

Prosperity Through Timeless Values

Dr. Jennifer Roback Morse • Your Coach for the Culture Wars



IS THERE A RIGHT TO HAVE A BABY?

Reproductive freedom is usually a code-word for abortion on demand. But the right to terminate a pregnancy is only the right to say “no” to having a baby. Full reproductive freedom would include the right to pregnancy on demand, analogous to abortion on demand. A California case in which a lesbian couple is suing an infertility clinic suggests we may be closer than we think to establishing a right to have a baby. And far from being an advance for women’s liberty, this development would be a disaster for everyone’s freedom. We need to look closely at the public relations case in favor of the lesbian couple’s claim to see why.

In 1999, Guadalupe Benitez went to an infertility clinic to be artificially inseminated with donor sperm. The doctors became reluctant to inseminate her when they realized that she was not married, but in a lesbian relationship. Citing their religious convictions, the doctors sent her to another clinic. The second clinic inseminated the woman. She had her baby boy, who is now three years old. She is suing the first clinic for sexual orientation discrimination. This case is significant, not for the legal issues on which it will be ultimately decided, but for the premises that generate pity for the woman.

The claim upon our sympathy is that because she wants a baby, she is entitled to a baby. This implied entitlement is the foundation for all the other arguments. Because of her “right” to have a child, the doctors do not have a right to refuse treatment. (Notice that these doctors are not refusing to provide lesbians with medically necessary treatment: artificial insemination is an elective procedure if ever there were one.) The doctors’ concern for the

future of a child whose mother has made a plan to deprive him of a father counts for nothing. Neither does the fact that they referred her to another clinic and that she ultimately satisfied her desire for a baby. The basis for her suit is that the original clinic refused her, inconvenienced her and cost her extra money.

Her claim is that a lesbian woman or an unmarried woman, has the same right to be artificially inseminated as a married woman. Excluding an individual on the basis of marital status or sexual orientation is an affront to that person’s dignity. Doctors who decline to provide an elective procedure deserve to be punished. And the strong arm of the law is the proper vehicle for chastising the insensitive.

This case hastens the day when we will have a society in which any woman, married or unmarried, straight or gay, has a right to be artificially inseminated. But if there is a “right to have a child,” it makes no sense to treat it as an individual right. It is a biological fact that every human being has two parents, one male and one female. The state of California already supports the right of unmarried women to be artificially inseminated. I think this is a mistake, because the state is supporting women in making a plan to deprive their children of any relationship with their biological father. The sperm donor is a “legal stranger” to the child, to use the cold language of the law. However much we might sympathize with the plight of any unmarried woman who wants a child, we really ought to ask ourselves the tough question: what public good is served by giving her what she wants, just because she wants it? Our instinctive answer she has a right to a child leads us astray.

There is no right to have a child. The child is not an object to which other people have rights. The parents would be the owners of their children, rather than their stewards or guardians. The well-being of the child could be, and would be, sacrificed to the “rights” of the parents. The woman’s “right” to a child trumps the child’s right to have a father. It is a bad idea to create a legal entitlement to a child. Such an entitlement undermines the very ground-work of freedom.

The family courts in general do not hold this position. Family courts do not typically use the language of rights, even for children who are already in existence, born to specific and identifiable individuals. The courts usually do not say, “these parents have a right to this child.” Even when we use the term “parental rights,” these are not like property rights to cars and refrigerators. A person cannot dispose of their children, nor write a contract to give up these rights. If anyone has a right to anything, it is the child who has a right to be born to both parents and have a relationship with both of them. By what “right” does a woman deprive a child of his or her father?

This is why our sympathies for the woman who desires a child should not tempt us to concede that she is entitled to satisfy this desire. Society’s expression of respect for the dignity of each person does not depend on every person getting their own way. Rather, society expresses its respect for the dignity of the person, by recognizing them as persons, not as objects, from the very beginning of their existence. Instead of continuing to slide down this path, we should retrace our steps and rethink the whole issue of whether anyone is “entitled” to a child. Instead of demanding that fertility clinics treat lesbians, we should be rethinking whether these clinics should serve women without husbands.

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