

ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY RESOLUTION No. 122

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 11, 2024

The Assembly State and Local Government Committee reports favorably and with committee amendments Assembly Resolution No. 122.

The amended resolution condemns the Alabama Supreme Court ruling in LePage v. Mobile Infirmary Clinic, P.C. and pending federal legislation, H.R.431; and reaffirms the freedom of access and protection of reproductive health care services in New Jersey, including in vitro fertilization.

In the United States, one in six people of childbearing age struggle with infertility and require some type of professional assistance in order to conceive a child. Fortunately, 90 percent of infertility cases are treatable with medical therapies including drug treatment, surgery, and in vitro fertilization (IVF). IVF is a process whereby an egg is removed from a person's body and combined with sperm inside a laboratory for fertilization; the fertilized egg, called an embryo, is then transferred into the uterus.

In LePage v. Mobile Infirmary Clinic, P.C. (Docket No. SC-2022-0515, SC-2022-0579), the Alabama Supreme Court ruled that embryos are “extrauterine children,” finding that that the State’s “‘Wrongful Death of A Minor Act’ applies on its face to all unborn children, without limitation.” In the direct aftermath of this ruling, Governor Kay Ellen Ivey of Alabama signed S.B.159 into law, which would ensure criminal and civil immunity for those administering or receiving in vitro fertilization services. However, the new law ignores the primary issue contained in the LePage ruling, that embryos are to be interpreted as children, which could have lasting effect on the ability of Alabamians to family plan.

With the support of over 120 representatives from the Republican party, Congressman Alexander X. Mooney of West Virginia introduced H.R. 431, which would implement equal protection under the Fourteenth Amendment to the United States Constitution for the right to life of each “born and preborn human person.” Under this bill, the terms “human person” and “human being” include “each and every member of the species homo sapiens at all stages of life, including the

moment of fertilization, cloning, or other moment at which an individual member of the human species comes into being.” This legislation, if enacted, poses a significant threat to the reproductive freedoms of the citizens in New Jersey and the United States, particularly those related to IVF and other fertility treatments.

A number of Republican senators joined the Democrats in criticizing the LePage ruling, and expressed their support for IVF. Tammy Duckworth, a Democratic Senator from Illinois who utilized IVF to conceive her two children, introduced legislation, S.3612, to protect the rights of individuals to seek reproductive assistance, such as IVF, and physicians who provide these services, without the fear of prosecution. Senator Duckworth urged her Republican colleagues to join the Democrats’ efforts to protect access to IVF by unanimously passing this legislation, as many Republican Senators initially denounced the LePage ruling for the harmful precedent that the decision has set on reproductive assistance services,. However, Republican Senator Cindy Hyde-Smith of Mississippi blocked the unanimous passage of the bill by objecting to Senator Duckworth’s request.

When the United States Supreme Court issued its 2022 decision in Dobbs v. Jackson Women’s Health Org., which overturned Roe v. Wade, the country faced fear and uncertainty around key reproductive rights issues. A number of states took action to interfere with a person’s access to reproductive health care out-of-state, in some instances by seeking to prosecute a person in a state where reproductive health care access was criminalized following Dobbs, for seeking reproductive health care services in another jurisdiction where it remained legal. Such actions are designed to prevent individuals and health care providers from seeking and providing lawful reproductive health care services by instilling fear through the threat of prosecution.

In stark contrast to actions taken in states to monitor private health information, the New Jersey legislature has acted to protect private medical information from prosecutors in other states, to ensure New Jersey law enforcement will not take part in extraditions to people who have sought reproductive health care that is legal in New Jersey, and to require the creation of a website so people who are confused about recent court decisions know what their freedoms are on reproductive health decisions in New Jersey

It is in the public interest of the citizens of New Jersey to condemn, in the strongest terms, any ruling that infringes on citizens rights to exercise their reproductive freedom or their access to reproductive health care, including IVF.

COMMITTEE AMENDMENTS:

The committee amended the resolution to address and clarify the effect of recent actions taken in the states of Alabama and Iowa concerning IVF access and services.