



MARCH 19 - 23

PCRS 2025

PACIFIC WAVES - EXPLORING SCIENTIFIC FRONTIERS IN AN EVOLVING SOCIETY

INDIAN WELLS, CA

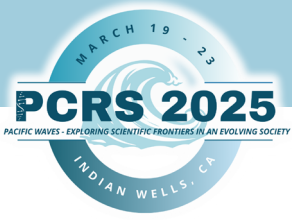
Legally Speaking: new & evolving legal challenges facing ART patients & providers across the US

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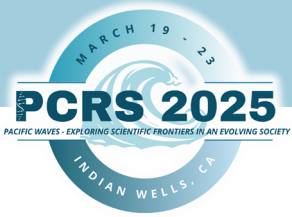
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Disclosure Slide

Neither I nor members of my immediate family have any actual or potential financial interests to disclose relating to the content of this presentation.



Learning Objectives

- Recognize the dramatically changed Constitutional & legal landscape following the US Supreme Court's 2022 Dobbs decision
- Identify potential impacts of recent & emerging judicial & legislative developments on both ART patients & providers
- Describe post-Roe v. Wade challenges surrounding IVF embryos, fertility preservation & 3rd Party interstate ART arrangements

A busy, confusing & worrisome legal roadmap today...

- Where *ARE* we & how did we get *HERE*?
 - Brief Recap of Dobbs (S.Ct. 2022) & LePage (AL 2024)
- The Fall-Out: Selected updated impacts on providers, patients, embryos, & 3rd party interstate ART
- Update on Donor identity disclosure laws
- **What's next (?) & What can we do (!)?**



It's been *quite* a few years ...



Keeping Up-to-Date? Interactive Tools

Abortion Rights Won in 7 of 10 Nov. State Ballot Initiatives

AZ, NV; CO, MD, NY; ~~MO, MT, FL, NE, SD~~

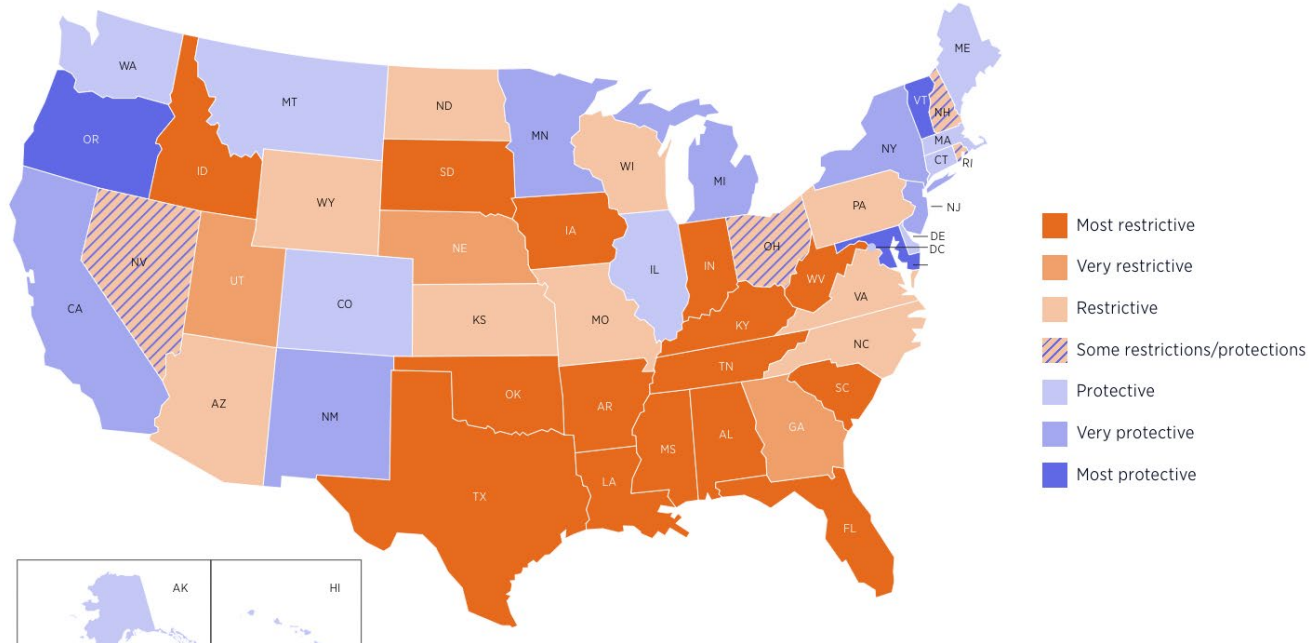
Guttmacher Institute

Interactive Map: US Abortion Policies and Access After Roe

Our interactive map groups states into one of seven categories based on abortion policies they have in effect. Select any state for details about abortion policies, characteristics of state residents and key abortion statistics, or select a policy to see which states have bans, restrictions or protections in place.

Policies current as of January 3, 2025

[FAQ](#) | [Methodology](#) | [Contact Us](#)



Dobbs v. Jackson Health Clinic: SCOTUS (June 2022)

No Federal Constitutional Right to Privacy for Abortion

- **Decision: Upheld Mississippi law that prohibited pre-viability elective abortions (15 wks.)**
 - Court could have, but didn't, stop there
 - MS Solicitor General replaced original incremental strategy after Justice Barrett replaced Justice Ginsburg
- **Overruled *Roe & Casey*, effective immediately:**
 - No Federal Constitutional protection for abortion
 - Abortion not "historically grounded"
 - Reversed 50 years of Constitutional jurisprudence
 - Invited "Zombie" laws back into effect, new laws, & both...
- **Majority: Protection of an "unborn human being"**
 - Abortion is "inherently different" (*Roe*); "a unique act" (*Casey*)
 - "Return the issue to the states"
 - Did not address interstate/right to travel, or Federal Law
 - One law review analysis on Rt. To Travel : yes, no, maybe, "sue us"
 - **Apply a "Rational basis test" to any state abortion law:**
 - Lowest threshold/standard of review/seldom overruled



How do *Dobbs*, & post-*Dobbs* Laws, impact ART?

- Is abortion “sharply distinguished” from IVF embryos?
 - ...[...] Abortion destroys ... “potential life” & what the law ...regards as the life of an “unborn human being.”
“None of the other decisions [cited by *Roe* & *Casey*] involved the critical moral question posed by abortion...”
- The Dissent explicitly raised IVF concerns & other uncertainties:
 - “the Ct. may face questions about the application of abortion regulations to medical care most people view as quite different from abortion. What about the morning-after pill? IUDs? *In vitro fertilization?* And how about the use of dilation & evacuation or medication for miscarriage management?”
 - Argued *Roe* & *Casey* reached an appropriate balance & compromise between a state’s interests in protecting potential life & an individual’s autonomy interests under 14th Amendment’s Constitutionally protected right to privacy & procreation



Dobbs' Potential Specific Impacts on ART?

My 2022 Predictions



- W IVF/Frozen embryos? State “Personhood” laws/“life begins at fertilization”
 - b Enhanced liability theories for loss, damage, misdirection (“wrongful death”)?
 - b Moving embryos: forum shopping - when, where, how?
 - b More “Compassionate transfers”? But could be prohibited?
 - b Will LA law be a longstanding ‘blueprint’? (“juridical persons, available for adoptive implantation”)
 - b “Forced *procreation*”? Increased &/or forced *donation*? LA, AZ statutes, Nick Loeb-type claims
 - b Changes the balancing for disagreements between ex-partners?
 - b Worst-case scenarios? No discard allowed? No research donation allowed?
 - b **More freezing of eggs & sperm v. embryos?**
- W PGT? Practical immediate impact: > FES + PGT by patients to avoid abortions
 - b But risks to embryos? For what purpose if discard not allowed?
 - b Mandatory donation of “deselected” embryos?
 - b Permanent storage? Who pays? Who controls?
- Practicing in “Red” states? Will Ob/Gyns & REIs go/leave...?



State Laws: “Carve-Outs” for IVF/ART?

Maybe, but problematic:

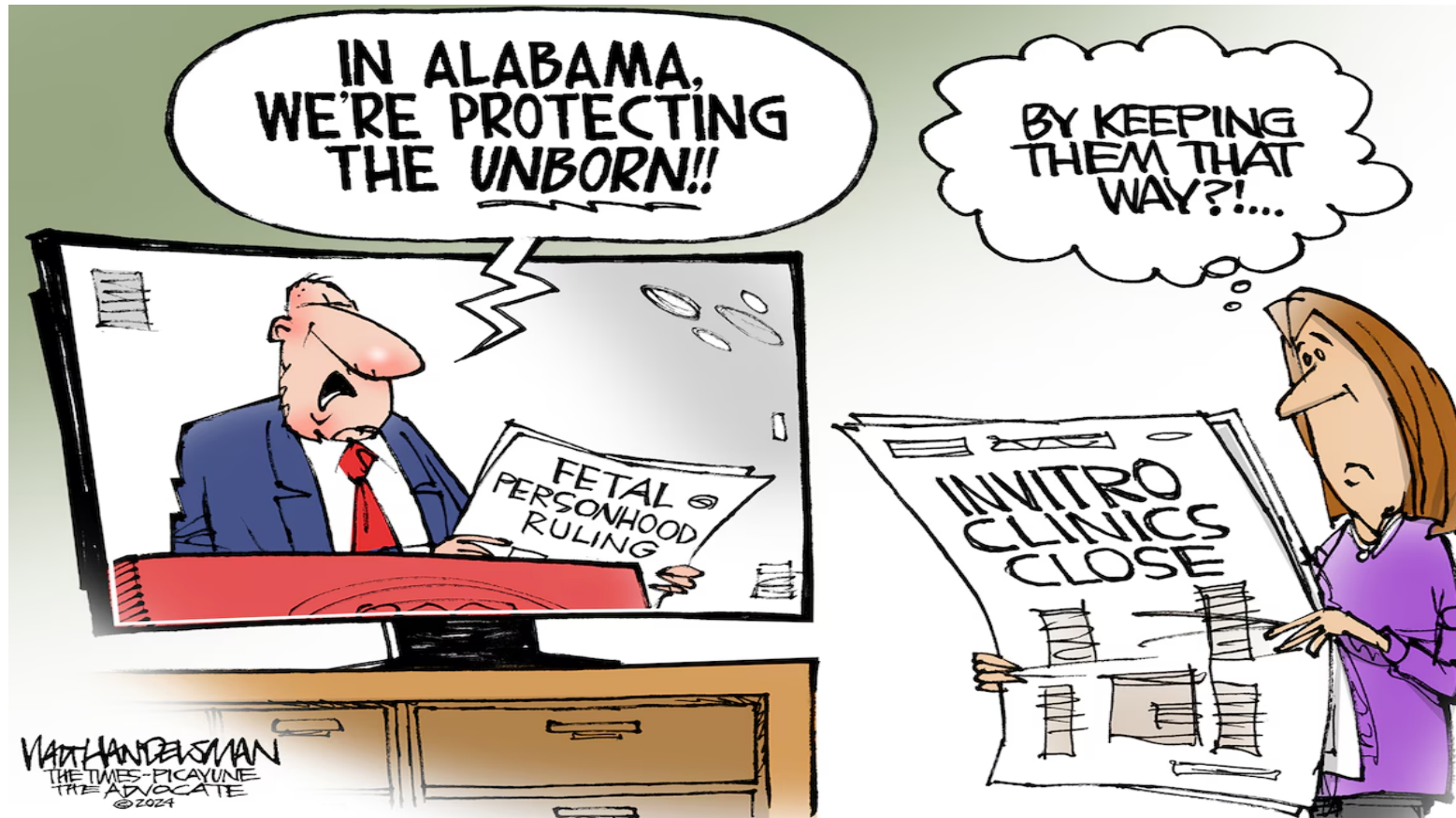
- Even if most anti-abortion state laws penalize “termination of pregnancies,” also frequently define life as beginning at “**conception**” or “**fertilization**”
- So definition may apply to other state laws re: provisions/penalties, e.g. 'Wrongful Death' statutes
- Congress & a very few states have attempted to explicitly exempt IVF

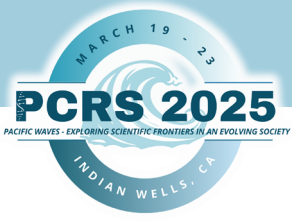
And very hard to distinguish under Supreme Court's rationale & language:

- “... what we'd have then is law that declares the sanctity of unborn life at the expense of the pregnant person's bodily autonomy w/limited exceptions for procedures in which there is not yet a pregnancy [so no restriction on bodily autonomy].
 - **This absurdity makes clear that abortion bans are less about protecting the sanctity of human life than...about controlling it.”**
- [Ikemoto,L. Op-ed \(UCDavis law prof\): https://www.latimes.com/opinion/story/2022-07-07](https://www.latimes.com/opinion/story/2022-07-07)

LePage v. Center for Reproductive Medicine (AL 2024)

IVF Frozen embryos = children under Alabama's civil "Wrongful Death Act"





The AL Supreme Court's Bombshell Decision: LePage v. Center for Reproductive Medicine (AL 2024)

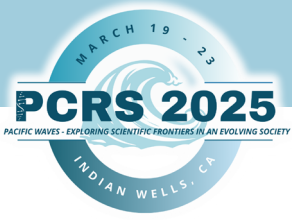
- **1st successful lawsuit against providers for “wrongful death” over embryo mismanagement**
- **What happened?**
 - Psychiatric inpatient accessed IVF clinic’s cryostorage area; removed/dropped FEs > non-viable
 - 3 couples, *all successful IVF patients/parents*, sued IVF clinic, including under the state’s civil WDA, the sole available basis for punitive as well as compensatory damages [4th couple later added]
- **How did the Court "frame" the issue?**
 - Decision 8-1 majority & concurring opinions; 1 partial/1 full dissent)
 - “The central question ... involv[ing] the death of embryos kept in a cryogenic nursery is whether the [WD] Act contains an unwritten exception to that rule for extrauterine children— that is unborn children who are located outside of a biological uterus at the time they are killed.”

LePage v. Center for Reproductive Medicine (2)

- **What did the Majority of the Court say?**
 - WDA (originally written in 1872) clearly intended to apply to “unborn children” regardless of location
 - Discriminatory not to apply the law to ex utero frozen embryos in “cryogenic nurseries”
 - IF WDA unclear, AL Constitution requires this protection for unborn children
 - Misstated, criticized current US IVF practices: too many embryo created/frozen/implanted
 - Misstated International policies on limited embryo creation in AU & NZ
 - Would leave children born from artificial wombs unprotected, suggesting the science imminent
 - Ectopic pregnancies not an issue...
 - Policy/consequences irrelevant to Courts
 - **Legislature makes policy (but must be consistent w/ Alabama Constitution)**
- **Chief Justice’s Lengthy Concurrence: religiosity rampant:**
 - *“...human life cannot be wrongfully destroyed without incurring the wrath of a holy God, who views the destruction of His image as an affront to Himself”.... Even before birth, all human beings bear the image of God, & their lives cannot be destroyed without effacing his glory.”*

The Dissent & the Fall-Out (3)

- Justice Cook's Dissent:
 - *"To equate an embryo stored in a specialized freezer with a fetus inside of a mother is engaging in an exercise of result-oriented, intellectual sophistry..."*
 - Scathing criticism of majority & concurrence's interpretation of AL laws, precedent, Constitution
 - *"Almost certainly ends the creation of frozen embryos [in AL]"*
 - Suggested no IVF MD would rely on dispositional agreements after this decision
 - But acknowledged "all parties" agree an embryo is a life
 - Framed issue as: Is embryo's life protected as an "unborn child" under AL civil law?
 - Answer: NO; noted that other civil & criminal AL statutes define, e.g. "unborn child in utero"
- **Aftermath?** Case remanded for damages & so clinic could potentially raise defense that couples signed disposition agreements to discard; 2 couples dismissed claims, 4th added
 - AL MD/clinic unsuccessfully petitioned SCOTUS to decide its constitutional rights(!)
- **AL Rep. Leg passes "stop-gap" law** after 3+ IVF Programs 'paused' & Shipping Companies paused
 - Most, but not all, clinics reopened
 - A "get-of-jail-free" card? Law protects physicians & professionals from liability, but not patients
- **So, what's next? Outside AL a virtual firestorm:**
 - Competing federal/state restrictive/expansive laws
 - Commentaries/predictions/warnings...



Wall St. Journal Op-Ed, Mike Pence (April 4, 2024)

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IVF in Alabama: The Real Story

The state Supreme Court case exposed a culture of negligence, and clinics should be accountable.

By Mike Pence and John Mize

April 4, 2024 12:04 pm ET

Justice Kagan Speaks Out (NYT Sept. 9, 2024) What other rights aren't "historically grounded"?



Supreme Court > [Kagan Sees Threats to Everyday Rights](#) [Justices' Book Deals](#) [Conservatives Push Back on Biden](#) [Biden's Student Debt Plan](#)

Kagan Sees Threats to Everyday Rights Beyond Abortion

The justice said the Supreme Court's reasoning in the Dobbs case called into question access to contraception as well as gay and interracial marriage.

▶ Listen to this article · 3:58 min [Learn more](#)

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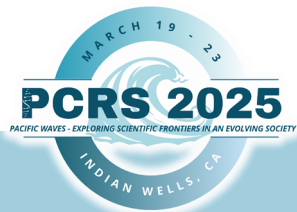
Justice Elena Kagan also spoke about the Supreme Court's long-running ethics controversies and efforts to address them. Rich Pedroncelli/Associated Press



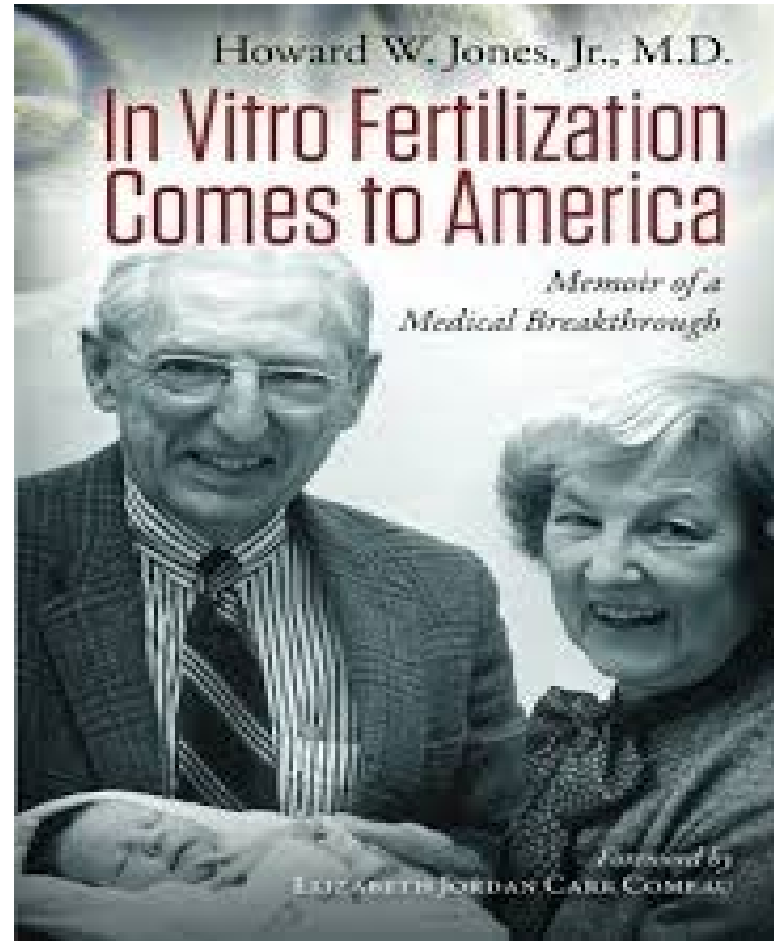
By **Jodi Kantor**

Sept. 9, 2024

<https://www.nytimes.com>



The Father (& Mother) of IVF in the US?



So, let's very briefly go to Law School ...
Law 101, "Embryo Law," & a Case Study:



Law “101”: Key Legal Principles for the Non-Lawyer

“ART LAW”: Relatively new & introduced 3 unique features that challenge the Law:

(1) Fertilization OUTSIDE the womb; (2) Cryopreservation; (3) 3rd Parties

Law: is made by legislatures (statutes & regs.) & courts (cases/opinions)

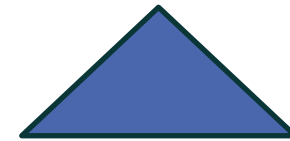
Federal v. State Law:

- US Constitution applies to- & *limits*- every state’s laws (e.g. *Roe* before 2021)
- Federal law “preempts” inconsistent state laws
- States can provide *greater* protections, both under state Constitutions & other legislation (ex. KA, IL, CA), & can interpret their own laws (e.g. *LePage*, AL Supreme Court 2024)

Family Law: traditionally under the control of state law

“Precedent”: depends on both “jurisdiction” & level of court:

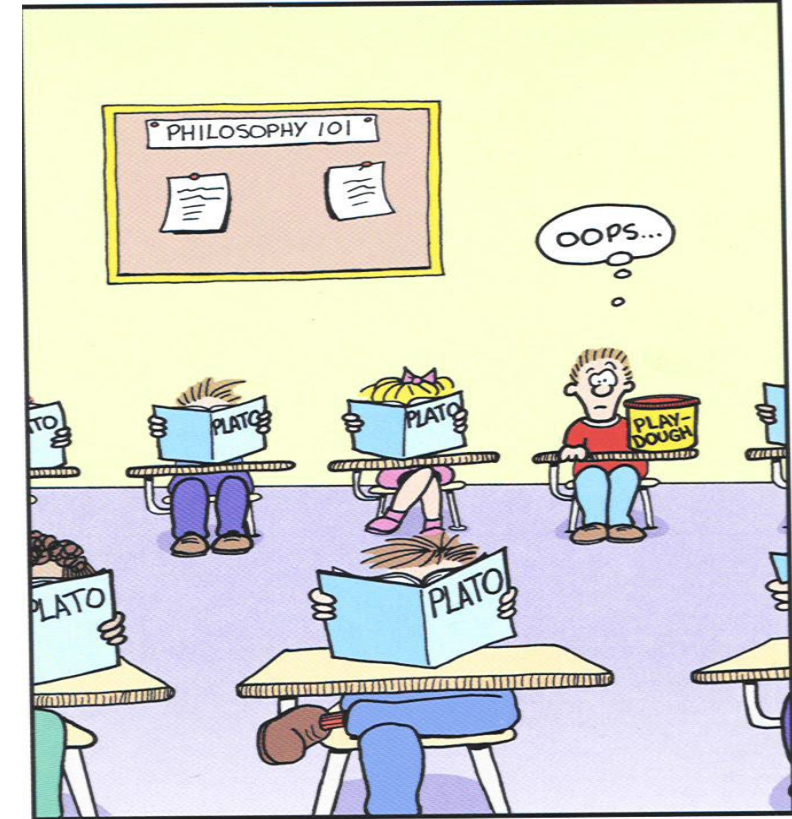
- US Supreme Court (SCOTUS) decisions apply to all states
- No state need follow another state’s laws
- Within a state, only higher/highest courts set “precedent” for lower ones to follow



Language Matters

(& in the law can be legally “outcome determinative”)

- “Donor” or “Parent” (≠ FDA definition)
- “Conception” or “Fertilization”?? (“life begins at...”)
- **“Abandoned”** or “Unclaimed” Embryos?
 - And post-*Dobbs*, does it matter ...?
- **“Embryo Adoption”** v. Embryo Donation?
- **“Agency”**, “Coordinating Program,” “Broker”?
- “Pre-implantation IVF embryo,” “pre-embryo”?
- “Fertilized egg,” “zygote”?
- **“Unborn child”, “little people” in “cryogenic nurseries”??**



Legally Speaking: what *IS* (was?) an IVF embryo?

- **Definition? No single, accepted legal definition (or single source) of “embryo”**
 - Context & jurisdiction always matter
 - Does life begin at ... “Conception”? “Fertilization”? “Implantation”? ...?
- **Constitutional protections?**
 - US reproductive rights based on right to privacy = a “negative” right not to interfere with ...
 - US has never had an explicit, positive Constitutional right to IVF or ART
 - But, *Dobbs* swept away a steady stream of Federal level reproductive rights' protections, invited states to legislate, and left more questions than answers
- **Litigation: 2 types & generally 3 theories (that intermingle):**
 1. **“Patients v. Provider” disputes** over “mishandling” (loss, control, misdirection, discard or destruction)
 - Legal Theories: property destruction, breach of contract, negligence, **“wrongful-death” (pre-Alabama)**
 2. **“Divorcing embryos”**: > 20 High State Courts have addressed who controls/accesses/discards
 - Legal Theories: Contract? Balancing of Interests? Contemporaneous Agreement? **“Wrongful-death”**

Welcome to (a mini) Jones Case Rounds

In honor of Howard W. Jones, Jr. (1910-2015)

A medical pioneer & an ethical visionary who always believed in learning through dialogue

Fertility Preservation in Today's Challenging post-Dobbs World

*"Two roads diverged in the woods... & I ---
I took the path less travelled by,
And that has made all the difference..." **

* *"The Road Not Taken,"* by Robert Frost (1916)

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www.jonesrounds.org

Jones
Rounds



Meet Erika & Jason: with an Urgent FP Matter...



- Erika & Jason, both in their mid-30's, present to your IVF clinic as a married couple; currently reside in IL; Erika is from AL, Jason is from IL
- Referred by Erika's oncologist following her breast cancer diagnosis to discuss FP options before her imminent chemotherapy treatment
- They tell you they want to have at least 1 child & are seeking your advice on how to proceed
- Time is of the essence

Having met Erika & Jason: What do you advise?

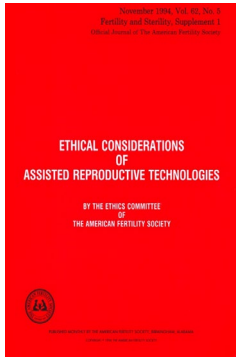
- IVF and ...
 - Freeze embryos?
 - Freeze eggs?
 - Freeze ½ & ½?
 - Other?



Davis v. Davis (TN 1992) (the 1st “Divorcing Embryos” case)

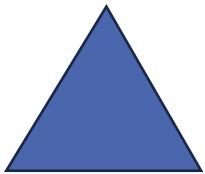
- **Q: W/o an agreement, which right trumps- Junior's or Mary Sue's?**
 - Clinic had just moved; not yet unpacked forms !)
- **CT: Constitutional rights to procreate/not procreate implicated; H wins, may discard**
 - “We conclude that *pre-embryos* are **not, strictly speaking, either “persons” or “property,”** but occupy an interim category that entitles them to ***special respect*** because of their **potential** for human life.” [*emph. added; quoting AFS 1st Ethics Committee definition, Chair H.Jones, MD*]
- **Over 20 high state courts that have considered control over “divorcing embryos:”**

None have allowed “forced procreation” over man's objection, even for cancer survivors
Some have allowed previous agreement/K to discard/donate over new objection
Reject “unborn child” label, often able to *avoid* defining an IVF Embryo



Note how differently *Dobbs* Supreme Ct. approaches procreation & motherhood

Lessons Learned? 4 Selective Frozen Embryo Cases

1. McQueen v. Gadberry (MO App.Ct. 2016)
 - “Noah & Genesis”, GAL? Thomas More Society assistance
2. Loeb v. Vergara (CA); Emma & Isabella v. Vergara (LA); CA again?
3. In re Marriage of Rooks (CO Sup.Ct. 2018)
 - Clinic agreement: “decide at divorce”
 - W argues: FEs not property or ‘in between’: but human; Court must decide on national level
 - SCOTUS “denies cert.”
4. Terrell v. Torres (AZ Sup.Ct. 2020) (3 courts/1 legislature) 
 - Courts reject W’s claim (agreement clear)
 - Legislature: “Award to spouse who intends to develop them to birth...”
 - Priority to genetic intended parent
 - **“Regardless of the couple’s agreement”**





2018 Ariz. Rev. Stat. § 25-318.03: “Human Embryos; disposition, responsibility for resulting child, definitions”

... The [Divorce] Court *shall*:

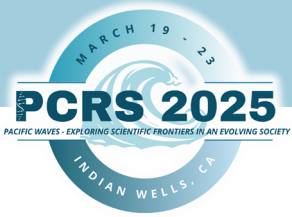
- A.1. Award In Vitro Human Embryos to Spouse who intends to allow [them] to develop to birth
- 2. Resolve any dispute to “provide best chance [...] to develop to birth”
- 3. If only 1 spouse provided gametes, award to that spouse

...

B. [Regardless of Couple’s Agreement]...

D. [Other] spouse: no parental responsibilities...unless [they] consent in writing to be a parent

Not retroactive; is it Constitutional?



2024 Post-Dobbs Selective Divorcing Embryo Cases: Any *New* Lessons Learned (3)?

- **Anton v. Anton (TX June 2024):** Upheld couple's signed contract to award FEs to H
 - W argued on appeal new TX abortion law defined "unborn child" from fertilization, so embryos had Constitutional protections & rights
 - W supported by "Texas Right to Life" advocacy group
 - TX Supreme CT. declined to reconsider divorce judgment > TX abortion ban
- **EB v. RN (OH Oct. 2024):** OH Sup.Ct. refused review; let Appellate Ct. dec. stand
 - Intermediate App. Ct. awarded FEs to W based on interests/wishes over "ambiguous contract"
 - *"Public policy to prefer preservation & continuation of life whenever constitutionally permissible."*
 - *Abortion statute "instructive...:"*

Selective Patient v. Provider Cases: Any New Lessons?

- Pre-*Dobbs*, no Court had accepted “wrongful death” claim for destroyed embryos
- *LePage* (AL 2024): Frozen embryos = unborn children under Alabama civil Wrongful Death Act
- *Mastrosante v. Fujifilm Irvine Scientific, Inc.* (USDC, W. Dis. NC, filed 8/20/24):
 - Plaintiffs’ 3 Count Claim: “viable” embryos destroyed by defective (recalled) embryo culture “oil”
 1. Breach of Warranty
 2. Negligence
 3. **Wrongful Death**
 - “Plaintiffs’ unborn implanted embryo negatively affected by Def’s product, causing the embryo to not develop properly & ultimately causing the death of the embryo.”
 - “The right to life for each born & preborn human being vests at fertilization.”

Q: Are LA, AZ & AL showing anti-abortion/anti-IVF advocates a path forward to curtail IVF & ART?

So, what happened to Erika & Jason?

- If they froze embryos & divorced 3 yrs. later?
 - And Erika still wants to use or discard them?
 - But Jason disagrees?
- **In (red) Alabama?**
- In (blue) Illinois or California?
- Or in Connecticut...?



Bilbao v. Goodwin, 217 A.3d 977 (Conn. 2019)

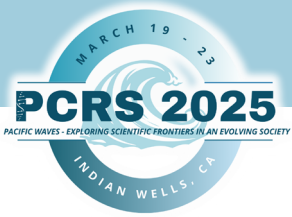
- Divorcing couple > chose “discard” upon divorce
 - H changed his mind, hoping to reconcile or donate
- Ct. refused; adopted K approach:
 - Honoring couple’s directives
 - “...provide[s] practical certainty for clinics”
 - Reduces “likelihood of abandonment”
 - Ensures clinics’ ability to “satisfy their ethical obligations”
- But Ct. explicitly noted it was not deciding whether:
 - A choice to procreate is enforceable or against public policy
 - W/o an agreement it would balance parties’ interests

- So... After a 2-year struggle, Erika “wins”...?

When's the last time you asked a
male patient
if he preferred to freeze sperm or embryos?

What can IVF Professionals Do: Eggs v. Embryos?

- With egg freezing no longer experimental, recommend over FEs?
 - Dobbs & LePage have highlighted existing legal uncertainties
 - Autonomy & continuing legal inconsistencies surrounding IVF embryos are critical reasons to present option to all PTs
 - How to counsel? It doesn't have to sound like, "in case you divorce..."
 - It's our standard protocol; less \$
 - Either of you could be hit by a bus? "We'll call you tomorrow"
 - Potential liability for failing to offer/recommend?
 - Especially in today's legal environment!



How do Providers work in today's uncertain world?

- Establish clear protocols for handling embryos, including fertility preservation
- Always clarify & document man's role: Partner/patient/donor/caring bystander?
- Use (after customizing) SART's 2 separate model forms: IC & Contract
 - LePage Court noted dispositional documents were contracts (not consents)
 - Dissent: but not enough to protect MDs
- Learn (& keep apprised of changes to) the law of your state:
 - EX: 2024 NY amendment: updates embryo control & surrogacy law
- Out-of-state PTs may need legal counsel from various states to consider potential impact (health, family, estate law)



NY just amended law to protect access to embryos

- (3) ...Married couples' transfer of legal rights & dispositional control effective upon:
- (i) living separate & apart pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto & acknowledged or proved in the form required to entitle a deed to be recorded; or
 - (ii) living separate & apart at least 3 years; or
 - (iii) divorce; or
 - (iv) death
- (d) Court may still find an embryo disposition agreement [**or advance directive**] ...not in compliance enforceable after balancing respective interests of the parties except that:
- The IP who divested him or herself of legal rights & dispositional control may not be declared to be a parent for any purpose w/o his or her consent.
 - The IP awarded legal rights and dispositional control of the embryos shall, in this instance, be declared to be the only parent of the child.

What keeps me up at night about IVF Embryos?



Frozen embryos are the 1st & easiest target ("we love babies!" "we love baby makers!")

- ~Potential changes to sub-standard of care ("just" make 1 embryo at a time)
- ~Based on both lack of understanding & anti-IVF/anti-abortion advocates
- ~Loss of autonomy: "give them to her/him/me!" ("forced procreation/donation")?
- ~More states may pass unlimited "physician protection" laws like AL w/o patient protections
- ~The "tip of the iceberg"...? A gateway issue for anti-IVF/anti-choice advocates

Interstate Surrogacy Today? 2 Perspectives



Surrogacy today truly takes a (Blue?) Village...



Surrogacy in a Post-Dobbs World Risky Business ...or "business as usual"?

- Always clear a surrogate has Constitutional right to her own bodily autonomy, including pregnancy management, decision-making
- But could IPs now have veto power?
- What if Jason & Erika had a Texas GC w/a fetal anomaly?
- Choice of state(s) critical:
 - Ex: MI (2024) & NY (Jan. 2025) passed new pro-surrogacy laws
 - Ex: W. VA (2024) Senate passed anti-broker law, no action in House as yet
- Contract impacts:
 - Draft travel restrictions to avoid “Red” states?
 - Choice of law provisions more critical, but enforceable?
- Carrier selection impact: Fewer, riskier, more \$... (TX v. CA)?

Surrogacy in a Post-Dobbs World?
Or, what else keeps me up at night?



Diminished Constitutional protections for reproductive choices

- Is there a “Right NOT to Travel” for unborn children (especially for termination)?
 - Contradictory & shifting state laws
 - Nosy neighbors? Angry spouses?
 - Religious & agenda driven courts & prosecutors?

And with the election behind us, will we see emboldened anti-abortion/anti-IVF prosecutors/forces?



Protecting Surrogacy Participants?

- Many more patients & professionals involved
- Recognize there may be shifting significant state law differences that can impact potential arrangements & outcomes
- Don't overpromise results/outcomes
- Refer patients to experienced legal ART counsel in appropriate jurisdiction(s)
 - (Don't play lawyer or MHP, or.... I don't play a doctor on T.V....)

The Death of Donor Anonymity?

A Picture's Worth a Thousand Words...



Brief Legal Update on Gamete Donation

- CO donor identity release law passed (7/24) for DCPs conceived on/after 1/1/25
 - Requires donors agree to release of identity & medical history to DCPs > 18 YO
 - Limits donation to 25 recipient families in/out of CO
 - Requires gamete banks request updated medical information from donors every 3 years
- Uniform Parentage Act (UPA) 2017 (amended 2023):
 - Enacted in CA, CT, CO, ME, MA, RI, VT, WA
 - 2017 added Article 9 on donor disclosure (w/“opt-in-opt-out” provision)
 - 2023 amended Article 9 to expand DCP access to info, now requires banks & clinics to:
 - Collect & retain both identifying info, & nonidentifying medical history about gamete donors.
 - Provide non-identifying medical history to parents upon request at any time
 - Provide identifying info. to DCP at/after 18 YO upon request
- LGBTQ Bar continues to flag need to also ensure legal protection of LGBTQ families
- ASRM Taskforce on the Interests of Donor Conceived People (DCP) & their Families
 - Launched in 2022; preliminary summary report presented at ASRM 2024

So, what's behind the (post-election) curtain?



Remember Project 2025?

The Comstock Act of 1873; from the Guttmacher Institute...

- It also recommends revoking mifepristone's US Food and Drug Administration (FDA) approval, which would remove the drug from the market entirely. **Nearly two-thirds of all abortions** provided by clinicians are medication abortions, and the vast majority of them use the combined regimen of mifepristone and misoprostol. Although use of misoprostol alone is also safe and effective, it is unclear how widely this regimen would be offered by providers, or taken up by patients, if mifepristone were no longer available.
- Decreasing access to medication abortion by either mechanism could in turn increase demand for procedural care, placing additional strain on clinics and increasing wait time for patients.
- Further, Project 2025 suggests that a hostile administration could bypass the FDA and effectively ban medication abortion—and potentially all abortions—through enforcement of the Comstock Act, an 1873 anti-obscenity law that prohibits mailing anything “intended for producing abortion.”^{3,4} The law could be used to prevent the distribution of medication and supplies needed for abortion care and if applied broadly, it could result in a nationwide total abortion ban.

Dueling Red States, Blue States & Courts over Abortion Medication



Conservative group sues FDA to revoke approval of abortion pill

By Laurie McGinley and Ariana Eunjung Cha
November 18, 2022 at 7:00 p.m. EST

[2/24/23]

The New York Times

12 States Sue F.D.A., Seeking Removal of Special Restrictions on Abortion Pill

The suit argues that rules applying to mifepristone unnecessarily limit patients' access to medication abortion.

[10/21/24]

The New York Times

States Revive Lawsuit to Sharply Curb Access to Abortion Pill

The Supreme Court ruled in June that the original plaintiffs, anti-abortion doctors and groups, did not have standing to sue. Now three states are trying to continue the legal fight.



“Blue” States Organize Stateline

HEALTH CARE DEMOCRACY EDUCATION ENVIRONMENT SOCIETY CRIMINAL JUSTICE

ABORTION ACCESS ABORTION POLICY HEALTH CARE SOCIAL ISSUES SOCIETY

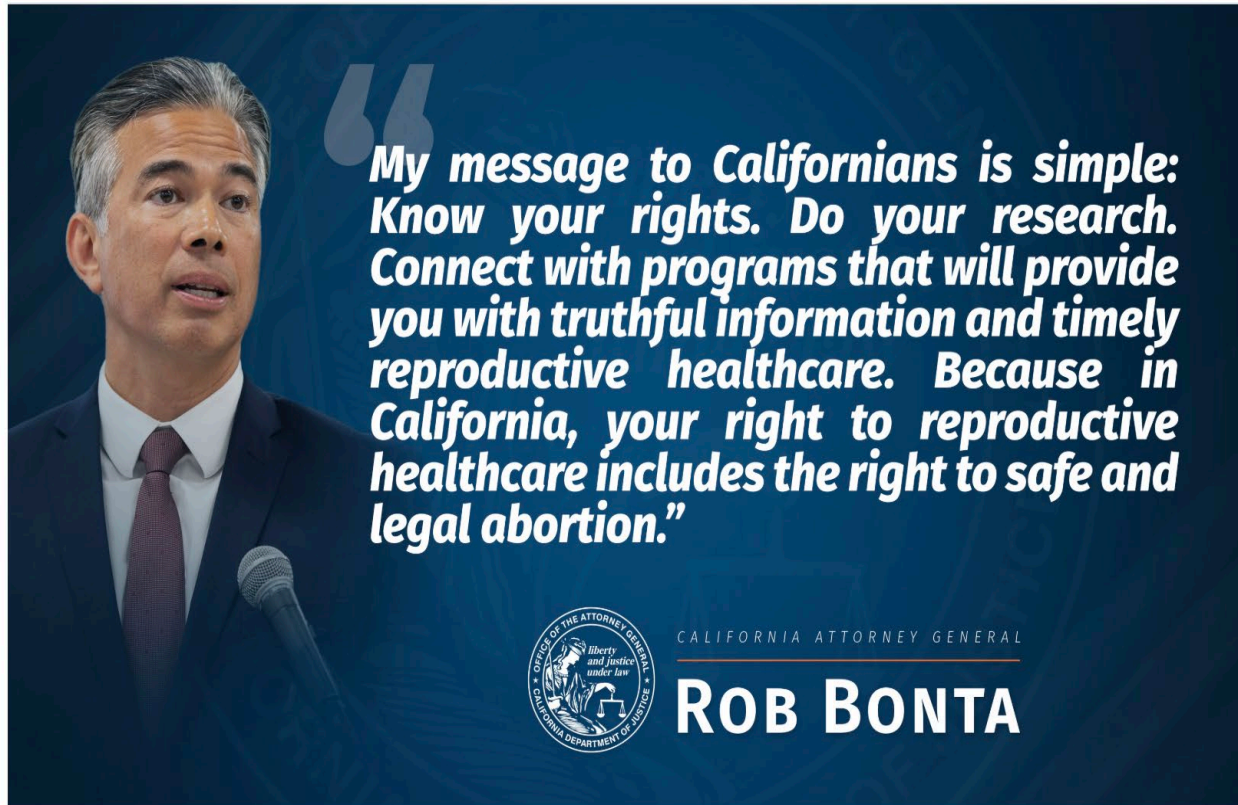
Expecting challenges, blue states vow to create ‘firewall’ of abortion protections

They fear threats to abortion medication, shield laws and contraception.


BY: ANNA CLAIRE VOLLERS - NOVEMBER 21, 2024 5:00 AM



Reproductive Rights



“My message to Californians is simple: Know your rights. Do your research. Connect with programs that will provide you with truthful information and timely reproductive healthcare. Because in California, your right to reproductive healthcare includes the right to safe and legal abortion.”



CALIFORNIA ATTORNEY GENERAL
ROB BONTA

Reproductive Rights

Your Rights

- Know Your Abortion Rights
- Know Your Rights to Birth Control
- Warning: Crisis Pregnancy Centers
- Reproductive Healthcare Providers

Resources

- FACE Act Training Video

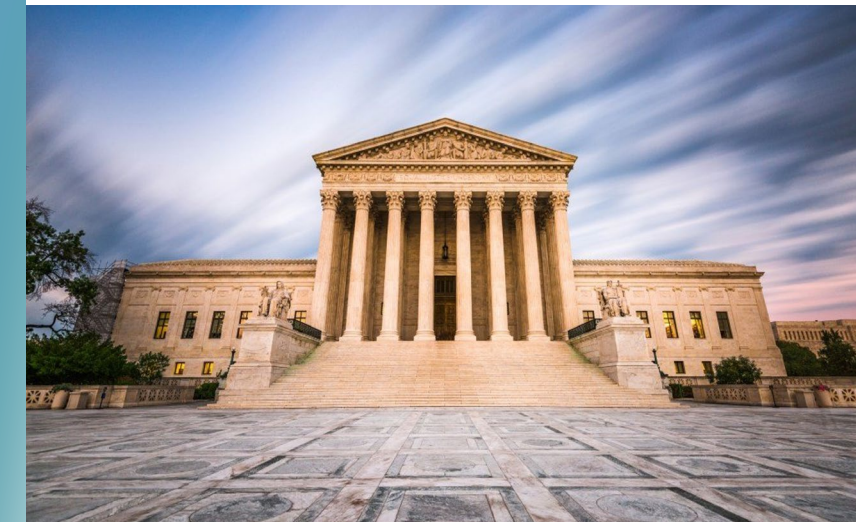
DOJ Actions

- Consumer Alerts
- Legal Bulletins

Post-Election ART Impacts?



- **Red States:**
 - More state abortion restrictions? More aggressive prosecutions?
 - If more so-called “Personhood” (“life begins at...”) laws, impacts on IVF? Or at least feared impacts?
 - Testing travel & extra-territorial restrictions beyond abortion?
- **Blue states:**
 - Increased embryo storage destinations > will Pts move care too?
 - More enhanced legal protections for doctors & patients?
 - 12 states post-*LePage* have attempted multiple protections, w/mixed success; coalition building impact?
 - CA & IL & others may provide blueprints for expanding protections
- **Federal Level?**
 - **Congress:** anyone’s bet...
 - **SCOTUS:** a (worrisome) wild card...



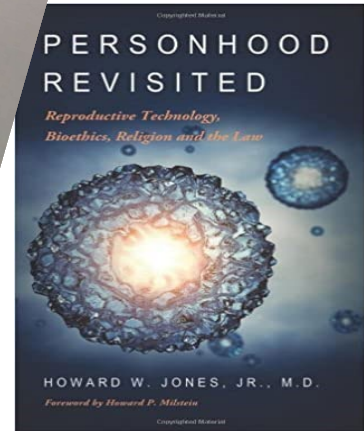
“The in vitro genie is out of the bottle ...& you can't put it back...”

Calvert v. Johnson (CA 1993)





What's next for ART Professionals & Patients?



Acknowledgments

Jones Rounds: Practicing safer ART together

Jones Rounds™

Grand Rounds & Case Based Didactics Modules
at the intersection of Reproductive Medicine,
Law & Ethics

In honor of Howard W. Jones Jr. (1910-2015)

A medical pioneer & ethical visionary who
always believed in learning through dialogue

Andrea Braverman, Ph.D.

Amy Altman, J.D.

Laura Bishop, J.D.

Francesca Nardi, J.D.

Sources of support for Jones Rounds™:

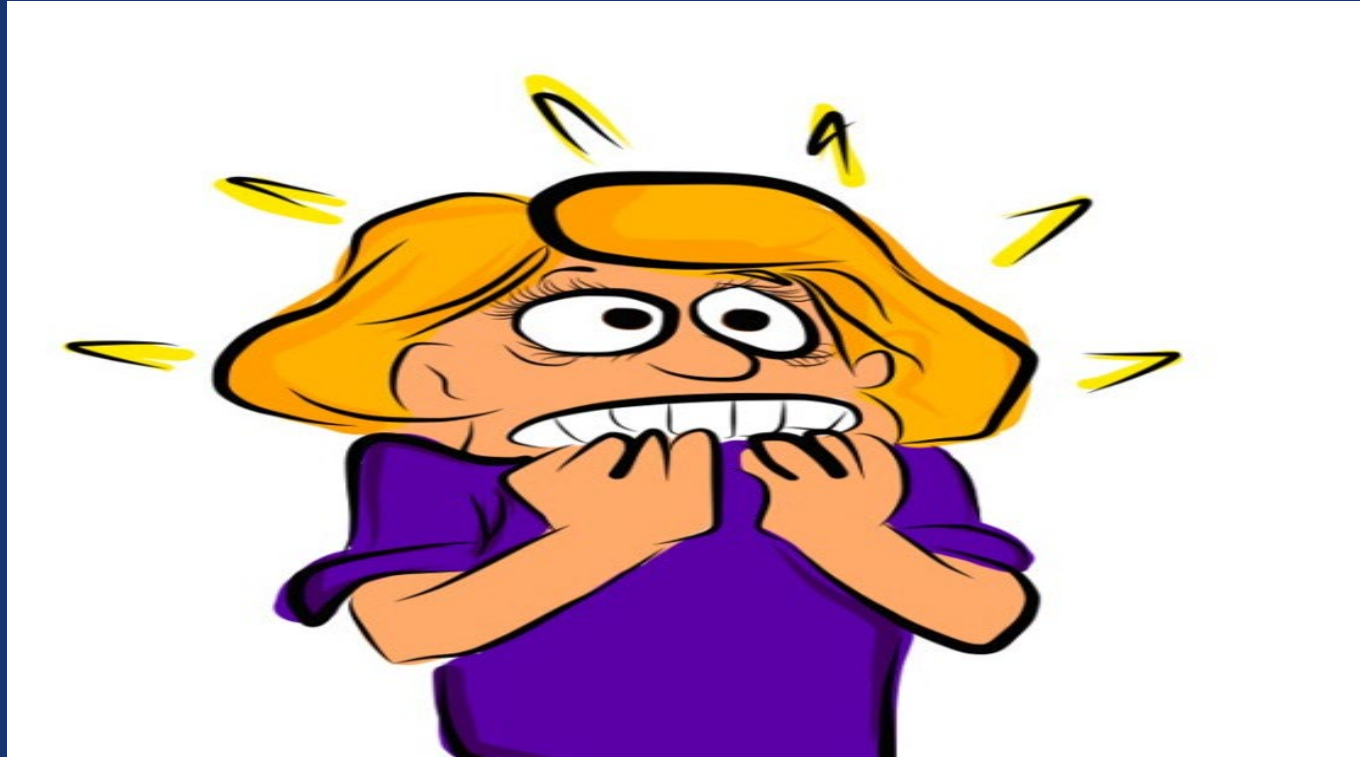
- Howard & Georgeanna Jones Foundation for Reproductive Medicine
- Georgetown U. Kennedy Inst. of Ethics
- O'Neill Institute for National and Global Health Law at Georgetown U. Law Center

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Thank you!
~~Questions?~~ Answers?





Q&A