

Reproducing Law: Autonomy, Surrogacy & Maternal Justice

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Who Controls Reproduction?

Fragmented Law

States diverge on
autonomy, parenthood
& embryo status

Real Costs

Exploitative surrogacy,
uncertain parentage,
inadequate consent

Core Argument

Law is not absent — it is **normatively incoherent**



PART I

Anti-Reproductive Freedom: Three Threats



Restricted IVF

Limits embryos per cycle, bans cryopreservation & genetic screening — pricing patients out at **\$30,000/cycle**



Blame-and-Shame Fertility

Frames infertility as personal failing; Arkansas RESTORE Act 2025 embeds ideology into public health infrastructure



TRIP Bills

Targeted Restrictions of IVF Providers — mirrors TRAP laws used to shut down abortion clinics

Restricted IVF: The Real Cost

\$30K

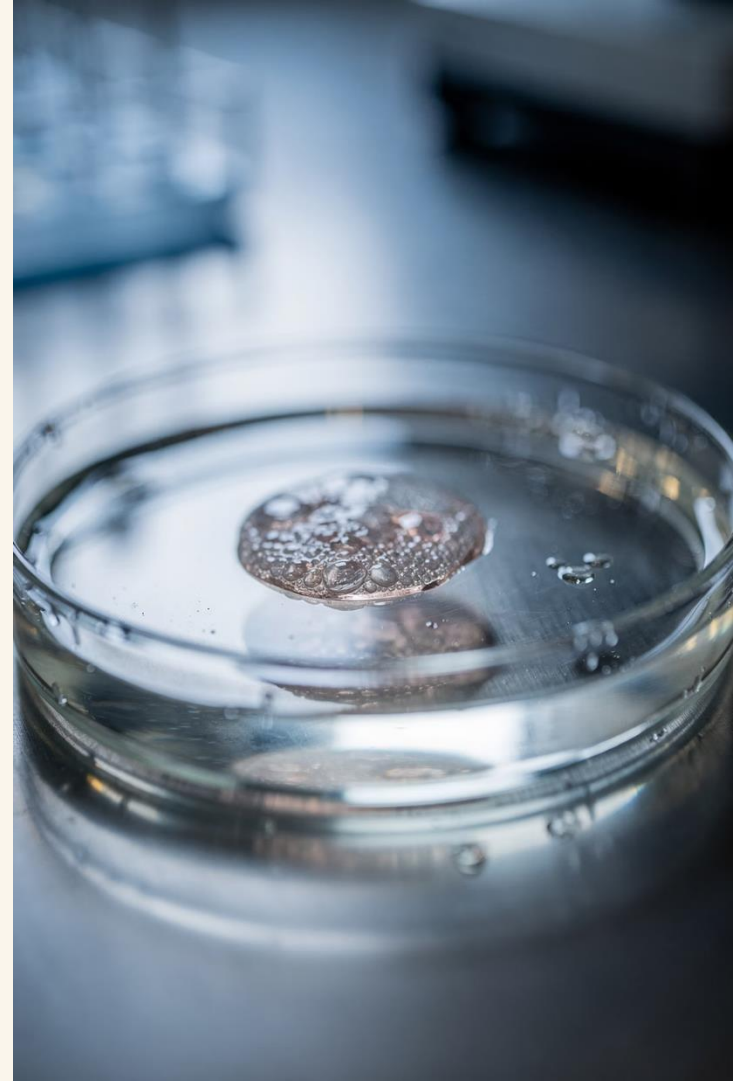
Per cycle
Without insurance
100%

Excluded

Single, LGBTQ+, unmarried, donor-gamete patients
Who Gets Shut Out?

- Same-sex couples
- Single parents
- Donor-gamete patients

⊗ Restriction is not incidental. It is the point.





PART II

The Alabama Earthquake

LePage v. Center for Reproductive Medicine (2024)

Alabama Supreme Court:
frozen embryos = children
under wrongful death statute

IVF providers **immediately**
suspended services.

Legislature responded with
liability shield — but the core
question remains **entirely**
unresolved.

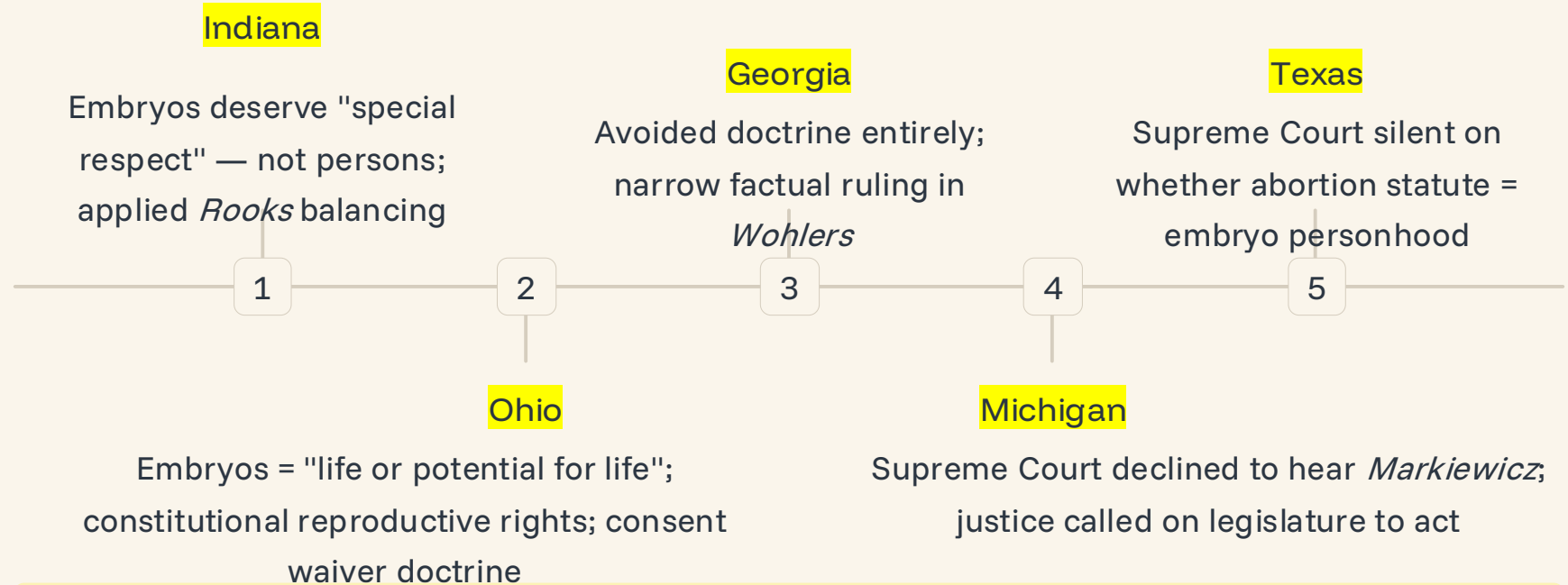
1.5M+

Frozen embryos in the
U.S. — with no federal
governance

Zero

Federal enforcement
mechanisms for IVF
clinic reporting

Improvising Without a Framework



⚠ Courts are on the front line — without the tools, doctrine, or capacity to resolve it.

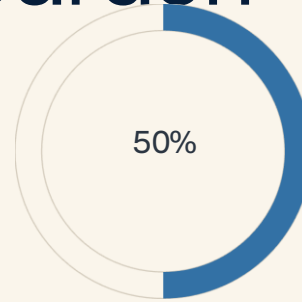
RACIAL JUSTICE

The Compounded Burden



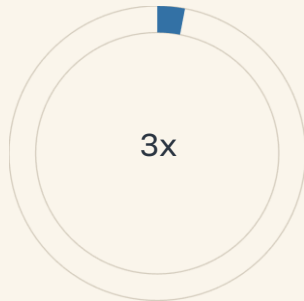
Fertility challenges

Black women face infertility at nearly twice the rate of white women



Treatment gap

Only half as likely to receive fertility treatment



Pregnancy loss

Three times higher pregnancy loss rate among those who do pursue IVF



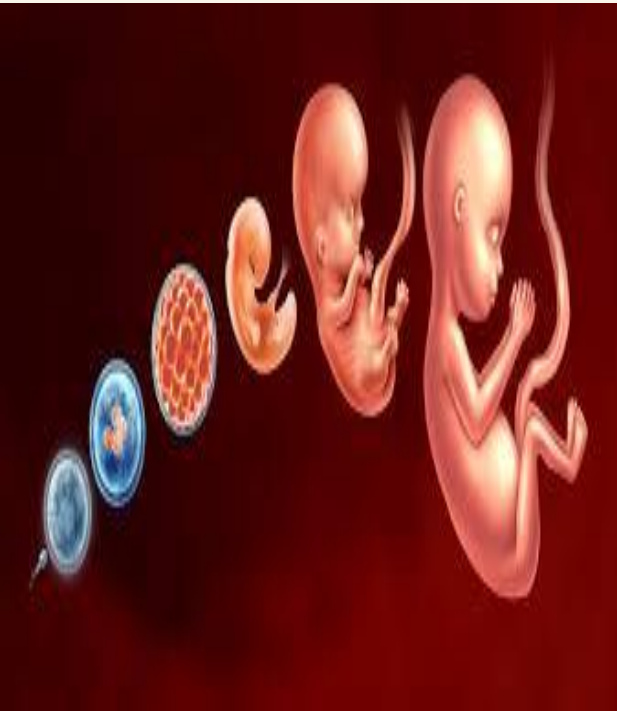
Maternal mortality

Black women die at 3x the rate of white women in pregnancy & childbirth

The IVF legal crisis is not racially neutral.

PART III

Three Normative Failures



Autonomy

Ideological restrictions override patient rights

Equal Protection

Access conditioned on wealth, status & geography

Legal Clarity

Embryo personhood perpetually deferred, inability to make a decision has role or effect on several parties: parents, child etc

Surrogacy & the Transnational Crisis

Cross-Border Reproductive Care

Domestic legal fragmentation drives "reproductive tourism" — circumventing protections entirely.

⊗ Real children. Real surrogates. Real families — caught between incompatible legal regimes.

Surrogates in lower-income jurisdictions face exploitative contracts

Children risk statelessness or legal parentlessness

Hague Conference instruments: years of work, no binding consensus





Toward Coherent Governance

1

Federal Action

Enforceable IVF access protections —
not political statements

2

State Frameworks

Principled embryo disposition guidance
anchored in constitutional rights

3

Reproductive Justice

Centre the most harmed: infertility
patients, surrogates, Black women,
children

Reproductive law decides what kinds of families
we allow to exist. Getting it right is a matter of
justice.