



**In re: Adding “Embryo” to the Definition of “Tissue” for Purposes
of Tissue Storage (S.568-Hoylman/A.1135-Paulin)**

Memorandum of Opposition

Bill S.568-Hoylman/A.1135-Paulin would add embryos as a regulated category under the tissue bank and storage facility licensing law. The bill is flawed and should not be passed.

The bill memorandum indicates that “under current law, embryos are not defined in the list of types of tissues that may be included in tissue bank and storage facilities. The New York State Department of Health includes embryos in their list of tissues that they regulate. Adding embryos to the law confirms that regulatory decision in statute.”

This language encapsulates the wrong-headed nature of this legislation. The Department of Health is—according to the bill's sponsor—already regulating frozen embryos; however, there is no statutory basis for it to do so. If the Legislature had wanted the Department to regulate embryo storage, it could have passed a law saying so. That has not happened. The Legislature—not the Department of Health—is responsible for policymaking, and the Department should be held accountable for exceeding the scope of its authority. The Legislature could simply amend the statute to authorize what the Department is already doing; however, this tail-wagging-the-dog approach to public policy is exactly backwards. Furthermore, embryos are—for many reasons—unlike the organs and tissues currently regulated under the licensing law; therefore, they should not simply be lumped in with those organs and tissues for regulatory purposes.

This bill brings up important questions that ought to have been answered years ago: Should embryos be frozen and stored in the State of New York? If so, what laws should govern frozen embryos? For what purposes, if any, should an embryo be frozen? How should this practice be regulated? Who should have the authority to make decisions about the fate of a frozen embryo? What should happen if there is a dispute regarding an embryo, or if payment for the continued storage of an embryo is not made? Do embryos have any rights of their own?

Rather than acquiescing to the Department of Health's regulatory overreach, the New York State Legislature should decline to pass this bill. Instead, it should give careful consideration to the question of how our state should treat human embryos.