

# Finding the Active Voice

The challenge of developing prochoice regulation of ARTs

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For over forty years, assisted reproductive technologies (ART) have helped women suffering from infertility to have children. But the ART industry has grown in a regulatory void. Prolife opposition to research on embryos prevented government funding of ART but also left the field largely free of the clinical trials, peer review and other forms of oversight that often come with federal support.

In place of federal regulation, market demands and medical custom have generated unenforceable industry guidelines pertaining to a panoply of measures, including *in vitro* fertilization, egg donation, pre-implantation genetic diagnosis, and sex selection. Not until 1992 was federal legislation (Fertility Clinic Success Rate and Certification Act) enacted to provide information on clinic success rates, in response to charges of deceptive advertising. The Act governs a market relationship, aiming to protect consumers from low-performing service providers. However, the extent to which clinics voluntarily report “success” rates is in part motivated by a desire to protect market share. In 2005, federal regulations began to require more careful screening of gamete providers and their “products;” nevertheless, the industry group Society for Assisted Reproductive Technology continues to resist federal regulation or independent oversight of other aspects of ART. These include the number of embryo implantations a clinic may perform per IVF cycle, the number of eggs retrieved per cycle, the number of retrievals per donor, the grounds on which prospective parents may

choose donors, disclosure of donor identity, upper age limits for receiving IVE, or most importantly, the long-term health outcomes for infants, egg donors, and mothers.

For prochoice critics, keeping track of live birth rates while failing to track long-term adverse health effects on women or children does not constitute adequate regulation. Still, the road from scholarly critique to corrective action has been marked by fits and starts. Lobbying on the part of this multi-billion dollar industry is one reason for the persistent dearth of external regulations. Another has been the self-censorship of prochoice critics concerned with how criticism of ART could threaten the politics of choice: Could seeking regulation of assisted reproductive technologies be construed as limiting a woman’s right to choose? Relentless effort from the right to undo the protections of *Roe v Wade* makes this a very real concern. Problematically, “on the ground” struggle against such assault and for reproductive rights occurs in a political landscape characterized by shifting positions on the role of the state. The reproductive rights movement of second-wave feminism emerged in an era when the state served a necessary role in protecting individual freedoms from the exigencies of a free market. But now, the reproductive rights movement operates in a context that has turned toward libertarian policies of privatization and deregulation—a political shift that valorizes a choice narrative embedded in market-based individualism while largely abandoning the idea that there is a role for the state in protecting the health and wel-

fare of its citizens. The need for securing a woman’s right to choose that found moorings in a liberal state experimenting with health and welfare programs plays out quite differently in a techno-libertarian context where radical individualism denies the interconnectedness of human relations. In the stillness generated by having to walk the razor’s edge between choice and social justice concerns, targeted action for addressing pressing issues—such as the inadequately researched health risks associated with egg harvesting, the often exploitive social contexts of surrogacy, or the troubling implications of sex selection—has been pursued hesitantly.

The exploding demand for women’s eggs and the rapidly expanding market in reproductive tourism, however, is calling forth reinvigorated prochoice activism. Progressive prochoice activists are creating new political framings not by “top down” theorizing but through “bottom up” pragmatic engagement of concerns on an issue by issue basis. In addition to op-eds and letter-to-the-editor writing, activists have testified before state and federal legislatures, held press conferences, engaged in public speaking, presented in classrooms, featured movie screenings, produced YouTube videos, initiated letter writing campaigns, circulated petitions, sought United Nations declarations, submitted amicus briefs, and introduced legislation. California’s 2006 SB 1260, for example, promulgated minimum safety standards for women who may donate eggs for privately funded research, and California Assembly Bill

1317 created the nation's first state law requiring ads seeking women's eggs to include reference to health risks.

The significance of such legislative measures is not merely the new laws themselves, which, in certain respects, bear the limitations of loopholes created by industry lobbying. Deeper meaning is conveyed by *who* initiated or supported them: civil society groups with prochoice orientation. SB 1260 was supported by Center for Genetics and Society, Pro-Choice Alliance for Responsible Research, Planned Parenthood Affiliates of California, and Women's Foundation of California. AB1317 was supported by the American Association of University Women, Alliance for Humane Biotechnology, Breast Cancer Fund, California NOW, Center for Genetics and Society, Our

Bodies Ourselves, and Pro-Choice Alliance for Responsible Research. Currently, a petition calling for a national egg donor registry and for nationally mandated health warnings on ads soliciting women for their eggs carries the endorsement of a number of prochoice groups including the California Nurses Association, Council for Responsible Genetics, the National Women's Health Network, and the National Organization of Women. The documentary, *Eggsploitation*, which chronicles the wrenching experiences of several young egg donors, though produced by the conservative Center for Bioethics and Culture, is promoted by prochoice adherents from Our Bodies Ourselves, Infertility Network, Donor Sibling Registry, Alliance for Humane Biotechnology, and Council for Responsible Genetics.

The painstaking, time consuming, trial and error labor it took to stitch together these connections is testimony both to the tenuous, shifting nature of alliances and to the effectiveness of pragmatic experimentation in bridging ideological divides to identify common goals. Moving forward, there will likely be as many disagreements as there were looking back. Even so, we can pause to celebrate how we've been overcoming unlikely odds to find the active voice. ■■■

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