

CNN: Amid Post-Roe Concerns, Democratic Lawmakers Introduce Bill To Protect Access To IVF

by Jacqueline Howard
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WASHINGTON - Democratic lawmakers have introduced legislation aimed at protecting access to infertility treatments, such as in vitro fertilization, amid growing concern that anti-abortion bills may threaten access in some states.

On Thursday, Illinois Sen. Tammy Duckworth and Pennsylvania Rep. Susan Wild plan to introduce the Access to Family Building Act, which would make it a statutory right for patients to access assisted reproductive technology, such as in vitro fertilization or IVF, continue treatments and retain authority over how sperm or egg cells are used during such treatments.

“It will be in federal code that you have this right,” said Duckworth, who has been outspoken about her own experience using IVF to grow her family.

IVF is a form of assisted reproductive technology in which eggs are fertilized by sperm cells in a lab and the resulting embryos transferred into a person’s uterus in hopes of leading to pregnancy.

The new bill could supersede states’ strict abortion laws when it comes to discarding a patient’s embryos during the IVF process or even terminating a pregnancy when a patient is implanted with multiple embryos while using assisted reproductive technology.

“This is really in part because of what’s happening across the country: You have state legislatures that impose a ban on access to abortion or state legislatures who have decided to, or there are moves to define a human being with personhood rights as a fertilized egg,” Duckworth said. “Well, if that were the case, that would actually prohibit many forms of IVF.”

During Duckworth’s IVF experience, she said, she had five fertilized eggs, but three of them were found to not be viable and were discarded.

Under a strict anti-abortion law, “if a fertilized egg is a human being with rights, then that’s manslaughter,” she said.

To date, there have not been any known legal cases in which a patient’s access to IVF has been overtly threatened or restricted, but there are growing concerns that such incidents may happen in states with strict abortion laws, said Sean Tipton, chief advocacy and policy officer at the American Society for Reproductive Medicine, a nonprofit focused on the advancement of the science and practice of reproductive medicine.

“Since the Dobbs decision, there has been a great deal of anxiety amongst patients and health care providers both of infertility care. They understand that a very strong protection has been taken away from them,” Tipton said of the US Supreme Court decision that overturned Roe v. Wade in June 2022.

Although there have not been overt attempts to stop access to IVF, Tipton said, such restrictions could occur if elected officials use language in anti-abortion bills that may endanger infertility care. A common example of this is when lawmakers write in anti-abortion bills that human beings are protected from “the moment of conception,” he said, because conception is not a “moment,” it is a process.

“In the in vitro fertilization process, eggs are fertilized outside of the body, and so if you write something that pertains to all fertilized eggs, whether that is in a woman gestating to become an embryo, a fetus and eventually a child, it could also apply to the fertilized egg in the freezer of an infertility clinic,” Tipton said.

“We think that’s pretty dangerous, and we think most people would think those are very different,” he said. “So where the rubber meets the road for fertility medicine is: What’s the legal status of the fertilized egg that has not yet been placed into a woman to establish a pregnancy?”

Just months after the US Supreme Court ruled on *Dobbs v. Jackson Women’s Health Organization*, Duckworth and Wild introduced the Right to Build Families Act to prohibit limiting access to IVF and other assisted reproductive technology.

But since then, Duckworth said, the duo has observed how strict abortion laws have been enacted in some states and have received feedback on what type of legislation might be needed to preempt such laws. Based on that, they developed the Access to Family Building Act, which would do something the previous legislation does not: make access to IVF and similar technologies a statutory right.

“This is basically an improvement on the previous bill that was introduced right after the *Dobbs* decision,” Duckworth said, adding that the language to make access to reproductive health care a statutory right has not been used before.

The Access to Family Building Act “goes hand in hand with my firm belief that a woman’s body is hers and hers alone and that what she chooses to do with it should be her decision alone, and that includes attempting to get pregnant,” Wild said.

It’s estimated that each year, about 2 in every 100 infants born in the US — or 2.3% — are conceived using assisted reproductive technology, according to the US Centers for Disease Control and Prevention.

Now that the bill has been introduced in the House and Senate, it will be referred to committee and then the committee decides whether to consider it. Wild said she hopes some of her Republican colleagues will offer their support for the legislation.

“A number of them have indicated a great deal of empathy,” she said. “I am sure there are many people on the other side of the aisle who have had either themselves or a member of their family who have needed assisted reproductive technology.”