

Chairman Ruby, Vice Chair Frelich, and members of the Human Services Committee,

My name is Nick Samuelson, and I reside in Fargo. My wife, Elizabeth, and I have been married since 2017. We have been trying to have children since 2023, but due to medical conditions beyond our control, we have had to turn to in vitro fertilization (“IVF”) to grow our family. We’re not alone—about 2% of babies born in the United States are conceived through IVF.¹ This process is long, expensive, and emotionally taxing. After many months, we’re in the home stretch, and I’m hopeful that by the time this bill reaches the House floor for a vote, we will be expecting our first child. However, I am concerned that, as written, House Bill 1373 may take away this option from North Dakota couples in our situation.

I want to be perfectly clear; as written, this law does not outlaw IVF. However, if passed in its current form, the predictable result will be to create an environment in which IVF providers cannot continue to operate in North Dakota.

In 2024, the Alabama Supreme Court held that under Alabama’s Wrongful Death of a Minor Act, the definition of a child included non-implanted, cryogenically preserved embryos created through IVF.² Within days of the decision, several providers ceased or paused IVF services in Alabama.³ At the same time, the University of Alabama at Birmingham Hospital announced that it was unable to locate shipping companies “able and willing” to transport embryos.⁴ Not only were new patients shut out from accessing care, but those waiting to transfer frozen embryos were stuck in a state of limbo as they could not even move their embryos out of Alabama. The liability risk to providers and couriers was so severe that the only option was to stop providing services in the state. In response, the Alabama State Legislature passed a bill granting civil and criminal immunity to IVF service providers and receivers.⁵

¹ MADELINE HOLCOMB, About 2% of babies born in the US are from IVF. Here’s what you need to know about it, CNN (Feb. 21, 2024) <https://www.cnn.com/2024/02/21/health/ivf-egg-freezing-explainer-wellness/index.html>

² LePage v. Center for Reproductive Medicine, P.C., SC-2022-0515 (Ala. Feb. 16, 2024).

³ Alabama Fertility Specialists, FACEBOOK, (Feb. 25, 2024), <https://www.facebook.com/alabamafertility/posts/dear-patients-of-afsw-e-have-made-the-impossibly-difficult-decision-to-hold-new-i/924664096329070/>; EL-BAWAB, NADINE, ELIZABETH SCHULZE, & CHEYENNE HASLETT, Alabama’s Biggest Hospital to Suspend Transfer of Embryos After Court Ruling, ABC News (Feb. 23, 2024),

<https://abcnews.go.com/US/2-alabama-clinics-pause-ivf-fertility-treatment-after/story?id=107455469#:~:text=Alabama%27s%20biggest%20hospital%20announced%20it,frozen%20embryos%20are%20considered%20children.>

⁴ Id.

⁵ LIZ BAKER, DEBBIE ELLIOTT, & SUSANNA CAPELOUTO, Alabama governor signs IVF bill giving immunity to patients and providers, NPR (Mar. 6, 2024), <https://www.npr.org/2024/03/06/1235907160/alabama-lawmakers-pass-ivf-immunity-legislation.>

As this bill is currently drafted, I would urge the Committee to give it a “do not pass” recommendation. If passed in its current form, I fear the risk of heightened legal liability will likely force North Dakota’s IVF providers to leave the state as Alabama providers did in the wake of the LePage decision. At the very least, please consider amending this bill to add protections for IVF service providers, medical couriers, and patients, as the Alabama Legislature did in response to the LePage decision. Please allow IVF providers to keep bringing hope to couples in our situation.

Respectfully submitted,

Nick Samuelson
Fargo, ND