Liberty Counsel Action
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Current Fertility Industry Practices Call for Strict Oversight, Promotion of Restorative Reproductive Medicine

The executive order signed in February 2025, calling for policy recommendations to protect in vitro fertilization (IVF) access and reduce out-of-pocket and health plan costs for IVF treatment, has the potential to positively alter the landscape of reproductive medicine, pending the form of said recommendations. The following analysis highlights the most pressing concerns related to IVF and other assisted reproductive technologies (ART), providing policy recommendations to both promote access to holistic reproductive health care in the form of restorative reproductive medicine (RRM) and require IVF providers to treat embryos as children instead of objects for sale.

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Medical and Ethical Concerns Related to Current Standard Practices of the Fertility Industry

In July 2025, a new record was set for the oldest baby born via IVF: Thaddeus Daniel Pierce, conceived in 1994 alongside three other siblings (including a now 30-year-old sister), was frozen for 30 and a half years[1] before being born to adoptive[2] parents Lindsey and Tim Pierce. As aptly summarized by his birth and adoptive mother, "It's like something from a sci-fi movie."[3]

This story illustrates a scientific truth, as outlined by Maureen Condic, Ph.D., associate professor of neurobiology at the University of Utah School of Medicine: "The conclusion that human life begins at sperm-egg fusion is uncontested, objective, based on the universally accepted scientific method of distinguishing different cell types from each other and on ample scientific evidence. … Moreover, it is entirely independent of any specific ethical, moral, political, or religious view of human life or of human embryos."[4] In essence, the location of an embryo at the moment of fertilization (in or outside the womb) does not change the fact that said embryo is a unique human being.

As such, every child conceived and born from in vitro fertilization (IVF) has incalculable worth and value, just as any child conceived and born naturally. Liberty Counsel Action celebrates these lives while also recognizing the sobering reality that current fertility industry practice results in more failures than successful live births, leading to emotional pain and financial struggles for the couples involved. The following are our top concerns related to current fertility industry practice.

1. Commodification and exploitation of women and children via surrogacy

A. Current estimates suggest there are between one and 10 million frozen embryos nationwide.[5] Any policy seeking to expand IVF access without providing limitations on embryo creation would exacerbate this (often indefinite) practice of placing lives on hold.

B. Industry practice often involves embryo grading, genetic testing, and selection. The most common approach, preimplantation genetic testing, is currently offered by over 90% of ART clinics for characteristics ranging from eye color to sex[6] and even IQ[7] (with 73% explicitly offering sex selection). Such testing for the purposes of selecting "desirable" embryos is the epitome of **eugenics**, widely accepted as a failed science post the horror of the Nazi regime in Germany. Some seek to justify the current practice of eugenics by distinguishing the reasons for it, but the outcome is the same: individuals die if they don't make the grade.[8]
**It should not go unmentioned that Germany has some of the strongest IVF protections, largely because the history of eugenics under Nazism is very present in the national psyche. The German population understands fully the weight of creating human life and the danger of choosing characteristics to suit one's own desires.*[9]

C. Ironically, though preimplantation genetic testing (PGT) remains routine in IVF, the American Association of Pro-Life OBGYNs (AAPLOG) found "several studies indicate PGT lowers the live birth rate; does not improve pregnancy, implantation, or live birth rates; and should not be used except perhaps for research studies."[10]

D. Unless strictly prohibited, expansion of IVF would advance the promotion of surrogacy, which enables individuals to "buy" an egg or a sperm, "rent" a womb, and "create" a child or

"designer baby"[11] with traits to their liking. By design, it severs the "natural maternal bonding that takes place during pregnancy," which can lead to difficulties in adjustment for children.[12] Additionally, it often deprives a child of either a mother or a father.[13]

E. Children are at risk of exploitation as well, perhaps best illustrated by a recent child abuse case out of California: A couple who owned a surrogacy operation were found to be housing 21 children from various surrogate mothers, all of whom have been placed in protective custody after discovery of severe child abuse inside the home, including a two-month old who suffered a traumatic head injury. As stated by one of the surrogate mothers, "It's horrific, it's disturbing, it's damaging emotionally."[14]
F. Referring to such surrogacy agencies, Kallie Fell, executive director of the Center of Bioethics and Culture, states, "Anything goes. And these clinics, these agencies are not regulated by any governing body."[15]
G. Related, surrogate mothers are also at risk of exploitation[16] (including being trafficked[17]) and have a higher risk of postpartum depression[18] and severe maternal morbidities[19] compared to those who conceived without the use of ART.[20]

2. Myriad physical health risks to mother and child

A. Children conceived through IVF face a 40% higher chance of birth defects, "double the chance of stillbirth," an increased risk of leukemia, higher blood pressure, low birth weight, and, according to a 2022 study, an increased risk of "any type of childhood cancer," among other risks.[21]
B. These risks should not be surprising, given the following 2024 testimony by expert Jennifer Lahl provided to the U.S. Senate:

> *The Journal of Human Reproduction reported that development of the embryo outside the body means that it is constantly exposed to stresses that it would not experience in the womb. Sources of stress on the human embryo include changes in pH and temperature shifts, exposure to atmospheric (20%) oxygen (vs. 95% in the body) and the build-up of toxins in the media the embryo is in. When more than one stress is present in the laboratory, there is evidence that negative synergies can result, culminating in significant trauma to the developing* embryo.[22]

C. Tragically, a Swedish study demonstrates that for those children who are born alive, they likely have "higher infant mortality risks" compared to those born without the use of ART.[23]
D. Women undergoing IVF similarly face double the risk of life-threatening pregnancy complications, "a 26% increase in the risk of preterm birth," as well as an increased risk for vascular complications (e.g., irregular heartbeat and kidney injury).[24]
E. According to the CDC, in 2022, the percentage of live births resulting from embryo transfers using a patient's own eggs ranged from 31.6%-43.6% for women up to age 40.[25] After age 40, this declines dramatically; according to one global fertility agency, IVF leads to live birth for approximately 7% of women over 40.[26] Another study highlights that anticipated

"success" is often met with discouragement; while almost 60% of patients expect to achieve a live birth, doctors' average estimates for said patient success was just over 30%.[27] The emotional and physical impacts of often multiple pregnancy losses is impossible to calculate.

3. Failure to adequately utilize the restorative health options available, which are often more cost-effective

A. Infertility affects 15-16% of U.S. couples[28] and is often a side effect of one or multiple underlying condition(s), including (but not limited to): endometriosis, adenomyosis, polycystic ovary syndrome, uterine fibroids, hormone imbalances, and more.[29] For example, endometriosis is present in up to **63% of unexplained infertility** cases for women.[30] Tragically, it takes 11 years, on average, to receive a diagnosis, and many women turn to IVF.[31]

B. Unfortunately, failing to deal with underlying health issues while seeking IVF may lead to a greater chance of miscarriage. For example, one study found women with endometriosis had a 76% higher risk of miscarriage and an ectopic pregnancy rate three times higher than those without.[32]

C. Conversely, several single-clinic studies show "adjusted cumulative live birth rates ranging from **29% to 66%**" when "subfertile couples" receive "restorative reproductive medicine . . . for up to two years,"[33] removing the need for an expensive, risk-laden IVF procedure.

D. Documented cases further demonstrate that restorative reproductive medicine can "improve fertility rates even after IVF failure."[34] For example, a study cited by expert policy analyst Emma Waters with the Heritage Foundation found "40% of couples previously diagnosed with infertility conceived naturally after undergoing RRM-based treatments compared with a 24% success rate with IVF."[35] Another study found 32.1% of women with an average of 2 failed IVF attempts experienced a live birth after undergoing RRM.[36]

E. In short, as also outlined by Emma Waters, any policy expanding access to IVF and related reproductive technologies should ensure doctors and patients "understand how to treat each of the conditions involved . . . Women should not spend years in pain struggling with 'unexplained infertility' when restorative treatments could alleviate their pain and remove barriers to successfully conceiving and carrying children. **Such methods may also increase a couple's success rates if they decide to still use IVF, too**."[37]

4. Failure to prevent "never events" (gross oversights), which can lead to immeasurable emotional and physical trauma

A. Currently, there are very few regulations providing effective protection for women and children undergoing IVF; for example, while IVF providers are technically meant to report to the CDC, said requirements "are not enforced and do not include information on accidents, adverse events, or legal or regulatory actions against clinics."[38]

B. Of specific concern, the fertility industry is exempt from reporting "never events" (or "major, avoidable mistakes"), which are closely regulated in every other field of medicine.[39]

C. Related, only 11 states have laws regulating "facilities that collect and transfer human gametes and embryos."[40]

D. In short, as outlined by Emi Nietfeld, the fertility industry is, for the most part, "self-regulated by professional bodies that have no enforcement power, besides referring reckless doctors to state medical boards."[41] This lack of oversight has likely contributed to numerous egregious harms, including the following:

- In May 2024, Krystena Murray was forced to relinquish custody of the child she had birthed through IVF, a child she "immediately" knew was not her own: she and her sperm donor are both white; the baby was black.[42] While she had resolved to raise the child, the biological parents discovered the issue and demanded custody. Murray, who was left "emotionally and physically broken," shares that while she "considered the consequences of IVF going in [including infection, sterility, and even death]," **she "never once" considered she may "birth someone else's child and have them taken from me . . . I feel like that should be something that women are aware of as an actual possibility."**[43]
- In April 2024, Ovation Fertility in Newport Beach, California was sued by 11 couples "for using hydrogen peroxide instead of distilled water during the incubation process" and for relying on "inexperienced, cheap, unqualified, and untrained employees to cut corners and maximize profits."[44] Despite knowing they were unviable, the clinic transferred over two dozen embryos into would-be mothers, then "waited over a month to tell them something went wrong."[45]
- A 2023 investigation into Kindbody, a fertility provider with 33 clinics nationwide, uncovered "multiple instances of accidental embryo destruction, mislabeled embryos, and labs with faulty heating, ventilation, and air conditioning systems."[46] One woman experienced intense trauma after waiting for three hours to have her last embryo implanted, having invested over $30,000 and undergone multiple hormone injections, only to learn it was mislabeled and the clinic was not sure it was hers.[47]
- In 2021, two women gave birth to and raised each other's children for months after the California Center for Reproductive Health and In Vitrotech Labs "mixed up" their embryos; DNA testing eventually revealed the mistake.[48]
- In 2019, a New Jersey couple filed suit against the "Institute for Reproductive Medicine and Science for an alleged mistake of putting the wrong egg with the wrong sperm." The couple noticed Asian features developing in the child at around the two-year mark, and after a DNA test showed the father had a 0% chance of being biologically related, the stress and tension that ensued led to divorce.[49]
- In recent years numerous "fertility fraud" cases have come to light; specifically, the cases "claim dozens of women unknowingly gave birth to children fathered by more than 50 doctors," some of whom are accused of illegally using "their own sperm to artificially inseminate patients."[50] Caused by a lack of regulation, such scenarios can lead "to a worst-case scenario coming to pass: accidental incest."[51] In one case, a woman conceived with sperm from a fertility doctor (allegedly without her mother's permission)

eventually discovered she had 22 siblings—one of whom had been her high school boyfriend.[52] (Legislation introduced in 2023 would address this issue; see recommendations.)

- In 2018, over 150 families filed suit against University Hospitals in Ohio after a freezer malfunctioned, leading to the loss of 4,000 eggs and embryos. According to one news source, "Temperatures rose in a cryopreservation tank, rendering the embryos and the eggs of more than 900 families nonviable."[53]
- In 2018, a California freezer tank failed, killing more than 3,500 human embryos and eggs. Over 140 federal lawsuits were filed against the tank manufacturer.[54]
- The Alabama case was entirely centered on the wrongful death of embryos who died after someone tampered with the cryogenic nursery in 2020.[55]

E. As summarized by an attorney whose firm has represented hundreds of people with fertility industry claims, "Tragically we see very serious errors on a daily basis. **These are the wild west days of the American fertility industry . . . It can do, basically, whatever it likes."**[56]

5. Increasing demand for commercial surrogacy from foreign nationals (with possible pathway to citizenship) and celebrities

A. Depending on policy specifics, expanding IVF access has the potential to further advance (or at least permit the continuation of) "reproductive tourism."
   - From 2014-2020, 32% of surrogate embryo transfers "were for international intended parents."[57] Of these, 41.7% come from China, many are men (41.3%) and 33.9% are over the age of 42 (compared to 26.2% of domestic intended parents).[58]
   - This is particularly concerning given the Chinese Communist Party is known for "coercive tactics abroad"[59] as well as human rights abuses. As one surrogacy agent (who gave a pseudonym for fear of retribution) notes, "**many of her clients were 'high-level Communist Party officials . . . with money and power who wanted their children to have American citizenship.**"[60]

B. As it relates to the possibility of citizenship for the children of surrogates born to (a) foreign parent(s):
   - While President Trump's executive order on birthright citizenship[61] clarifies that babies born to mothers[62] unlawfully present in the U.S., or lawfully but temporarily present, do not automatically qualify for American citizenship under the Fourteenth Amendment, the executive order is less clear regarding babies born to foreign parents with eggs or sperm donated by an American citizen, and/or born by a surrogate mother who is an American citizen.
   - In the former case, the child would be granted "citizenship" (though this is complicated if the sperm or egg donor is anonymous); in the latter case, it is unclear. Specifically, the order outlines that "if at least one progenitor is a US citizen or a lawful permanent resident, the individual would automatically be afforded citizenship."[63] The question is whether a gestational surrogate qualifies as a progenitor.
   - In short, this requires immediate legislative action.

C. Similarly, numerous celebrities have utilized the unregulated surrogacy market.[64] Said surrogates often have uniquely emotional and at times traumatic experiences, given that "when a high-profile person comes with business managers . . . head of security, that can be very intimidating for a surrogate," who is often drawn to surrogacy for financial reasons.[65]

6. Failure to address the harm experienced by surrogate mothers

A. Surrogate mothers face the risk of financial exploitation, becoming infertile, and dying as a result of the process.[66] There are also known cases of surrogates being trafficked.[67]

B. Similarly, there are myriad examples of surrogate mothers being asked to abort, which can be emotionally taxing and draining, if not traumatic, experiences for the birth mother. For example, surrogate mother Crystal Kelley was asked to abort after a five-month ultrasound showed "a number of medical problems, including a cleft palate, a brain cyst, and a heart condition."
    - She refused and was subsequently offered $10,000.
    - She refused again and was threatened by being told the child would be placed in an institution.
    - After seeking legal help, she was advised to go to Michigan, "One of the few states in which custody is automatically granted to the gestational mother."
    - After finding a family to adopt the baby, she did so.[68]

C. We respectfully propose this issue be dealt with as a priority such that any policy proposal expanding IVF access also imposes strict regulations expressly prohibiting commercial surrogacy, as well as the practice of "reproductive tourism."

7. Permitting ethically questionable practices

A. Though the use of genetically modified embryos intended for pregnancy is banned by an annual appropriations bill rider,[69] there are no guarantees it will be renewed. Furthermore, there are calls to remove the ban,[70] which could make the following permissible nationwide: the creation of, and the sale or purchase of, genetically modified embryos for implantation purposes, including three-parent embryos,[71] enabling polyamorous "throuples" to have a child related to all parents; human-animal chimeras (which have already been created by scientists in China[72]), and reproductive cloning (banned in some states).[73]

B. Advancements in technology present further ethically questionable practices, including in vitro gametogenesis (IVG), "which involves custom-making human eggs and sperm in the laboratory from any cell in a person's body" and "is on the precipice of materialization."[74] This could enable lesbian, homosexual, and transgender couples to have babies that are genetically related to both partners and a single person to have a "uni-baby." With further technological advancements of artificial wombs, theoretically, a male could self-procreate without the assistance of a biological woman.

C. Perhaps most appallingly, the current lack of regulations surrounding ART has **allowed a Tier 1 registered Pennsylvania sex-offender and his male partner to become parents via surrogacy** "without the same intense scrutiny, accountability, and judicial oversight mandated for the adoption process."[75] The sex-offender-now-surrogate-father, Brandon

Keith Riley-Mitchell, was convicted in 2016 for **"sexual abuse of children"** and **"pleaded guilty to felony possession of child pornography."**[76] He was sentenced to a maximum of 23 months of prison time, with a minimum of three months in confinement. And while a PA district attorney is "calling for legislative action . . . noting current state law did not preclude Riley-Mitchell from becoming a father," until such loopholes are corrected, the federal government should by no means support an industry that accommodates such unconscionable practices.[77]

Policy Recommendations: Expanding Access to In Vitro Fertilization (IVF) Necessitates Strict Oversight of the Fertility Industry and Promotion of Restorative Reproductive Medicine

Proponents of federally funded IVF, particularly for federal employees and military members, rightly claim it is hypocritical for Congress to deny members of the military the same IVF coverage they benefit from. The solution, however, is not expanding bad policy; rather, Congress needs to address the abhorrent lack of regulatory structure over the fertility industry and pass legislation that values life, prevents the commodification of children and exploitation of women, and ensures couples are aware of the risks related to IVF and the myriad restorative health options available. Furthermore, we propose that the risks faced by children created through IVF procedures (increased pediatric cancer rates, congenital heart defects, etc.) deserve serious consideration in any public policy.

The following policy proposals, some of which closely mirror model legislation from Americans United for Liberty, would address the concerns inherent in IVF while fulfilling the spirit of President Trump's IVF executive order— "more babies."[78]

1. Promote reproductive restorative medicine: advance the RESTORE Act

Liberty Counsel Action recommends that Congress advance the Reproductive Empowerment and Support through Optimal Restoration (RESTORE) Act as introduced by Senator Hyde-Smith (R-MS) and Representative Diana Harshbarger (R-TN) in the 119th Congress.[79] In short, this act seeks to promote restorative reproductive care methods that are known to improve men and women's health and natural ability to conceive. Such methods are also often "far more affordable than IVF"[80] and have also been shown to succeed where IVF fails.[81] Notably, this approach would likely reduce financial burdens on families seeking to conceive as well as those placed on the health care system.[82]

As the RESTORE Act findings state, "[u]nfortunately, many couples do not receive adequate information about their reproductive health and do not have access to restorative reproductive medicine."[83] Indeed, diagnosis, treatment, and research funding for most underlying reproductive health conditions is sorely lacking,[84] leading (in part) to the current situation wherein medical professionals (who themselves may lack the proper training on these underlying causes) simply

direct couples facing infertility to IVF treatment (which as detailed above is often ineffective as well as emotionally and financially draining). The RESTORE Act takes the first steps in addressing these gaps by promoting "educational tools for women seeking information about reproductive health conditions and restorative reproductive medicine" and providing medical professionals with training opportunities "to learn how to better diagnose and treat reproductive health conditions," among other things.[85]

As summarized in a recent joint opinion editorial penned by a former IVF doctor turned RRM advocate alongside the founder of a pro-life human rights organization, "RRM achieves comparable or better live birth rates than IVF, without the destruction of embryos and at a fraction of the cost. Because it restores long-term reproductive health, RRM not only supports conception but improves maternal and infant outcomes as well."[86]

In other words: Restorative reproductive medicine should be the "gold standard" of fertility care.[87]

2. Introduce legislation with life-affirming requirements

While some IVF providers operate with the best of intentions, the "bad actors," and the unfortunate truth that ART procedures regularly lead to disappointment (miscarriage, stillbirth, or death of the child post-birth), necessitate proper regulations. As outlined by Americans United for Liberty, allowing the ART industry to self-regulate "is ineffective."[88] Setting aside the fact that not all ART programs are members of the professional organizations that create recommended guidelines (e.g. the Society for Assisted Reproductive Technology (SART) or the American Society for Reproductive Medicine (ASRM)), even for those that are, there is no guarantee they follow them.[89] Liberty Counsel Action recommends Congress introduce legislation similar to the following model, which offers a basic regulatory approach that ensures life is respected and protected and mitigates the damage being caused by the current lack of regulatory oversight.

A. Limit the number of embryos created and transferred; prohibit freezing embryos

- No more than [one–two] [viable] embryos should be created in one reproductive cycle.
- All [viable] embryos should be implanted as soon as clinically appropriate.
- If two embryos are transferred, selective reduction should be expressly prohibited.
- Freezing embryos should be prohibited, with an exception allowed for couples whose circumstances change such that they no longer desire to have embryos implanted. In these cases, embryo adoption should be considered (see point (b)).

Rationale: Of note, several jurisdictions, including the state of Louisiana, as well as Australia, France, Germany, Italy, and New Zealand, have laws limiting or prohibiting "the wanton transfer, production, and destruction of human embryos."[90] Indeed, transferring multiple embryos at one time can lead to a pregnancy of multiples, which increases the risks of complications. Notably, in a 2021 Data Brief the CDC (citing ASRM) stated "Reducing the number of embryos transferred and increasing the use of single embryo transfer procedures, when clinically appropriate, can help reduce multiple births and related adverse health consequences for both mothers and infants."[91]

The above recommendation also allows couples to consider whether a higher-risk (twin) pregnancy is clinically appropriate while remaining life-affirming and largely preventing the indefinite freezing of embryos.

B. Permit and create a regulatory structure for embryo adoption

Rationale: For embryos currently frozen as well as those that may be created in the future and abandoned, the most life-affirming solution is to permit embryo adoption. As with most ART practices, the regulatory structure required to protect the parents and children involved in embryo adoption has not been developed and is sorely needed. If said structures are created and implemented, parents of currently frozen embryos should be notified.

C. Prohibit genetic testing and selection

Rationale: While the above would, by implication, prevent future testing of and selection of embryos, for embryos already created, Congress should ensure embryo testing does not become a tool of modern-day eugenics by prohibiting its further use. The immutable characteristics of sex, race, non-threatening life disability, or other known or anticipated traits should not impact the selection of certain embryos over others.

D. Prohibit egg donation to third parties and surrogacy

Rationale: Women who donate eggs face myriad risks to their health.[92] Similarly, there is a greater risk of complications in pregnancies involving donor eggs, which includes surrogacy. (For example, "Studies show that women pregnant with donor eggs have a more than three-fold risk of developing pregnancy-induced hypertension and pre-eclampsia."[93]) Given the many health and psychological risks associated with surrogacy, its ties to human trafficking, and concerns related to foreign nationals utilizing U.S. surrogates to obtain citizenship for their children, surrogacy should be expressly prohibited. Notably, several nations have laws prohibiting commercial surrogacy, and surrogacy in all forms is banned in Bulgaria, France, Germany, Italy, Portugal, Taiwan, and Spain.[94]

E. Prohibit genetic modification of embryos

Congress should expressly prohibit genetically modifying embryos, including but not limited to the creation of three-parent embryos, the creation of chimeras (human-animal hybrids), and any that could be created through advancements of in vitro gametogenesis.

Rationale: These are deeply controversial practices. The long-term effects of such modifications are unknown, and the ethical questions tied to such practices outweigh any arguments seeking to allow their continued practice.

3. Prevent "never events": require regulation of ART providers, reporting (data collection), & comprehensive informed consent

Most other medical fields closely regulate medical facilities, yet currently, there are no federal laws, nor enforced professional guidelines, that expressly require and enforce licensing and regular inspection of [ART] facilities.[95] Such licensing and inspection are particularly needed to mitigate the

risk of "never events" (major, avoidable mistakes) and prevent tragedies like those listed above. Similarly, reporting requirements are needed to advance our understanding of the nature and extent of ART procedures. Indeed, without robust data, making policy recommendations is difficult. Finally, to ensure women are protected, uniform informed consent is sorely needed.

Federal law touches on some of these aspects, though evidence suggests it lacks efficacy. Specifically, the Fertility Clinic Success Rate and Certification Act (FCSRCA) is meant to govern ART programs and fertility clinics, requiring ART programs "to report data to CDC," and directing the CDC "to develop a model certification program" that states can voluntarily adopt.[96] However, in 2021, 33 out of 453 ART clinics "did not comply with reporting requirements."[97] Furthermore, some statutory requirements are arguably relatively ineffective on their face given "the FCSRCA does not *require* a clinic to seek certification from a state or an independent accreditation program, nor does it include penalties for failing to do so."[98]

Some lawmakers have sought clarity as to the effectiveness of the law; a June 2024 letter from Senator Bill Cassidy and others to the Inspector General of HHS states it is unclear "whether CDC is implementing the law in such a manner as to maximally benefit the mothers it purportedly seeks to empower" and requests "that HHS OIG provide an evaluation and assessment of how well ART clinic oversight is working to better enable Congress to evaluate what changes may need to be made."[99] Again, based on what is known, changes are needed. As outlined by Mary E Harned, J.D., "the Secretary cannot exercise any control over how IVF clinics are run, and the CDC has chosen not to review or approve state certification programs or conduct inspections of IVF laboratories."[100]

Harned goes on to outline that the FCSRCA could be amended to address some of these needs. To this end, Congress should introduce legislation to:

A. Require comprehensive reporting

ART providers and clinics should be required to report the following to the CDC:

- The information outlined in the FCSRCA, namely, pregnancy success rates achieved "through each assisted reproductive technology" and "whether the laboratory is certified,"[101] with a clarification or addition requiring that the specific rate of success per each IVF cycle be included, along with the number of embryos created per cycle that are transferred versus frozen or discarded.
- The percentage of children who survived to age one.
- Any fetal anomalies as well as low birth weights.
- The number and type of adverse (or "never") events (both those affecting the woman and child).
- Any cases of negligent care of embryos resulting in destruction or injury.
- The costs of IVF and ARTs and related insurance payments.
- Any lawsuits or similar actions taken against ART clinics and providers.

Providers failing to report should face penalties.

B. Require certification and inspection of ART clinics and providers

Like the federal government's ineffectiveness in this area, states have not adopted comprehensive certification programs that include "health and safety standards for ART providers."[102] While ART providers may argue they receive oversight in the form of private accreditation programs recognized by the CDC ("which purport to require clinics to meet standards to maintain certification"), as evidenced above, said certification has done little to prevent tragic "never events" from occurring in fertility clinics in recent years (ranging from implanting the wrong embryos to transferring "embryos that clinicians knew were not viable").[103] Furthermore, in 2021, out of 453 ART clinics reporting to CDC, 39 had no accreditation."[104] Congress should therefore amend current legislation to provide penalties for clinics that fail to obtain proper certification and inspections.

C. Require uniform informed consent procedures

Informed consent should include information on all risks associated with IVF and the less invasive options available, including but not limited to those outlined in the RESTORE Act under the definition of the term "restorative reproductive medicine," which means "*any scientific approach to reproductive medicine that seeks to cooperate with, or restore the normal physiology and anatomy of, the human reproductive system, without the use of methods that are inherently suppressive, circumventive, or destructive to natural human functions"* and "*may include ultrasounds, blood tests, hormone panels, laparoscopic and exploratory surgeries, examining the man's or woman's overall health and lifestyle, eliminating environmental endocrine disruptors, and assessing the health and fertility of the individual's partner, Natural Procreative Technology, fertility awareness-based methods, and fertility education and medical management."*[105] Natural Procreative Technology should also be defined as it is under the RESTORE Act, as "*an approach to health care that monitors and maintains a woman's reproductive and gynecological health, including laparoscopic gynecologic surgery to reconstruct the uterus, fallopian tubes, ovaries, and other organ structures to eliminate endometriosis and other reproductive health conditions."*[106]

The information provided in informed consent procedures should also outline the success rates of these restorative options. Related, consent from the parents should also be required regarding any decisions concerning their currently frozen embryos.

D. Settle disputes under family law, not property law

As per the AAPLOG October 2024 committee opinion, "Since human embryos are human beings and not objects, embryo dispute cases should be settled under family law, not property law."[107]

4. Advance the Protecting Families from Fertility Fraud Act

Federal law provides no limit on the number of times a man can donate sperm, "leading to donors with hundreds of offspring and a rise in accidental incest between donor-conceived half-siblings."[108] Furthermore, there are no laws regulating the information provided on sperm donors; for example, "one bank promoted its most popular donor as a genius athlete with a Ph.D. and perfect health" when said individual was actually a "college dropout with a rap sheet."[109] Such a lack of regulation

leaves deceived patients little room for redress. To address this issue, Congress should reintroduce and pass the Protecting Families from Fertility Fraud Act, previously Representative Stephanie Bice (R-OK). [110] Said act would make it a criminal offense to knowingly misrepresent "the nature or source of DNA used in assisted reproductive technology or assisted insemination." [111]

5. Oppose the Protect IVF Act, Access to Fertility Treatment and Care Act, and Veteran Families Health Services Act of 2025

Previously introduced in the 118th Congress as part of the "Right To IVF Act,"[112] the Protect IVF Act, Access to Fertility Treatment and Care Act, and Veteran Families Health Services Act of 2025 introduced in the 119th Congress carry similar medical and ethical concerns.

As it pertains to the Protect IVF Act, of primary concern is the fact that it seeks to create a "right" to fertility treatment "*without prohibition, limitation, interference, or impediment, to the extent that such prohibition, limitation, interference, or impediment in any way or degree obstructs, delays, or affects commerce over which the Federal Government has jurisdiction.*"[113] While it does not, like the Right to IVF Act, require certain health insurance issuers offering group or individual health plans to "provide coverage for fertility treatment," it (perhaps more concerningly) leaves room for interpretation, and could lead to a requirement that the federal government fund fertility treatments, as failure to do so could be argued a "limitation" on said right. Furthermore, the bill would codify language that, in essence, allows the fertility industry to self-regulate by giving the ASRM (whose leadership consists of several board members, some of whom have a financial interest in the fertility industry[114]) the authority to define "widely accepted and evidence-based medical standards of care."[115] Indeed, it is at best ignorance and at worst negligence to trust these profiteers to police themselves. Finally, the bill also infringes on states' rights by prohibiting states from enacting any laws that conflict with said "standards of care."[116]

In short, if enacted, it would likely exacerbate most of the issues detailed above while failing to address the numerous ethical questions surrounding IVF and other reproductive technologies.[117]

The Access to Fertility Treatment and Care Act would require, as the Right To IVF Act would have, a "group health plan or a health insurance issuer offering group or individual health insurance coverage" to cover fertility treatments, "if such plan or coverage provides coverage for obstetrical services," among other things.[118] While it is challenging to provide an estimated cost for this bill, it will undoubtedly lead to an increase in federal spending (see point 6 for specific estimates).

Likewise, the Veteran Families Health Services Act of 2025 exacerbates numerous issues detailed above, including expanding the use of surrogacy and genetic testing, alongside the promotion of embryo, egg, and sperm freezing, among other things.[119] Moreover, it is fiscally irresponsible: The cost to American taxpayers is easily upwards of multiple billions per year (a very conservative estimate places the cost of the bill at approximately $2 billion annually), yet it both allows those

without an actual diagnosis of infertility to receive treatment and fails to ensure the root causes of those service members who are experiencing infertility are effectively addressed.[120]

6. Avoid federally subsidizing IVF, allow insurance companies flexibility and choice related to IVF coverage

Liberty Counsel Action cautions against any policy that would mandate insurance companies to provide coverage for IVF treatment or federally subsidize the same. Both options would more than likely perpetuate the profit-making proclivities of the (over) $46 billion-dollar fertility industry, including as it relates to "reproductive tourism."[121] If insurers are mandated to provide IVF coverage, providers could lose incentive to price IVF competitively. A policy requiring the government to pay for costs associated with IVF would (at minimum) add billions to the Federal Budget, further burdening U.S. taxpayers. In short:

- According to the U.S. Department of Health and Human Services in 2024, estimates for a single cycle of IVF "range from $15,000 to $20,000 and can exceed $30,000"; combined with the fact that most women undergo 2.5 cycles (with some women needing upwards of six cycles),[122] costs can easily exceed $40,000 per woman, going as high as $180,000 for those needing more than the average number of cycles.[123]
- While we do not have robust data on the number of individuals seeking IVF, according to the HHS, in 2022, approximately 435,426 assisted reproductive technology cycles were performed, 184,423 of which were egg or embryo banking.[124] Of the remaining cycles, 206,304 included embryo transfers,[125] and based on the above ranges, total costs likely amounted to between $3.1 and $6.2 billion on IVF alone (not including the cost for egg retrieval and freezing or other reproductive cycles).
- Currently, most IVF is self-pay; should the government fund IVF and related ART, or require insurers to provide coverage for the same (as the Access to Fertility Treatment and Care Act seeks to), the number of individuals seeking IVF and ART would likely see a dramatic increase. Furthermore, couples may be incentivized to wait to procreate, knowing the government will assist them later in life. Additionally, men, pending the specific policy proposed, could be eligible to hire surrogates. The above estimated cost of $3.1 - $6.2 billion therefore serves as merely a bare minimum annual expected cost. Taking into account the aforementioned factors, whether the government were to fully fund ART or require insurance providers to do so (which would still create a cost to the federal government as the government subsidizes marketplace health plans), the cost is likely to be much higher.
- Additionally, the government would be forcing Americans to fund a controversial, morally concerning practice.
- Finally, insurance premiums will undoubtedly increase.

7. Ensure any policies expanding IVF provide conscience protections*

Similarly, depending on the specific policy proposed, both options outlined in recommendation 6 carry the potential to force taxpayers or religious employers to violate sincerely held religious beliefs

by subsidizing a procedure they disagree with. Given the tremendous strides the Trump administration has made in advancing religious freedom, this would be an ironic travesty; hence, any policies seeking to expand reliable access to IVF should also provide conscience protections.

**Of note, this risk would be mitigated if the RESTORE Act were enacted, given it prohibits discrimination against health care providers that decline to "assist in, receive training in, provide, perform, refer for, pay for, or otherwise participate in assisted reproductive technology" or "facilitate or make arrangements for any of the activities specified in paragraph (1) in a manner that violates the provider's sincerely held religious beliefs or moral convictions."*[126]

Assisted Reproductive Technologies and Life-Affirming Regulations Are Not Mutually Exclusive

Couples and their prospective children deserve the best care available, including having access to all available resources related to growing a family. The above recommendations seek to ensure the prior while providing life-affirming guardrails around the fertility industry. Furthermore, though Liberty Counsel Action cautions against subsidizing IVF, if such policy is pursued, we strongly encourage it to be done alongside these recommendations, which would likely diminish the need for IVF (thus, by default, subsidizing it would provide less strain on the federal budget).

Finally and perhaps most importantly, we urge any policy changes in this area to avoid following the rash and reckless path of the Alabama legislature, whose knee-jerk reaction to the Alabama Supreme Court's decision (which permitted parents who lost their children to sue those who were negligent in their care of them) was to immunize fertility clinics from civil and criminal liability—an **immunity "no other medical facilities or practitioners enjoy."**[127] It not only ignored the pain of the parents who lost children but also ignored the truth that "**destroying or neglecting human embryos is not essential for IVF**."[128]

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[101] "42 USC 263a-1: Assisted reproductive technology programs," accessed November 19, 2024, https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title42-section263a-1.
[102] Mary E. Harned, "IVF Industry Regulation in the United States: Changes Are Needed to Protect Embryonic Children and their Families..."
[103] Ibid.
[104] Letter from Senator Bill Cassidy, M.D., et al to Christi Grimm, Inspector General of HHS...
[105] "S.1882 - RESTORE Act," Congress.Gov ...
[106] Ibid.
[107] "Ethical Treatment of Human Embryos," *AAPLOG Committee Opinion* ...
[108] Emi Nietfeld, "America's IVF Failure..."
[109] Ibid.
[110] "H.R.451 - Protecting Families from Fertility Fraud Act of 2023," Congress.gov, January 24, 2023, https://www.congress.gov/bill/118th-congress/house-bill/451.
[111] Ibid.
[112] "S.4445 - Right to IVF Act," Congress.Gov, June 3, 2024, https://www.congress.gov/bill/118thcongress/senate-bill/4445.
[113] "S.2035 - Protect IVF Act," Congres.gov, June 11, 2025, https://www.congress.gov/bill/119th-congress/senate-bill/2035/text?s=2&r=2&q=%7B%22search%22%3A%22IVF+Protection+Act%22%7D.
[114] Board members have self-disclosed conflicts of interest, which include some grant recipients, paid consultants, and being direct stockholders, in one case for a fertility startup. See: "2024-2025 Board of Directors," American Society for Reproductive Medicine, accessed August 4, 2025, https://www.asrm.org/about-us/asrm-leadership/board-of-directors/ and "American Society for Reproductive Medicine Conflict of Interest Disclosure," accessed August 1, 2025, https://www.asrm.org/globalassets/_asrm/about-us/board/asrm-board-disclosures.pdf. NB: While the disclosure states, "The interest is to assist ASRM in resolving conflicts of interest that may create bias in any ASRM activities (educational, leadership, or committees)," the reality is said bias exists for many members, and it is likely impossible to fully eradicate.
[115] The bill states, "The term 'widely accepted and evidence-based medical standards of care' means any medical services, procedures, and practices that are in accordance with the guidelines of the American Society for Reproductive Medicine."
[116] Specifically the text states, "a State law, or the administration, implementation, or enforcement of a State law, constitutes a prohibition, limitation, interference, or impediment on a health care provider choosing to provide, an individual choosing to receive, a health insurance issuer choosing to cover, or a manufacturer choosing to market drugs or devices for fertility treatment, provided in accordance with widely accepted and evidence-based medical standards of care, as described in section 4, if the administration, implementation, interpretation, or enforcement of such law has an effect that" it "imposes requirements or limitations that are inconsistent with providing, receiving, providing health insurance coverage for, or providing drugs or devices for fertility treatment in accordance with widely accepted and evidence-based medical standards of care or that otherwise violate the purpose and requirements of this Act."
[117] For a detailed analysis of the Right To IVF Act as introduced in the 118th Congress, see https://lcaction.org/PDFs/LCA/InVitroFertilization-EthicalConsiderationsandFinancialImpactoftheRightToIVFAct.pdf.
[118] "S.2408 - Access to Fertility Treatment and Care Act," Congress.gov., July 23, 2025, https://www.congress.gov/bill/119th-congress/senate-bill/2408/text, and "H.R. 4648 - Access to Fertility Treatment and Care Act," Congress.gov., July 23, 2025, https://www.congress.gov/bill/119th-congress/house-bill/4648/text.
[119] "A Bill To improve the reproductive assistance provided by the Department of Defense and the Department of Veterans Affairs to certain members of the Armed Forces, veterans, and their spouses or partners, and for other purposes," 119th Congress, accessed August 1, 2025, https://www.murray.senate.gov/wp-content/uploads/2025/07/HEY25D35.pdf. See also "Reps. Larsen, Jacobs and Sens. Murray, Duckworth, Booker, Schumer, Reintroduce Legislation to Help Veterans Struggling with Infertility Grow Their Families," Press Releases, Representative Rick Larsen | Washington's Second Congressional District, August 1, 2025, https://larsen.house.gov/news/documentsingle.aspx?DocumentID=4023. For example, the bill language includes provision of genetic testing, as well as "such other information, referrals, treatments, procedures, medications, laboratory testing, technologies and services relating to fertility as the Secretary of Defense determines appropriate," which could open the door to very questionable ethical practices.
[120] The bill specifically makes fertility treatments available to a member of the armed forces and covered veterans, or to their spouse, partner, "or gestational surrogate" (though covered veterans must "pay a to the United States a copayment

amount as a condition for the receipt of hospital care, medical service, or medicines under this chapter"). It further allows for 3 egg retrievals and unlimited transfers. Looking only at active service members (of which, there are approximately 1.32 million) and only at IVF cycles (with a low-end estimated cost of $12,000 per cycle per a recent CBO estimate), and assuming just half of the estimated 1 in 4 struggling with infertility utilize IVF services (amounting to165,000 members) the cost to American taxpayers would be **approximately $2 billion *annually***. Again, this estimate does not account for any other services offered by the bill (such as egg and embryo freezing), nor does it consider the covered veterans that may seek fertility coverage – hence the actual cost is likely to be much higher. See: Congressional Budget Office, "Cost Estimate, S. 4638, National Defense Authorization Act for Fiscal Year 2025," October 16, 2024, https://www.cbo.gov/system/files/2024-10/s4638_0.pdf;
Jeanette Tomasion, "IVF cost: Understanding the expenses of in vitro fertilization," *Carrot,* July 6, 2023, https://www.get-carrot.com/blog/ivf-cost-understanding-the-expenses-of-in-vitro-fertilization, which estimates the average cost of an IVF cycle at over $20,000;
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Jenn Hatfield, "6 facts about the U.S. military," Pew Research Center, June 6, 2025, https://www.pewresearch.org/short-reads/2025/06/06/6-facts-about-the-us-military/.

[121] "Fertility Services Market Report by Cause of Infertility (Male Infertility, Female Infertility), Procedure (In Vitro Fertilization with Intracytoplasmic Sperm Injection (IVF with ICSI), Surrogacy, In Vitro Fertilization Without Intracytoplasmic Sperm Injection (IVF without ICSI), Intrauterine Insemination (IUI), and Others), Service (Fresh Non-Donor, Frozen Non-Donor, Egg and Embryo Banking, Fresh Donor, Frozen Donor), End-User (Fertility Clinics, Hospitals, Surgical Centres, Clinical Research, Institutes, Cryobanks), and Region 2025-2033," *Imarc*, accessed August 1, 2025, 2024, https://www.imarcgroup.com/fertility-services-market.

[122] "How Many IVF Cycles Does It Take to Get Pregnant?" ORM Fertility, March 29, 2023, https://ormfertility.com/how-many-ivf-cycles-does-it-take/; Andrew DAC Smith, Kate Tilling, Scott M Nelson, Debbie A Lawlor, "Live-birth rate associated with repeat in vitro fertilisation treatment cycles," *JAMA,* December 22, 2015, https://jamanetwork.com/journals/jama/fullarticle/2478204.

[123] "Fact Sheet: In Vitro Fertilization (IVF) Use Across the United States," U.S. Department of Health and Human Services, https://www.hhs.gov/about/news/2024/03/13/fact-sheet-in-vitro-fertilization-ivf-use-across-united-states.html#footnote35_8g1x7d5, "National ART Summary," U.S. Centers for Disease Control and Prevention, accessed August 4, 2025, https://www.cdc.gov/art/php/national-summary/index.html, and "About ART," U.S. Centers for Disease Control and Prevention, December 10, 2024, https://www.cdc.gov/art/about/index.html.

[124] Ibid.

[125] "National ART Summary," U.S. Centers for Disease Control and Prevention, accessed August 4, 2025, https://www.cdc.gov/art/php/national-summary/index.html.

[126] "S.1882 - RESTORE Act," Congress.Gov ...

[127] Mary E. Harned, "IVF Industry Regulation in the United States: Changes Are Needed to Protect Embryonic Children and their Families..."

[128] Emma Waters, "Why the IVF Industry Must be Regulated..."