



April 3, 2025

Oregon State Legislature  
Senate Committee on Health Care  
State Capitol  
900 Court Street, NE  
Salem, OR 97301

Re: S.B. 535 (Insurance Coverage of Infertility Services)

Dear Chairperson Patterson, Ranking Member Hayden, and Members of the Senate Health Care Committee:

The purpose of this letter is to share Alliance Defending Freedom's legal analysis of Oregon Senate Bill 535, which would require health insurance plans to cover various fertility services and treatments.

Alliance Defending Freedom (ADF) is a non-profit legal organization that advocates for religious freedom, free speech, parental rights, and the sanctity of life. ADF regularly provides analyses of bills pending in state legislatures and Congress. In addition, ADF is one of the nation's most respected and successful United States Supreme Court advocates, representing parties in 15 victories since 2011.

As you know, S.B. 535 would require large employer plans, small employer plans, and individual plans to cover procedures and medications to address infertility. The bill specifically identifies in vitro fertilization, cryopreservation of embryos, and the transfer of embryos to gestational carriers or surrogates, among other things.

At the outset, it is important to note that ADF believes that children are gifts from God and has deep sympathy for couples who have trouble conceiving or carrying children to term. Some of our own team members have experienced profound heartbreak over infertility or unsuccessful pregnancies. Our legal observations about S.B. 535 do not diminish our compassion towards such suffering.

As you undoubtedly know, there are insurers, plan sponsors, and individuals who object on religious and moral grounds to including certain artificial reproductive technologies in the health insurance plans they sell or buy. For example, Providence Health Plan has informed the House Committee on Behavioral Health and Health Care that S.B. 535's companion bill, H.B. 2959, would violate its freedom to follow its religious convictions.

Providence's stance reflects the position of the United States Conference of Catholic Bishops (USCCB), which maintains its "Ethical and Religious Directives for Catholic Health Care Services."<sup>1</sup> The Directives express the Bishops' thoughtful and nuanced views on in vitro fertilization, surrogacy, prenatal fetal diagnosis, and the use of donor gametes. It is undeniable that a faithful Catholic insurer or plan sponsor could not sell or buy, respectively, plans that comport with S.B. 535. Purchasers of individual plans may have religious objections as well.

It bears noting that the USCCB's Directives are applications of the Catechism of the Catholic Church (CCC).<sup>2</sup> The Catechism notes that although "[r]esearch aimed at reducing human sterility is to be encouraged," (CCC, 2375), techniques that contradict Church teachings on marriage and the dignity of the human person are impermissible. (CCC, 2373-2379).

Roman Catholics are not the only religious tradition with concerns about artificial reproductive technology. Last year, the Ethics & Religious Liberty Commission of the Southern Baptist Convention (SBC) issued a document entitled, "Ethical and Theological Considerations on IVF."<sup>3</sup> In that document, the SBC expresses its opposition to "the willful destruction or even donating to scientific experimentation of non-implanted human embryos wantonly created in the typical IVF process." It bears noting that the SBC is the largest Protestant group in the United States.

Some Muslims and Jews also have religious reservations about certain reproductive technologies. For example, Orthodox Jewish rabbinic authorities forbid the use of donor gametes in infertility treatments. *See* Sherman J. Silber, "Judaism and Reproductive Technology," *Cancer Treat. Res.* 2010; 156: 471-480, available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC3071555/> (last visited April 2, 2025). According to one source, assisted reproductive technologies are permissible in Islam, but only "if the semen source, ovum source, and the incubator (uterus) come from the legally married husband and wife during the span of their marriage." Mohammed Ali Al-Bar and Hassan Chamsi-Pasha, *Contemporary Bioethics: Islamic Perspective*, p. 176, available at <https://www.ncbi.nlm.nih.gov/books/NBK500175/> (last visited April 2, 2025).

In the eyes of many followers of these respective faiths, these prohibitions and restrictions apply not just to those who might personally participate in what they believe to be morally problematic acts. Through moral reasoning about complicity, the restraints extend to those who might *facilitate* such acts, including through the sale, purchase, or provision of insurance plans that cover the procedures in question. Concerns about complicity in religiously impermissible behavior underlaid the lawsuits filed by employers challenging the HHS Preventive Services Mandate, which required them to offer health plans that included contraceptives and/or abortifacients to which they objected on religious grounds. *See, e.g., Zubik v. Burwell*, 578 U.S. 403 (2016); *Burwell v. Hobby Lobby Stores*, 573 U.S. 682 (2014).

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<sup>1</sup> Available at [https://www.usccb.org/resources/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06\\_0.pdf](https://www.usccb.org/resources/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06_0.pdf) (last visited April 2, 2025).

<sup>2</sup> Available at <https://usccb.cld.bz/Catechism-of-the-Catholic-Church> (last visited April 2, 2025).

<sup>3</sup> Available at <https://erlc.com/resource/ethical-and-theological-considerations-on-ivf-from-the-southern-baptist-convention/> (last visited April 2, 2025).

In short, it is clear that S.B. 535, as currently written, will coerce many employers, individuals, and at least one insurer to violate their religious convictions. Accordingly, the State would be subject to litigation and potential liability under applicable legal protections of religious liberty, including the Free Exercise Clause of the First Amendment and Article I, Sections 2 and 3 of the Oregon Constitution.

It has been suggested that the bill be amended to include a religious exemption like that found in the Reproductive Health Equity Act. *See* ORS § 743A.067(9). Under this exemption, insurers are permitted to sell religious employers plans that do not include “coverage for contraceptives or abortion procedures that are contrary to the religious employer’s religious tenets.” *Id.*

Such an exemption would be profoundly inadequate because the statute’s definition of religious employer is extremely narrow. An employer qualifies for the exemption only if:

1. Its primary purpose is the inculcation of religious values;
2. It primarily employs persons who share the religious tenets of the employer;
3. It primarily serves persons who share the religious tenets of the employer; and
4. It is a nonprofit that is a church, integrated auxiliary, convention or association of churches, or the exclusively religious activities of a religious order.

ORS § 743A.066(4).

The exemption is essentially available only to inward-looking houses of worship and religious orders. It excludes the vast majority of religious organizations, including churches, schools, and social service providers. It also excludes for-profit employers owned and operated by people of faith. The U.S. Supreme Court has declared that such employers have religious liberty rights. *See Hobby Lobby*, 573 U.S. at 707-719. The narrow exemption also excludes employers who have non-religious moral objections.

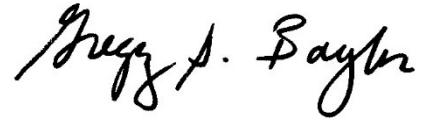
It bears noting that in the context of the controversy over the HHS Preventive Services Mandate, both the Obama and Biden administrations crafted or maintained exemptions far broader than what has been suggested/what is currently found in the Reproductive Health Equity Act. Indeed, the Biden administration left undisturbed the broad religious and moral exemptions crafted by the previous administration. *See* 45 C.F.R. § 147.32 (religious exemption); *id.* at § 147.133 (moral exemption). The existence of these exemptions proves that the government can fully accommodate people of faith without undermining the objectives of the mandate, thus sparing the government from virtually endless and expensive litigation.

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ADF respectfully requests that the Committee take these observations into account as it considers S.B. 535.

Thank you.

Very truly yours,

A handwritten signature in black ink that reads "Gregory S. Baylor". The signature is written in a cursive style with a large, prominent "G" and "B".

Gregory S. Baylor  
Senior Counsel