

Update: Alabama Legislature Moves to Shield IVF from “Personhood” Ruling

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In response to the recent turmoil caused by the Alabama Supreme Court’s February 16th ruling in *LePage et al., v. The Center for Reproductive Medicine et al.* and *Burdick-Aysenne et al., v. The Center for Reproductive Medicine et al.* that pre-embryos are human children for the purposes of advancing a wrongful death claim, the Alabama legislature enacted a law intended to shield those who “provide or receive goods or services related to in vitro fertilization [(“IVF”)]” from any “action, suit, or criminal prosecution for the damage to or death of an embryo[.]” [AL SB 159 \(2024\)](#). The law provides civil and criminal immunity for IVF services provided both before and after the effective date of the law. However, the law exempts “services that are not already the subject of litigation”, such as the litigants in the *LePage* and *Burdick-Aysenne* cases. The law took effect upon signature by Alabama’s Governor, Kay Ivey, a Republican, on Wednesday, March 6th. Notably, both chambers of the Alabama legislature – the Alabama House and the Alabama Senate – have republican majorities. The bill passed with a 94-6 vote out of the House and with a 32-0 vote out of the Senate, demonstrating broad support for the law.

The enacted law now clarifies that a “manufacturer of goods used to facilitate the in vitro fertilization process or the transport of stored embryos” could be the subject of a civil suit, but damages from such a claim would be limited to “compensatory damages calculated as the price paid for the impacted in vitro cycle.” A single IVF cycle can cost a patient [between \\$15,000 - \\$30,000 by some estimates](#), so transport companies that move a large volume of embryos or products used to store many hundreds of embryos may not find much comfort in the cap, although it would shield these entities from punitive damages and criminal prosecution which could make services impossible.

Services such as extraction procedures, implantation procedures, and cryogenic storage are being viewed as “related” services intended to be protected by the new law, but do manufacturers of goods not specifically related to IVF, but nevertheless used in the IVF process, fall under the new law’s protections? For example, would a maker of petri dishes or pipettes remain liable if they also provide these supplies to medical facilities who provide services unrelated to the “process of in vitro fertilization”? The more ancillary the service to IVF, the more risk that service might bear of being excluded from the pending law’s shield. Entities that may bear the most continued risk would be third-party services that dispose of embryos or entities that engage in medical research involving embryos,

unless they can make the case that their services are sufficiently “related to” IVF. This may be difficult to do, as medical research and others did not receive special attention under the new law in the same manner as manufacturers of goods and transport companies. It is also difficult to define how “related” or not a service may be without a clear definition of “in vitro fertilization”.

While the law may provide enough relief from the Alabama Supreme Court’s ruling for [IVF providers to resume operations](#) based on its promise to shield providers and patients from civil and criminal liability, the new law still leaves intact the Court’s ruling finding that frozen pre-embryos are “extrauterine children”. Alabama’s 2018 amendment to the state’s constitution still “acknowledges, declares, and affirms that it is the public policy...to ensure the protection of the rights of the unborn child...” Ala. Const. Art. I § 36.06. Advocates for fetal “personhood” may seek to challenge the new law as contrary to the public policy of the state, and in a contest between a statute and a state constitution, the state constitution would control. Though, the present ordeal may have created new detractors to the “personhood” movement, as the new limits on access to IVF has caused a bipartisan public outcry in support of maintaining access to IVF.[1]

[1] See [Red-state Christian Women are Rising Up, Speaking Out to Defend IVF, Washington Post](#), (Mar. 1, 2024).

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