



United States Conference of Catholic Bishops

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United States Senate
Washington, DC 20510

February 28, 2024

Dear Senator:

The often-painful experience of infertility is a challenge facing an increasing number of families. As pastors, we grieve with many couples bearing this cross and seek to be part of a community that accompanies them in a way that helps them to flourish in love. In this, we can understand the profound desire that motivates some of these couples to go to great lengths to have children, and we support morally licit means of doing so.¹ The solution, however, can never be a medical process that involves the creation of countless preborn children and results in most of them being frozen or discarded and destroyed. For this and other deeply troubling problems with the bill, we strongly oppose the *Access to Family Building Act* (S. 3612).

Even if you do not agree with us on the evident humanity of every conceived person, there are problems with S. 3612 that raise serious concerns on other grounds. If enacted, the *Access to Family Building Act* would be the first law ever to exempt itself from the longstanding Religious Freedom Restoration Act (RFRA), led by then-Representative Schumer and passed in the Senate by a vote of 97 to 3 in 1993. An unprecedented self-carve-out from RFRA would be devastating. The bill's command that private entities and individuals must not "unreasonably limit[], or interfer[e]" with a new right to provide or obtain assisted reproductive technologies (ART) is, while ambiguous, certainly sweeping. For example, faith-based non-profit charities, schools, and church organizations that serve your communities and, out of principle, cannot cover in vitro fertilization (IVF) in their employee health plans could face impossible, potentially existential choices. Faith-based health care facilities and providers of faith could likewise be forced to facilitate procedures that violate their beliefs or to exit the field. Such consequences would hurt not just organizations but, more importantly, those whom they serve.

The terms of S. 3612 could also be readily interpreted to fabricate and impose new rights to human cloning, gene editing, making human-animal chimeras, reproducing children of a parent who is long deceased, engaging in the buying and selling of human embryos, commercial gestational surrogacy, and more. Human cloning and commercial surrogacy are otherwise prohibited in some States.² Further, with no limits on age or who is liable, even parents could be sued by the government or a provider if they try to prevent their underage child from using ART.³ And like any of these results, a new nationwide right to commercial surrogacy would also

¹See <https://www.usccb.org/resources/Reproductive%20Technology%20Guidelines%20for%20Catholic%20Couples%20updated.pdf>.

² We would observe an incongruity, then, in those who say (erroneously) that protecting preborn children from abortion is now only an issue for the States, after the U.S. Supreme Court's *Dobbs* decision, to then say that the federal government must intervene in States to provide IVF nationwide.

³ This would be all the more probable if the ambiguous syntax of the parenthetical in Sec. 4(a)(1) of the bill indicates that "financial cost" is an "unreasonable" barrier, requiring undefined others to pay for one's use of ART.

be deeply problematic. As Pope Francis recently observed, the practice exploits vulnerable women and commodifies both them and their children.⁴ It also violates children's right to a mother and father, and tears them away from the mother in whom they grew and whose voice is the first and only one they had ever known.

All of the foregoing problems would seem to be disproportionate to the perceived benefits that the bill would achieve even for its supporters. This is because federally ensuring the availability of IVF is wholly unnecessary for those who wish to do so. Contrary to repeated misconceptions, the Supreme Court of Alabama's decision of February 16 did not "ban" IVF. It merely took existing law, in effect long before *Dobbs*, and applied it to embryos in IVF facilities so that parents could hold the latter accountable for negligent wrongful death. IVF providers and clinics that have responded by pausing operations have done so voluntarily, possibly in a bid to resist accountability to parents, financial liability, and, effectively, regulation.

While we highlight a range of concerns that we believe are shared by a majority of Americans regardless of their political persuasions, we must make clear that, even if such problems are addressed, we will continue to oppose the *Access to Family Building Act* as a threat to the most vulnerable of human beings. Contrary to what some have claimed, a position that supports legal enshrinement of IVF, however well-intended, is neither pro-life nor pro-child. Approaches such as investing in life-affirming research on infertility, or strengthening support for couples who desire to adopt, would be better to explore.

Among those to whom we and our parishes minister, we know well the deep yearning and even suffering of families struggling with infertility. We seek to ameliorate that personal suffering. Yet we cannot condone a practice and an industry that is built on millions of children who are created to be destroyed or abandoned. For all of the above reasons, we implore you in the strongest possible terms to oppose S. 3612 and any similar legislation that comes before you.

Sincerely,



Most Reverend Borys Gudziak
Archbishop of Ukrainian Catholic
Archeparchy of Philadelphia,
Chairman, Committee on Domestic
Justice and Human Development



Most Reverend Robert E. Barron
Bishop of Winona-Rochester
Chairman, Committee on Laity,
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Most Reverend Michael F. Burbidge
Bishop of Arlington
Chairman, Committee on Pro-Life
Activities



Most Reverend Kevin C. Rhoades
Bishop of Fort Wayne-South Bend
Chairman, Committee for Religious
Liberty

⁴ See Pope Francis, Audience with the Diplomatic Corps accredited to the Holy See for the exchange of greetings for the New Year, Rome, Jan. 8, 2024.