

AN EDUCATIONAL UPDATE FROM THE SOUTHEAST LAW INSTITUTE™, INC.

To: Interested Persons
Date: November 2025
From: A. Eric Johnston
RE: The Trump Administration: Abortifacients, The FDA and IVF

Reproductive rights have remained a divisive and compelling issue since 1973. When SCOTUS originally found privacy or liberty rights in the Constitution allowing, apparently quite innocently, married couples to buy contraceptives (1965) and then unmarried persons buying contraceptives (1972), most citizens did not realize that would begin the permissive definition of reproductive rights resulting in the destruction of innocent human life in the seminal case of *Roe v. Wade* (1973).

For 49 ½ years, abortion was legal in all fifty states. The *Dobbs* decision (2022) determined that each state could prohibit, regulate or permit abortion, depending on the will of the voters. Abortion is not a right or subject addressed in the U.S. Constitution. Alabama passed the Alabama Human Life Protection Act (2019) which prohibits virtually all abortions, both surgical and chemical. However, although the most recently reported statistics for Alabama show only three surgical abortions were performed in 2024, we know that maybe as many as 3,000 chemical abortions have resulted because women could purchase abortifacients from out of state or out of country and have them delivered to their home, without medical oversight.

The Biden Administration ruled the FDA could send abortifacients through the mail without a physician's participation and in violation of an old law known as The Comstock Act, which prohibited that. The Trump administration stopped that practice. However, the Trump Administration recently approved a generic version of the abortion drug, mifepristone. This means the drug can be obtained more easily and inexpensively. There was an immediate outcry by Republicans in Congress. Fifty-one Republican Senators wrote a letter requesting the FDA to rescind the generic determination and to go a much further step to reexamine and issue new regulations for the administration of the drug. The letter had two parts. First, the medical standard of care determined by the FDA is flawed and must be re-examined. Secondly, it reminded the FDA that the *Dobbs* decision had returned the abortion issue to the states and the uniform sending of drugs to all fifty states, violates that ruling.

U.S. Representative Robert Aderholt of Alabama said this determination "caught us all by surprise. We were not expecting that... this is not something that I think most people who voted for Donald Trump would have expected." It is troubling that the Trump Administration has not immediately reversed the FDA policies, requiring an examination of new evidence showing the abortion drugs create many medical complications for women and also enforcing The Comstock Act prohibition of mailing the drug.

At the same time, President Trump has followed through on a campaign promise regarding invitro fertilization treatments. You will recall that Justice Jay Mitchell, then a Justice on the Alabama Supreme Court wrote an opinion saying the frozen embryo is a person within the meaning of Alabama law. Unfortunately, the Alabama Legislature reacted by giving IVF clinics total criminal and civil immunity. Therefore, there is no medical standard of care.

Then presidential candidate Trump made promises to make IVF treatments affordable and available to women. Last month, the President announced efforts will be made to lower the cost of IVF drugs. Rather than simply lower the cost of the drugs, the better approach would be to not only strictly regulate IVF processes, but to focus on "restorative reproductive medicine" ("RRM"). The Pro-life community has significant concerns with IVF, particularly the destruction of the embryos. Rather than focus on continuing those processes, medicine should use RRM to determine underlying problems with fertility. When asked about that in a press conference, Trump said "I think we're going to do that."

As a reminder, in the coming regular session of the Alabama Legislature, we will be assisting Legislators with a bill that will prohibit internet access to abortifacients through mail or courier deliveries in Alabama. We are hopeful that at some future date, sooner than later, the Alabama Legislature will revisit the IVF issue and perhaps focus on RRM.

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