March 8, 2024

To the Members of the Mississippi House of Representatives:

AFA Action has learned of concerning language in Mississippi House Bill 1688 that passed committee and is now up for consideration on the floor of the House. As originally introduced, the bill established a community health worker program. In committee, a new Section 6 was added to the bill to create a statutory right to access "assisted reproductive technology" (ART). Section 6 uses much of the same language as S. 3612, a bill introduced in the United States Senate by Sen. Tammy Duckworth (D-Illinois), who has a 100% approval rating with Planned Parenthood Action Fund and NARAL Pro-Choice America. S. 3612 was blocked in the U.S. Senate by Mississippi's pro-life U.S. Senator Cindy Hyde-Smith.

Section 6 is unnecessary and, as currently worded, is a danger to the cause of life. AFA Action urges the House to remove Section 6 or, at a minimum, make significant changes to it.

First, the section is unnecessary. The bill proponents say Section 6 was added out of concern that a February decision of the Alabama Supreme Court threatened Mississippians' access to in vitro fertilization (IVF). We have no doubt the bill proponents are sincere in their concern. But the concern is misplaced. Section 6 is not needed to preserve access to IVF. IVF procedures remain legal in Mississippi. The Alabama decision did not outlaw IVF in Alabama and has no effect on Mississippi. Moreover, because Mississippi law is so different from Alabama's, there is no threat to IVF procedures here.

In the Alabama case, a cryogenic nursery let someone enter and destroy frozen fertilized embryos belonging to a couple, who sued the nursery. Alabama has a statute that allows a family to sue for the wrongful death of a "minor child." The Alabama Supreme Court ruled in 2011 that the phrase "minor child" included an unborn child at any stage of development. Based on that case and the Sanctity of Human Life Amendment to Alabama's constitution, the Alabama Supreme Court ruled that the Alabama statute's reference to "minor child" included frozen embryos. So, they allowed the suit against the nursery to proceed.

Mississippi's law is very different. The Mississippi statute only allows recovery for the wrongful killing of "any person or unborn quick child[.]" In 2003, the Mississippi Supreme Court ruled that "[a] 'quick' child is defined as a child that has developed so that it moves within the mother's womb." That definition clearly does not apply to a frozen embryo stored in an IVF clinic. Also, unlike Alabama, Mississippi does not have a constitutional personhood amendment.

Because there is no threat to IVF procedures in Mississippi, Section 6 is unnecessary.

Second, the language of Section 6 as written goes far beyond protecting IVF, which was the author's intent. Despite the best of intentions that is not what the words of Section 6 say. As the U.S. Supreme Court has said, intentions don't matter: "Only the written word is the law."

So, what do the words of Section 6 say? Section 6 establishes a statutory right to "assisted reproductive technology" (ART). It incorporates a federal statutory definition of ART, being "all treatments or procedures which include the handling of human [developing eggs] or embryos, including in vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, and such other specific technologies as the [HHS] Secretary may include" after public notice and comment.

As defined, ART includes IVF, but goes way beyond that. Procedures like human cloning, designer babies, three-parent babies and even human-animal hybrids all "include the handling of human developing eggs or embryos." Under the current wording of Section 6, Mississippians would have a statutory right to access these procedures.

Section 6 gives patients and providers the right to access ART "without prohibition or unreasonable limitation or interference … due to financial cost." It doesn't make clear who will pay the cost if the patient can't afford it.

Further, Section 6 allows patients and providers the right to sue those who "interfere" with this right.

What if a church-affiliated hospital objects to facilitating such procedures? What if a church or small business owner has moral objections to funding them through its employee health plan? Under the current vague language of Section 6, both could be exposed to lawsuits. Enforcing these requirements against conscientious objectors would clearly be an infringement of the free exercise of religion guaranteed by the First Amendment to the U.S. Constitution and the Mississippi Constitution. Nevertheless, Section 6 makes no exceptions for sincerely held religious or conscientious objections.

We urge the Mississippi Legislature to avoid rushing to judgment on this issue. IVF procedures continue to be offered in Mississippi without interruption. If legislators feel action is necessary this session, we urge them to work carefully with stakeholders to craft legislation that helps families enjoy the gift of children while respecting human life and protecting religious rights. With care and goodwill, both goals can be achieved.

Sincerely,

Walker Wildmon, CEO
AFA Action