

In Vitro Fertilization: How to Talk About the Alabama Court Decision

THE ISSUE

The Alabama supreme court's ruling that embryos created through in vitro fertilization (IVF) are children in no way prohibits IVF. Rather, it is a victory for the women who lost their embryonic children due to the negligence of an IVF clinic. Parents have a right not to have their unborn children's lives snuffed out by others, regardless of their stage of development.

The well-being of children, not profit margins, should be the top priority when it comes to IVF and embryonic cryopreservation. This court decision reassures parents who rely on IVF that their children will receive the same legal protections as everyone else's.

The State of Alabama's hasty decision to give the fertility industry complete immunity from all civil and criminal liability in the practice of IVF, however, fails to protect the interests of parents as well as embryonic life. Why should the fertility industry be less regulated than the fast-food industry?

Destroying or neglecting human embryos is *not* essential for IVF. In Louisiana, for example, an embryo protection act has been on the books since the 1980s, and IVF continues to flourish in the state. Similarly, many Western countries permit IVF but limit or prohibit the wanton production and destruction of human embryos. Examples include Australia, France, Germany, Italy, and New Zealand.

The Alabama supreme court decision drew the public's attention to how the IVF industry operates. Many likely do not know that many IVF treatments in the United States rely on the

routine destruction of embryonic life, either intentionally or through neglect. Clinics often create a surplus of embryonic children to test them for the "best" genetic profile or to select embryos based on their sex or physical features. They routinely destroy unwanted embryos and may freeze some for later use. The case in Alabama involved the death by neglect of frozen human embryos.

No parent should suffer the loss of an embryonic child due to the intentional or careless actions of a fertility clinic.

Women choose IVF with the hope of conceiving and bearing a child. The Alabama court decision will help to ensure that the financial motives of the fertility industry in that state do not violate human life and the well-being of families.

The hysteria about restricted access to IVF services in Alabama following the state supreme court's ruling in *LePage v. Center for Reproductive Medicine* is unwarranted. The petitioners' wrongful death claim arose under the Alabama Wrongful Death of a Child Act after a patient at a nearby hospital entered an unsecured area and dropped a tank of frozen embryos. The state supreme court noted that its own precedents on statutory civil actions for the wrongful deaths of minor children have for decades included the unborn, and in recent years including those before "viability." The court wrote that there was no exception in the statute based on the location of the unborn child and therefore the statute ought to treat those in utero and those outside the uterus the same.

This paper, in its entirety, can be found at <https://report.heritage.org/fs269>

The Heritage Foundation | 214 Massachusetts Avenue, NE | Washington, DC 20002 | (202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

The court decision does not require IVF clinics in Alabama to close. Rather, they need only require their employees to better secure their facilities and exercise ordinary care—not negligence—in the handling of embryos. IVF patients in Alabama may rest assured that they can now pursue damages under the state’s Wrongful Death of a Child Act when clinics act negligently. A legal remedy of that kind should be good news for everyone.

RESPONDING TO FALSE OBJECTIONS

Objection: “Oh, then this is about abortion, and it reminds us that Republicans want to ban all abortions, even at early stages of development when the embryo is just a tiny cell.”

Rebuttal: *Block and Bridge*. Block: No. Abortion is about the destruction of unwanted unborn children; this case was about the destruction of unborn children *wanted* by the parents, but the defenders of the clinic argued that the embryos were not children at all. But,

scientifically, life begins at conception. Human embryos are human beings at the earliest stage of life. All people were once embryos. Bridge: Shift to discussion of Democratic abortion extremism.

Objection: “Limiting how clinics perform IVF will increase the cost. Three clinics in Alabama already ceased IVF treatments because they are concerned about legal battles. This ruling is already hurting couples who hope to conceive with IVF.”

Rebuttal: IVF clinics want to remain mostly unregulated. If clinics allow random people to access frozen embryo stores and destroy them, then such clinics should be shut down. Responsible clinics, on the other hand, are free to operate in Alabama. But Alabama and every other state legislature should establish a clear legal framework for the industry that, as it seeks to create life, also limits the destruction of unborn human life.