

TESTIMONY OF ERIN VANEK, ON BEHALF OF THE COLORADO LGBT BAR ASSOCIATION
IN SUPPORT OF THE MISUSE OF HUMAN REPRODUCTIVE MATERIALS ACT (HB20-1014)

Chairman Lee, members of the committee, thank you for the opportunity to present to you today. My name is Erin Vanek, representing the Colorado LGBT Bar Association, and we are here to support this bill because of the high impact of any policy regarding assisted reproductive technology on the LGBTQ+ population.

For many LGBTQ+ people who dream of having biological children, their only real option is assisted reproductive technology. However, these families face significant institutional barriers in pursuit of those dreams. In contrast to their heterosexual counterparts, most same-sex couples can only use genetic materials from one party. A fraudulent insemination could mean that the child would not be related to either of them. Aside from the devastating emotional effects caused by fraudulent parentage, this issue could potentially raise extraordinarily complex custody questions for same-sex parents. Transgender individuals face even greater challenges, as transitioning can greatly impact fertility. One option for transgender people who want to be parents is to store their genetic material before they begin their transition. Another approach for those assigned female at birth is to temporarily halt transition-related hormone treatments and carry the pregnancy themselves rather than through a surrogate.¹ These additional limitations place a natural constraint on the possibility of biological children, either due to finite supply of genetic material or a finite window for pregnancy. Fraudulent insemination could entirely preclude a trans parent from having biological children of their own.

This bill would also serve to strengthen trust in health care providers, which is already lacking in the LGBTQ+ community. A history of discrimination and mistreatment by health care providers has led to heightened distrust of the medical system. Medical research has indicated that implicit preferences for heterosexual people versus lesbian and gay people are pervasive among heterosexual health care

¹ Philip J. Cheng et al., *Fertility concerns of the transgender patient*, 8 *TRANSLATIONAL ANDROLOGY AND UROLOGY* 209–218 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6626312/>.

providers.² LGBTQ+ people feel the effect of this bias: according to a nationally representative survey by the Center for American Progress in 2017, approximately 10 percent of lesbian, gay and bisexual respondents and 30 percent of transgender respondents reported that a healthcare provider had refused to provide services because of their sexual orientation or gender identity in the past year, and a roughly equal percentage said a provider had used “harsh or abusive language” when they sought medical care.³ This leads LGBTQ+ people to avoid seeking medical care out of fear of how they will be treated. Additionally, the Human Rights Watch reports that while there are “significant barriers to care for LGB people, especially in fertility and sexual health services, discrimination against transgender and gender non-conforming people is particularly acute.”⁴

There have been few studies done regarding LGBTQ+ discrimination in assisted reproductive technology, but the available results show a clear pattern of discrimination. The desire of LGBTQ+ people to have children has been stigmatized by providers and politicians who perpetuate the stereotypes that non-heteronormative parents would have a detrimental effect on their children.⁵ According to the American Society for Reproductive Medicine, “Patients who deviate from the heteronormative family have historically been denied access to assisted reproductive technology.”⁷ In a 2005 report on the screening practices of assisted reproductive technology programs, medical researchers surveyed the directors of 369 Society for Assisted Reproductive Technology-associated programs, which represent

² Janice A. Sabine, Rachel G. Riskind & Brian A. Nosek, *Health Care Providers’ Implicit and Explicit Attitudes Toward Lesbian Women and Gay Men*, 105 AMERICAN JOURNAL OF PUBLIC HEALTH 1831–1841 (2015).

³ Shabab Ahmed Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People from Accessing Health Care*, CENTER FOR AMERICAN PROGRESS (2019), <https://www.americanprogress.org/issues/lgbtq-rights/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>.

⁴ Ryan Thoreson, “*You Don’t Want Second Best*”: *Anti-LGBT Discrimination in US Health Care*, HUMAN RIGHTS WATCH (2018), <https://www.hrw.org/report/2018/07/23/you-dont-want-second-best/anti-lgbt-discrimination-us-health-care> (last visited Feb 26, 2020).

⁵ ASRM Ethics Committee, *Access to fertility services by transgender persons: an Ethics Committee opinion*, 104 FERTILITY AND STERILITY 1111–1115 (2015), https://www.reproductivefacts.org/globalassets/asrm/asrm-content/news-and-publications/ethics-committee-opinions/access_to_care_for_transgender_persons.pdf.

⁶ ASRM Ethics Committee, *Access to fertility treatment by gays, lesbians, and unmarried persons: a committee opinion*, 100 FERTILITY AND STERILITY 1524–1527 (2013), https://www.reproductivefacts.org/globalassets/asrm/asrm-content/news-and-publications/ethics-committee-opinions/access_to_fertility_treatment_by_gays_lesbians_and_unmarried_persons-pdfmembers.pdf.

⁷ 104 FERTILITY AND STERILITY at 2.

over 95% of all assisted reproductive technology programs in the United States.⁸ 48% of respondents answered that they would be “very or extremely likely” to turn away a gay couple seeking to use surrogacy, with one of the men as a sperm donor; 17% answered that they would be “very or extremely likely” to turn away a lesbian couple wanting to use donor insemination.⁹ While attitudes have undoubtedly shifted in the intervening years, no similar available report has been conducted since and no data exists pertaining to LGBTQ+ assisted reproduction, especially state-specific data. This may be due to the fact that the assisted reproductive technology industry is largely unregulated; clinics are required to report very little, with zero repercussions for failure to report.¹⁰

While Colorado currently has protections in place for both sexual orientation and gender identity, discrimination is still prevalent within the state.¹¹ One Colorado’s most recent survey indicates that more than half of Colorado’s LGBTQ+ population has faced or expects to face discrimination from their health care provider.¹² Another factor is access to health care. Although Denver Health has been referred to as “an oasis in the desert of LGBTQ healthcare,”¹⁴ One Colorado’s survey respondents have only found LGBTQ-competent care in 19 of the 64 counties in Colorado.¹⁵ 32% of LGBQ people and 64% of trans people now have to travel a significant distance to receive care from a provider they feel comfortable with, with some people having to travel more than 100 miles.¹⁶

⁸ Andrea D. Gurmankin, Arthur L. Caplan & Andrea M. Braverman, *Screening practices and beliefs of assisted reproductive technology programs*, 83 FERTILITY AND STERILITY 61–67 (2005), [https://www.fertstert.org/article/S0015-0282\(04\)02600-7/fulltext](https://www.fertstert.org/article/S0015-0282(04)02600-7/fulltext).

⁹ *Id.*

¹⁰ Mary Hinckley, *Regulations Guiding and Governing Fertility Clinics*, REPRODUCTIVE SCIENCE CENTER (2019), <https://rscbayarea.com/blog/regulations-guiding-and-governing-fertility-clinics> (last visited Feb 26, 2020).

¹¹ Keeley Griego, *Discrimination creates disparity*, COLORADO SPRINGS INDEPENDENT (2019), <https://www.esindy.com/coloradosprings/discrimination-creates-disparity/Content?oid=19976566> (last visited Feb 26, 2020).

¹² Jenny Brundin, *LGBTQ Coloradans Face More Barriers to Health Care than Others*, COLORADO PUBLIC RADIO (2019), <https://www.cpr.org/2019/06/27/lgbtq-coloradans-face-more-barriers-to-health-care-than-others/> (last visited Feb 26, 2020).

¹³ ONE COLORADO, CLOSING THE GAP: THE TURNING POINT FOR LGBTQ HEALTH (2018), https://one-colorado.org/wp-content/uploads/2019/05/Closing_The_Gap_2018-LGBTQ-Health-Assessment_FINAL_5.17.19.pdf.

¹⁴ Caitlin Galiz-Rowe, *Denver Health is an Oasis in the Desert of LGBTQ Healthcare*, OUT FRONT (2019), <https://www.outfrontmagazine.com/featured/denver-health-is-an-oasis-in-the-desert-of-lgbtq-healthcare/> (last visited Feb 26, 2020).

¹⁵ *Closing the Gap* at 20.

¹⁶ *Id.*

Health care discrimination is rampant, and Colorado is not the exception. Fraudulent insemination by a doctor you thought you could trust is a betrayal of the worst sort, and such abuse would intrinsically hurt the LGBTQ+ community. Knowing that such abuse is legally condoned further alienates LGBTQ+ people from the medical system. As the LGBTQ+ community already faces immense difficulties and distrust with regard to medical care, any measure that protects patients from medical abuse and builds trust between doctors and patients has our full support. To prevent direct harm to LGBTQ+ families and to condemn medical abuse against the community, this bill must be passed. The Colorado LGBT Bar Association strongly stands behind this bill as a logical and unfortunately necessary measure of protection against a reprehensible act.