

**MEMO – LEPAGE V. CENTER FOR REPRODUCTIVE MEDICINE, P.C.  
ALABAMA SUPREME COURT HOLDS FROZEN EMBRYOS ARE CHILDREN**

**JENNIFER L. PIATT, J.D.**, RESEARCH SCHOLAR & CENTER CO-DIRECTOR  
**ISABELLA GOLDSMITH**, LEGAL RESEARCHER

March 14, 2024

---

On February 16, 2024, the [Alabama Supreme Court ruled](#) that embryos created through [in vitro fertilization](#) (“IVF”) are children covered by the state’s wrongful death law. [IVF](#) is a medical procedure through which human embryos (i.e., fertilized eggs) are implanted in the uterus for development. Typically, [multiple embryos](#) are created because of risks of unsuccessful implantation or miscarriage. IVF is often the best choice for reproduction among the nearly [1 in 6 people](#) affected by infertility, including [cancer patients](#) opting for IVF while undergoing treatment. IVF activists, attorneys, and medical professionals warn that this ruling:

- (1) alters the IVF landscape in Alabama (and potentially beyond in [anti-abortion states](#)); and
- (2) may have [sweeping repercussions](#) on reproductive care as a forerunner to expanding [fetal personhood](#) (i.e., the notion that fetuses have similar rights and protections as those enjoyed by already born persons).

This memo reviews the facts of the case, *LePage, et al. v. Center for Reproductive Medicine, P.C., et al.*, the court’s decision, and prospective reproductive health repercussions.

**Facts:** From 2013 through 2016, three couples sought IVF treatments through a fertility clinic operated by the Center for Reproductive Medicine, P.C. (“Center”) in Alabama. These couples agreed to store their embryos at the Center. In 2020, a hospital patient gained unauthorized access to the Center and dropped several stored embryos on the ground, destroying them.<sup>1</sup>

The couples sued the Center and hospital for wrongful death, alleging the embryos were “children” under [Alabama’s Wrongful Death of a Minor Act § 6-5-391 \(“Act”\)](#), originally enacted in 1872. Alternatively, the couples brought claims of negligence and wantonness presuming the embryos were deemed personal property. The trial court held that cryopreserved IVF embryos could not fit within the definition of “person” or “child” and that the couples could not proceed on their wrongful death claims. The court dismissed both the plaintiffs’ wrongful death claims and their negligence and wantonness claims.

The couples appealed this ruling to the Alabama Supreme Court, arguing again that their embryos qualified as “children,” entitling them to damages under the Act.<sup>2</sup> Additionally, via a [2018](#)

[constitutional amendment](#), Alabama endowed rights to embryos at all stages of development (not specifically including frozen embryos).

The Center asserted the couples lacked standing as parents because the frozen embryos were not “children” under the Act. Additionally, because Alabama’s criminal-homicide laws would not recognize the embryos as a class of protected persons, the Center argued that the Act should not recognize the embryos as persons either in the civil context. Finally, the Center argued that the couples’ argument conflicted with their contractual agreements to (1) automatically destroy their embryos if they were frozen for longer than five years or (2) donate their unused embryos for scientific experimentation.<sup>3</sup>

**Alabama Supreme Court’s Decision:** The Court held that the Act applies to all unborn children “without exception based on developmental stage, physical location, or any other ancillary characteristics.”<sup>4</sup> Consequently, the couples may now pursue civil wrongful death claims for the destruction of their embryos. The Court reasoned that frozen embryos were considered minor children because:

- Two prior cases decided by the court stated that unborn children qualify as minor children under the Act, which does not require a child be “in utero” to qualify;<sup>5</sup>
- Wrongful death suits in Alabama can be brought for wrongful death of *any* unborn child;<sup>6</sup>
- State voters passed a [constitutional amendment](#) specifically recognizing rights of unborn children; and
- One-to-one congruity between the classes of people protected by criminal-homicide laws and civil wrongful death laws in the state is not legally-required.<sup>7</sup>

The court also rejected multiple public policy considerations raised by the Center, including that:

- Additional IVF expenses would extend from such a ruling;
- Preserving embryos would be unreasonably complicated and burdensome on providers and IVF patients;
- Other states may similarly adopt harmful IVF policies; and
- IVF access in Alabama could essentially be terminated.<sup>8</sup>

The court’s reasoning relied on a plethora of sources, including dictionary definitions of “child”<sup>9</sup> and Biblical text. Reviewers have opined that Chief Justice Parker’s concurring opinion, which leans heavily on Christian ideology to interpret the state statute, reads more like [“scripture”](#) than legal reasoning. Referring to embryos, the Chief Justice [stated](#): “Carving out an exception for the people in this case, small as they were, would be unacceptable to the People of this State, who have required us to treat every human being in accordance with the fear of a holy God, who made them in His image.”<sup>10</sup>

**Reproductive Health Implications:** The U.S. Supreme Court based its 2022 decision to [overturn \*Roe v. Wade\*](#) in *Dobbs v. Jackson Women’s Health Organization* on the notion that state legislators, elected by their constituents, should govern abortion legality, rather than courts. The Alabama Supreme Court noted this in its decision, refuting its role to create new limitations based on asserted public policy outcomes. Yet, in choosing to ignore medical policy arguments, the

Alabama Supreme Court still made a choice: the choice to view embryos as “children” and unleash the potential consequences accompanying such a decision. The court’s decision in *LePage* has [monumental consequences](#) for IVF and reproductive care and justice more broadly.

Ultimately, *LePage* initially generated [many more questions than answers](#) related to continued IVF practices, including:

- If existing frozen embryos have full personhood rights within the state, can IVF patients still lawfully execute standard contracts to discard extra embryos?
- Must facilities continue to store embryos *ad infinitum* to avoid allegations of wrongful death, or worse, in the state?
- How will fertility clinics avoid liability in the case of accidents, power outages, or contracted embryo disposal?
- Might fertility clinics face kidnapping charges if they opt to take their practices out of Alabama completely?
- Where does this leave the state of Alabama law concerning IVF access and, more broadly, concerning personhood?

After the decision issued, several Alabama IVF providers immediately [suspended continuing IVF treatment](#) in the state. Given its [prohibitive costs](#) and complexities (entailing multiple steps completed often over [several weeks or months](#)), many Alabama families may not otherwise have easy options to accessing care in alternate states absent legislative action.

On March 6, 2024, [Alabama](#) enacted legislation granting criminal and civil immunity to IVF service providers in the event of “[death or damage](#)” to an embryo. While this statute leaves in place the Alabama Supreme Court’s new definition of “child,” it immunizes IVF providers. As a result, two Alabama fertility clinics have announced that they will [resume](#) IVF services. The [clinics](#) involved in *LePage* have decided not to resume IVF services, citing [continuing concerns](#) regarding the status of embryos. Given that the Supreme Court’s definition of “child” remains intact, Alabama’s new legislation leaves unclear whether such an interpretation could be extended to other state laws.

What *is* clear from *LePage* is that the evolution of personhood is continuing to change post-*Dobbs*. Whether additional states will follow Alabama is undetermined, but the new legal landscape post-*Dobbs* enables expanded state law personhood interpretations, complicating or eliminating access to reproductive health care and negatively impacting the public’s health. Also undetermined is whether the U.S. Supreme Court may define “person” under the Due Process Clause consistent with *LePage* or other similar cases.

---

<sup>1</sup> [LePage v. Ctr. For Reprod. Med., P.C.](#), No. SC- 2022-0515, 2024 WL 656591, at\* 1-34 (Ala. Feb. 16, 2024).

<sup>2</sup> *Id.* at 8.

<sup>3</sup> *Id.* at 6-7.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *LePage*, No. SC- 2022-0515 at 6.

<sup>6</sup> *Id.* at 4, *Mack v. Carmack*, 79 So. 3d 597 (Ala. 2011); *Hamilton v. Scott*, 97 So. 3d 7288 (Ala. 2012).

<sup>7</sup> *LePage*, *supra* note 1, at 7.

<sup>8</sup> *Id.* at 8.

<sup>9</sup> *Id.* at 6.

---

<sup>10</sup> *Id.* at 13.