

To: Members of the United States Senate

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Subject: S. 4445, the Right to IVF Act

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This bill is a solution in search of a problem, as fertility treatments are widely available and there are no serious efforts to curtail thoughtful care for those experiencing infertility. Instead of serious legislation that balances complex issues, this is an anything goes free-for-all for the fertility industry. Legislation should balance the value of human life with fertility treatments, by avoiding the over creation of embryos while protecting parents and patients. Fertility treatments and ethical, pro-life approaches do not have to be in conflict. Unfortunately, this bill is a hyper-partisan, political endeavor and senators should not vote to advance to the bill.

But providing for a right and coverage for unlimited fertility treatments with no safeguards while also preempting state laws, S. 4445 puts families at risk and protects Big Fertility, [a multi-billion dollar industry](#). Fertility issues are among the most personal, emotional health issues, and should be handled with care and respect. Unfortunately, there are all too many [stories of embryos](#) lost by the fertility industry, whether as a result of human error, neglect, or by accident, as well as [fertility fraud](#) by doctors illegally fathering the children of their patients.

S. 4445 does nothing to protect parents or embryos; rather, it protects the anything goes fertility industry. It is so deeply flawed as to be irredeemable through floor action. The Senate should not get on the bill for the purpose of amending it. If the Senate goes back to the drawing board to draft legislation, they must prioritize protecting parents and embryos over a massive funding free-for-all for the multi-billion dollar fertility industry. Furthermore, S. 4445 misses the mark by ignoring the underlying causes of infertility and failing to prioritize treatment of underlying causes of infertility. Families facing infertility deserve better.

**S. 4445, the Right to IVF Act**, is a package combining four extreme bills that take an “anything goes” approach to fertility treatment. The legislation funds assisted reproductive technologies with virtually no safeguards to protect couples desperately seeking to build their families. The bill contains no respect for the embryos created. Instead, it shores up the fertility industry and forces taxpayers to foot the bill.

Throughout the bill, the unlimited definition of “fertility treatment” explicitly includes genetic testing of embryos. Procedures known as pre-implantation genetic diagnosis are used for the purpose of picking which embryos get a shot at life and which are discarded or frozen. There is no limit on testing embryos for non-lethal characteristics like sex and eye color, and for the destruction of embryos based on those tests. The definition also includes other procedures and referrals relating to fertility (as deemed appropriate by the Secretary of HHS) without excluding selective reduction abortions or fertility treatment using human cloning.

Notably, the bill does not prioritize restorative fertility treatments that would address underlying causes of fertility and give parents the opportunity for better health and to be able to conceive without assisted reproductive technologies.

**Title I: Access to Family Building** (Sen. Duckworth): establishes a statutory right to unlimited, broadly defined fertility treatment and reproductive technologies; prohibits commonsense regulations for the fertility industry; and entirely precludes protections for embryos.

- This creates a universal right to Assisted Reproductive Technology (ART) for individuals, providers, and insurers. The statutory right is defined so broadly that it creates a right to human cloning and genetic engineering of human embryos.
- This language blocks safety standards to prevent overproduction of embryos, which leaves parents with difficult decisions about the disposal of “excess” embryos.
- It would preempt and invalidate state laws like Louisiana’s that seeks to balance respect for embryonic life with fertility treatment, or laws requiring health and safety standards for the fertility industry.
- Further, the bill prohibits any state laws from limiting the ability to dispose of embryos, including “by defining... [an] embryo in such a way as to prevent the disposition of...embryos” (Sec. 104(e)(1)(C)). This would preclude states from enacting reasonable standards of storing and disposition that place value on the embryo as the earliest form of human life. It would not allow, for example, for embryos to be treated as anything more than property.
- The language supersedes any law that has the effect of “limiting...a patient’s right to receive...fertility treatment” (Sec.104(e)(1)(A)(iii)), which could be used to supersede conscience protections or claims under the Religious Freedom Restoration Act. Whatever a person’s view of IVF, nobody should be forced to be a part of the IVF process.

**Title II: Veteran Families Health Services** (Sen. Murray): permanently funds unlimited, broadly defined fertility treatment and reproductive technologies for service members serving in harm’s way or after an injury or illness, but only covers one year of cryopreservation for embryos. Just one year of cryopreservation incentivizes embryo destruction by forcing parents to

make difficult decisions regarding discarding unused embryos or paying out of pocket for continued preservation. It also provides coverage for unlimited, broadly defined fertility treatment and reproductive technologies for veterans and coverage for travel and other expenses related to procuring donated gametes.

- This puts the Departments of Defense (DOD) and Veterans Administration in the business of creating, storing and destroying embryos under definitions of Assisted Reproductive Technology (ART) that go far further than any previous Defense or Veterans Administration funding bills.
- The bill requires that all active duty service members be given the opportunity to freeze embryos before deployment, or before a hazardous assignment, including “other assignments as determined by the Secretary” without regard to whether the service member has an infertility diagnosis.
- Additionally, the language broadly defines “infertility treatment,” leaving too much discretion to the Secretaries of Defense and Veterans Affairs.
  - This fails to stop military-funded genetic engineering of human embryos (i.e. sex selection, intelligence, eye color, strength, etc.) in the future.
  - There is no guidance to ensure gestational surrogates and egg/sperm donors are not exploited during DOD taxpayer-funded fertility procedures.
- This legislation does not include safety standards to prevent overproduction of embryos, which leads to difficult decisions about the disposal of excess embryos.

**Title III: Access to Fertility Treatment and Care** (Sen. Booker): this requires employer-sponsored insurance plans and other public insurance plans, including Medicaid and Medicare, to cover unlimited, broadly defined fertility treatment and reproductive technologies.

- Notably, coverage for fertility treatments under this title does not require the individual to have an infertility diagnosis.
- Health insurance plans may not disincentivize fertility treatments (which in this bill largely means assisted reproductive technologies and IVF), which begs the question whether prioritizing less invasive or restorative reproductive health care treatments would be allowed.
- Genetic testing of embryos is explicitly covered.

**Title IV: Family Building FEHB Fairness** (Duckworth): this requires the Office of Personnel Management (OPM) to cover unlimited, broadly defined fertility treatment and reproductive technologies for government employees through the Federal Employee Health Benefit program.

- This gives broad latitude to the Director of OPM and the Secretary of HHS to determine what treatments and services would be covered.
- Genetic testing of embryos is explicitly covered.

### **Background:**

- In 2022, three infertile couples filed a wrongful death suit in Alabama because their frozen embryos were destroyed by a patient at the adjoining hospital who gained unauthorized access to the embryos. The families could have filed a property suit, but specifically chose to file for the wrongful death of their unborn children.
- On February 16<sup>th</sup>, 2024, the Alabama Supreme Court issued an [opinion](#) allowing the couples to seek compensation for the wrongful death of their embryos under Alabama's Wrongful Death of a Minor Act.
- This ruling set up a national discussion about in vitro fertilization (IVF). Unfortunately, much of the reporting on the subject is incorrectly equating embryo protection with prohibitions on IVF.
  - The ruling correctly assigned value to the embryos and did not prohibit IVF. It spoke only to whether embryos should be destroyed – in this case due to extreme irresponsibility on the part of the fertility lab.
  - Louisiana has both allowed IVF and provided protection for embryos as people, not property, since 1986.

### **Talking Points:**

- Legislation should balance the value of human life with fertility treatments, by avoiding the over creation of embryos while protecting parents and patients. Fertility treatments and ethical, pro-life approaches do not have to be in conflict. Unfortunately, this bill is a hyper-partisan, political endeavor—a solution in search of a problem.
- Embryos are unique human organisms that deserve to be respected and treated ethically.
- Creating a right and providing coverage for unlimited fertility treatments with no safeguards while also preempting state laws puts families at risk and protects Big Fertility, [a multi-billion dollar industry](#).
- S. 4445 does nothing to protect parents or embryos, but rather, protects the anything goes fertility industry.
- Congress must prioritize protecting parents and embryos over a massive funding free-for-all for the multibillion dollar fertility industry.
- S. 4445 also misses the mark by ignoring the underlying causes of infertility and failing to prioritize treatment of underlying causes of infertility. Families facing infertility deserve better.

- The Alabama court ruling allowed for embryos to be treated with the highest level of respect and care in response to the wishes of the couple seeking IVF treatment.
- Keep in mind that the plaintiffs in this case were couples who used IVF for their families. These families chose to seek justice for their destroyed embryos by suing for wrongful death of their unborn children. They knew there was something special about their embryos.
- Recognizing the biological fact that embryos are distinct human organisms with their own DNA creates an incentive to avoid the creation of excess embryos.
- [Louisiana](#) and [Germany](#) have established ethics and safety standards for IVF that prevent embryo destruction.
- Looking around the country at other states' laws regarding the practice of IVF while upholding the sanctity and dignity of all life, Louisiana clearly has the best laws on the books to support both. In fact, per the most recently available [CDC data](#) (2021), there were approximately 1500 embryo transfers and over 700 live births in Louisiana. And, according to [one fertility doctor](#), there are around 1,000 babies born through IVF in Louisiana each year. For comparison, the same CDC data reported only 966 embryo transfers and 437 live births in the state of Alabama.
- In the Alabama case, it was not IVF that was at issue, but rather whether embryos should be destroyed. People can be for IVF without being for the destruction of embryos.
- Deregulation of the industry is [dangerous](#).
- Embryo destruction can be addressed by reducing the creation of excess embryos.

### **Rebuttals:**

**Claim:** Fertility treatment would have been banned under the Alabama ruling, and Republicans want to ban fertility treatments.

**Response:** This is not correct. Hormone treatments and intrauterine insemination (IUI) are unaffected by the Alabama ruling. Additionally, the court decision allows for IVF while respecting embryos. Efforts to practice ethical fertility treatment does not ban fertility treatment. Since 1990, Germany has had in law "[The Embryo Protection Act](#)." The Act regulates for what purpose and in what way embryos may be handled:

- In procedures, the number of fertilized ovum cells that mature into embryos in the laboratories may not exceed that of those that are transferred to the woman during a treatment attempt.
- No more than three embryos may be stored per treatment attempt.
- Sex selection is prohibited.
- Embryonic research is prohibited.

**Claim:** Republicans want to punish doctors and women for conducting or receiving IVF.

**Response:** This is not true. Legislatures can set parameters around IVF, like how Germany addressed the parameters for handling embryos. The Alabama case was clearly one in which the facility recklessly mishandled the embryos. Parents and embryos both deserve protection.

**Claim:** The Alabama decision will negatively impact scientific research and developments.

**Response:** This is simply not true. There have not been any cures produced from [embryonic stem cell research](#). On the other hand, there have been [cures and treatments](#) produced from [ethical adult stem cell research](#).

**Claim:** What happens when someone loses their fertility traumatically (cancer, combat, etc.)? Are they not allowed to have kids now?

**Response:** Fertility treatment is not banned. IVF should be conducted in a manner that avoids excess embryos that will later be destroyed. Other methods of fertility preservation and other fertility treatments are unaffected.