

APLC  
ALABAMA PRO-LIFE COALITION, INC

**To: Interested Persons**  
**Date: April 2026**  
**From: A. Eric Johnston**  
**RE: IVF, Attorney General Race and the Legislature**

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Alabama Families for IVF has released a political ad against Attorney General Candidate Jay Mitchell. The premise of the ad is that Mitchell opposes IVF.

As a then-Supreme Court Justice, Mitchell authored a court opinion that said frozen embryos stored for IVF purposes are children protected by Alabama law. While all of the justices on the court and all of the parties in the case agreed the unborn child “is a unique human being whose life begins at fertilization,” the case touched on many legal and policy issues for which the court had no answers. It was generally opined that only the legislature should decide them.

The opinion for which Mitchell is criticized resulted from a lawsuit parents filed against an IVF provider whose negligence resulted in the loss of their stored and expected to be used embryos. The Alabama wrongful death of a minor law includes the unborn. Under the Alabama Constitutional law recognizing the unborn are entitled to protection of all laws, the question before the court was whether the embryos were protected. The court found they are.

The problem is that the Alabama legislature about two weeks later simply gave IVF clinics both criminal and civil immunity from all claims. As a consequence, those providers have no legal medical standard of care. All other healthcare providers have standards for their respective services. Couples who may be damaged by culpable IVF providers have no protection.

Justice Mitchell’s opinion should have been a catalyst for legislative protection, with which the court generally agreed. It was the legislature who failed parents and children planned through IVF.

Alabama Families for IVF may not understand this is what happened. If some of them, like the plaintiff-parents in the lawsuit, lose their children due to the acts of IVF providers, they have absolutely no remedy.

Neither is this protected by HB642. This bill was filed too late for it to be considered this session. More significantly, this bill fails to do anything but say use of contraceptives and IVF are protected by law in Alabama. These are not issues remotely on the horizon.

There is an ancient legal maxim: “there is no wrong without a remedy.” Under present Alabama IVF law, the maxim does not apply. Members of the APLC have various positions on IVF. As a “coalition” however, we agree that IVF is legal and is an option for some couples. APLC understands the realities and the very complex nuances of unborn life issues. We agree it must be protected. But we are pragmatic enough to know there must be cooperation and understanding by all parties to the issue in order to provide protections, procedures and remedies for the various facets of the issues. There must be reasonable medical rules.

APLC has requested Alabama legislators to address IVF and provide a proper legal/medical framework to assure good medicine, while protecting the innocent unborn, which is to say, protect the families who use IVF and their prospective children. The legislature has failed to act.

It is not Jay Mitchell who should be the object of scorn. He should be commended. The Supreme Court opinion meant to provide the basis for a remedy to the parents in that case who lost their children. As several Justices pointed out, the people’s elected representatives have that duty.

It may be the Alabama Families for IVF ad is purely a campaign motivated attack on Mitchell. According to the Alabama Daily News, the TV campaign costs about \$255,000. This group has registered as a “Political Action Committee” and reported a single contribution of \$425,000 from a dark money group in Virginia. Dark money has been an issue in this race. Nevertheless, neither the ad nor HB642 address the issue.

It appears all three attorney general candidates support IVF. The question that should be asked is what should be done to regulate it. The legislature has that assignment, and the attorney general does not pass laws. Only the legislature can do that. Alabama Families for IVF misplace their grievances. APLC would like to work with them and others for the protection of this class of unborn children and their parents.

We are grateful for Jay Mitchell’s opinion and recognition of what is needed for IVF. We are grateful that other members of the court agreed that action should be taken by the legislature. We encourage the legislature to recognize its duty and to do it.

*APLC is a Section 501 (c)(4) Alabama non-profit organization consisting of pro-family organizations in the State of Alabama who join together for the sanctity of life.*