

February 25, 2020

**RE: OPPOSITION TO HB 20-1158**

Dear Honorable Members of the Colorado Senate:

Thank you for your public service to the citizens of Colorado. Your role as a leader in making decisions that benefit the best interest of all Coloradans is critical. We are asking you to oppose HB 20-1158: known as the “Colorado Building Families Act.” There are strong ethical and scientific reasons to keep this bill from becoming law. Please do not be swayed by what other states are doing. We offer below a deeper, more thoughtful, and far-reaching look at the reality of IVF.

The devastation of infertility is all too real. For those who long for a child, infertility is a direct attack on their hopes, dreams, and personal identity. There is not an area of their lives it leaves untouched, impacting physical health, emotional well-being and cherished relationships. For some, infertility shows up seemingly out of nowhere. For others, it is the unfair price paid for a life-saving treatment or the ongoing assault of an injury sustained on the front lines, out of selfless service for the greater good. And there seems to be a solution, one that, on the surface, provides hope, but for too many, is just financially out-of-reach.

HB 20-1158 appears to address this dilemma, but unwittingly overlooks a greater concern in this matter. IVF, or *in vitro fertilization*, is at the heart of this bill (see Lines 13-14 for procedures and Lines 17-22 for drug protocol required for retrieval procedure). The end – the child – is always good. However, no moral evaluation can be based on just one component of a complex process, and that is why we must take a closer look at *what it is* and *how it works* in order to assess if it is a legitimate means to the desired end.

The IVF industry currently has no oversight or transparency and passing this bill will give it a license to further operate without scrutiny. IVF, by its nature, is not within the scope of health insurance. IVF poses serious medical and ethical risks. It is in this context that we are asking you to do something that at first glance may seem unfair, callous, or unfeeling. We are asking you to look beyond the adult desire and instead, stand for the rights of children. We are asking that you oppose HB 20-1158.

In order to fully grasp the arguments in opposition, defining terms is essential. An *egg* is a single reproductive cell. A *fertilized egg* is one that has joined with sperm, beginning the rapid cell growth of a new life. 95% of all biologists agree that a *fertilized egg* is a human being. Other terms for fertilized egg include: embryo, zygote, morula, blastocyst, “pre-embryo,” tissue, and specimen. However, biologically, if fertilization has taken place, the life of a new, unique human being has begun.<sup>1</sup>

Five Arguments in Opposition to HB 20-1158:

1. *Mandating IVF coverage contributes to the growth of an industry lacking transparency and oversight.*

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<sup>1</sup> “...95% of all biologists affirmed the biological view that a human’s life begins at fertilization (5212 out of 5502).” [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3211703](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3211703).

The US is described as the “wild west” of infertility care.<sup>2</sup> If it’s possible, it’s permissible. One such abuse is the number of so-called “extra” fertilized eggs, or embryonic children, who are created but destroyed, with or without an intermediary stay in a cryopreservation tank. Even for those with the best intention of not creating “extra embryos,” the processes of IVF are designed and deployed to routinely create more embryonic children than most families would ever intend to transfer and bring to term.

There may be upwards of one million or more abandoned or “extra” frozen embryos in the U.S. alone.<sup>3</sup> There is no accountability for or registry of cryopreserved embryonic human beings who are stored under IVF lab counters or by commercial long-term cryopreservation storage facilities. The drug protocol used prior to egg retrieval essentially industrializes the ovaries so a maximum yield of eggs may be retrieved. In the US, there are no limits on the number of eggs that can then be fertilized in a single cycle. And while the CDC and SART collect and report some information about IVF cycles, there is no reporting on the total number of fertilized embryonic human beings created in the IVF lab, or what happened to them, apart from uterine transfer. How many went into liquid nitrogen storage? How many were discarded? Why?<sup>4</sup> There is, however, vested interest by the IVF industry to create larger pools of embryonic humans. Having a larger pool of embryonic human beings to choose from increases the clinic’s odds of having better so-called “success rates” for pregnancies and live births. These outcomes then play an important role for network inclusion and reimbursement rates.

The current informed consent process for IVF does not provide patients with information that equips them to make a fully-informed decision about proceeding with the procedure. (1) Patients do not receive a clear, plain-language definition of “embryo.” At best, they are given a synonym. They are not told that a human embryo is a human being in his or her earliest stages of development, despite the embryo’s obvious, complete, and essential role in a pregnancy. (2) Many of the patient’s newly created embryonic children will be “discarded.” “Discard” refers to removing a living human being from the embryology lab incubator, bringing it to room temperature and disposing of it as medical waste. Alternatives to waste disposal are available, but not offered, prior to the start of an IVF cycle. (3) Many legal cases for embryo custody have already confirmed that parents who sign these consents are in no way shielded from tumultuous and bizarre judicial decisions once the parents separate or divorce. Parents are lulled into a false sense of security signing these consents and do so many times without legal advice or even the opportunity to review the consents properly or determine their legal ramifications. This process will only be exasperated by HB 20-1158.

IVF intentionally ends the life of hundreds of thousands of embryonic human beings annually, and it does so under the guise of “medical waste discard.” Embryonic children are discarded due to morphological assessment, pre-implantation genetic assessment (e.g., for diseases like cystic fibrosis, chromosomal abnormalities like Downs Syndrome, or sex selection known as “family-balancing”). Considering the viability of any given fertilized egg, “discard” is a euphemism for killing a living human

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<sup>2</sup> <https://www.inquirer.com/health/history-of-infertility-treatments-in-us-reproductive-medicine-ivf-20191113.html>

<sup>3</sup> <https://www.nbcnews.com/health/features/nation-s-fertility-clinics-struggle-growing-number-abandoned-embryos-n1040806>

<sup>4</sup> Reporting requirements for ART programs. <https://www.federalregister.gov/documents/2015/08/26/2015-21108/reporting-of-pregnancy-success-rates-from-assisted-reproductive-technology-art-programs#p-81>. Actual published data: <https://www.cdc.gov/art/artdata/index.html>

being. Between intentional discard, spontaneous self-arrest and post-transfer mortality, it is estimated that less than 8% of embryonic children conceived in the IVF lab will survive to live birth.<sup>5,6</sup>

2. *IVF poses serious medical & ethical risks to woman and to IVF-conceived children through the practice of surrogacy.*

Page 4, lines 6-7, are particularly problematic, because it opens the door for surrogacy. The line simply reads “a person’s inability to reproduce either as an individual or with the person’s partner”. While this language may seem innocuous enough, it opens the door for both same-sex and heterosexual couples who cannot carry a child, to engage in the practice of surrogacy, both altruistic and commercial. Typically, the surrogate mother is someone who is in financial need.<sup>7</sup> Commercial surrogacy opens the door to commodification of women and the practice of payment for a child. The ethical and moral cause of exploitation and the rights of the woman should be protected at every stage, including loosen the IVF regulations to allow surrogacy. Further, it is not only the woman’s rights that are violated. Surrogacy, especially commercialized surrogacy, ignores the biological reality that a real bond is formed between the child and the surrogate mother. It is known that biologically an unborn child responds more strongly to his mother’s voice than any other. The child forms a natural bond while gestating within the womb and his first knowledge of family is from what he experiences within.<sup>8</sup>

Unfortunately, it is in this role that one can see the commodification of the surrogate. The surrogate merely is contracted to be an incubator for the “intended parents” while biological reality is disregarded. In essence, *the right of the child is ignored*. The fact remains that the state has more guidelines for the adoption of children because it recognizes the right of the child to have certain rights met by the adoptive parents. This simply does not yet exist in the realm of surrogacy. Adoption is not viewed as a process of exchange of material “goods” (money for the child) as seen in commercial surrogacy, but rather seeks to ensure that the adoptive parents will live up to their legal (and moral) responsibilities as parents. The embryonic children are also commodified because they are not even seen as human beings but simply “tissue” or “material” to be produced or discarded at the whim of the IVF industry. In most states, animals that are considered property have more rights than a human embryo.

IVF drives a host of medical and ethical concerns sprouting up in the name of reproductive care: long-term effects of potent fertility drugs on women’s health, paid surrogacy, the commodification of children, the injustices to donor-conceived children who are unable to know their biological parents or heritage. Passing this bill is the first step toward releasing the floodgates of grave bioethical dilemmas for Colorado.

3. *IVF, as a scientific procedure, is not within the scope of health insurance.*

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<sup>5</sup> M. J. Tucker et al., “Oocyte to Live Birth Efficiency of Autologous In Vitro Fertilization,” *Fertility and Sterility* 94.4 suppl (September 2010): S83, doi: 10.1016/j.fertnstert.2010.07.321.

<sup>6</sup> <https://www.reuters.com/article/us-fertility/conception-is-a-rare-event-fertility-study-shows-idUSTRE69O50T20101025>

<sup>7</sup> See <https://www.nytimes.com/roomfordebate/2014/09/22/hiring-a-woman-for-her-womb/paid-surrogacy-is-exploitative>.

<sup>8</sup> See <https://www.today.com/parents/unborn-babies-are-hearing-you-loud-clear-8C11005474>.

Health insurance is a financial instrument that protects people against the cost of health care by distributing medical expenses across a defined population. Health care exists to prevent illness, treat injury and cure or manage disease...*for a human being who already exists*. With IVF, on the other hand, a scientist creates *a new human being*. IVF may be many things, but it is not by its very definition, a procedure which can be a covered medical expense. Thus, this practice will continue to be cost prohibitive to all but the wealthiest of couples to create their idealized child.

*4. HB 20-1158 puts in place a "health benefit" where conscientious objectors unknowingly support a practice to which they are opposed.*

HB 20-1158 has the potential to create a situation in which insurance policy holders unknowingly pay premiums in support of something which they find religiously, ethically, or morally objectionable. Not only does the naming convention of this bill obfuscate the subject matter of IVF, but plan summaries and coverage language may not describe, in plain language, the nature of the covered services. In essence, people who might hold religious or conscientious objections, become unwitting accomplices to practices that violate their consciences.

*5. HB 20-1158 seeks to prioritize one person's desires over another's rights.*

The argument is often made that a prospective parent has a *right to have a child*. In this, there seems to be a fundamental misunderstanding of what the actual term "right" means. Rights imply duties. When one tries to argue that there is a *right* to a child, one is arguing that others essentially have the duty to provide him with the necessary materials (gamete cells, a uterus, and an actual child) to get a child. It is in the fundamental misunderstanding of the term "right" where we can see that the child somehow becomes commodified. Neither the State nor any citizen has the duty to provide a child to persons who want them. Nor is there a duty to compel others to provide gamete cells to produce children. In fact, States take great care in the adoption process to ensure the rights of the child, not of the would-be-adoptive parents. Yet when it comes to IVF, the desires of the would-be parents are placed before those of the child, who at any age, even at 1 hour old in a petri dish, is a person of equal value and as deserving of dignity and respect.

More can and should be done to support people battling infertility, and we should all advocate for effective, affordable treatments that respect both the potential parents and their children. There is also a compelling need to actively take a closer look at the IVF industry and its practices. If in reading this you discover a passion to bring about transparency and accountability in this space, we hope you will look to us as resources.

We thank each of you for your great commitment to serve the people of Colorado. We strongly urge you to oppose HB 20-1158 since it will only exacerbate the creation and destruction of embryonic children, force insurance policy holders to pay for coverage that they find morally problematic, and promote the morally problematic practice of surrogacy and commodification of human beings. It is time to start recognizing that there is no "right" to a child. Human beings, even very young, very small ones, cannot be commoditized and bought. Families are not something you pay to build. Thank you for your consideration.

Sincerely,

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