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Azcona, Yohayra, "Commercialization of the College Woman's Body – Egg Donation" (2021). *Law School Student Scholarship*. 1146.

https://scholarship.shu.edu/student_scholarship/1146

Commercialization of the College Woman's Body – Egg Donation

Yohayra Azcona

I. Background: The History and Growth of Egg Donation

1. Demand for egg donors - Why are egg donations needed?

The first child conceived from a donated egg occurred in Australia in 1983 and for the first time in the United States in 1984.¹ Since then, this reproductive transaction and procedure has grown into a thriving industry. There is growing demand for egg donations from aspiring parents who are appealed by the idea of hand choosing the “ideal” genes for their child. The demand, paired with an essentially non-existing body of regulations, has empowered egg donation agencies. These agencies are in the business of servicing hopeful parents by finding them the eggs of the perfect young educated woman whose genes will produce the ultimate child.² Growing by nearly 20 percent annually, the business of egg donors is exploding in the United States.³ Demand for young women's eggs keep exceeding the supply at an ever-accelerating pace, prompting the compensation to rise steeply from \$250 per donation in 1984 to \$100,000 in some cases today.⁴

This has led to a competition where fertility businesses are at war to attract top and ideal egg donors. Without any supervision on behalf of the Federal government or medical associations, the competition has created their own rules. These rules and business objectives target impressionable and often vulnerable college women and as a result the number of women donating their eggs continues to rise.⁵ An increase in donation was attributed to technological

¹ Medical Advisory Board, *The lucrative (and potentially dangerous) World of Human Egg Donation*, (April 2019) <https://www.advisory.com/daily-briefing/2019/04/29/egg-donation>

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Market Analysis Report, *U.S. Donor Egg IVF Services Market Size, Share & Trends Analysis Report by Type (Fresh, Frozen), By End Use (Fertility Clinics, Hospitals), Competitive Insights, And Segment Forecasts, 2019 – 2026*, (October 2019), <https://www.grandviewresearch.com/industry-analysis/us-donor-egg-ivf-services-market>

advancements in assisted reproductive technology and to a growing acceptance of such procedures.⁶ Other factors that are driving the market include significant compensation for the donor, the social practice of younger couples planning and delaying pregnancies, women focusing on their careers, rising infertility due to unhealthy habits, and a substantial success rate of reproductive procedures.⁷

As reproductive technology grows in popularity, even on an international scale, young women in the United States are considering and actually donating their eggs more than ever before, as a means to achieve financial freedom and to cope with the high costs of education.⁸ This comment intends to examine the issue regarding the lack of Federal regulation surrounding egg donation. The lack of such jurisprudence can leave these young women, who are often college students, unprotected, exploited, and unaware of their rights.⁹ The United States owes a duty to young college students to protect them by creating more concrete guidelines that protect their health interests. The Federal Government should offer Donors legal protection that extends beyond the egg donor transaction.

This comment will explore the requirements, screening process, and risks off egg donation. It will focus on college students being targeted as ideal donors. The procedure and its medical risks will also be explored along with what motivates women to donate, focusing again on college donors. Lastly, the current regulation of egg donation will be discussed to demonstrate that ASMR guidelines should be adopted as federal law to regulate egg donation and to protect the privacy, psychology, and medical interests of young college donors. The protection is

⁶ *Id.*

⁷ *Id.*

⁸ ABC News, *College Students Targeted for Egg Donation*, (2016)
<https://abcnews.go.com/Health/story?id=1981899&page=>

⁹ *Id.*

warranted because the demographic being targeted is particularly susceptible to exploitation given their status as young college students. Adopting such guidelines can be used by the CDC to expand their annual reports to include information on egg donors and these reports can be used to create a national database. The database will allow for donors to be better monitored and contacted if adverse effects are discovered. The lack of research regarding the long term and post donation effects, coupled with the substantial financial compensation, leaves young college women without the autonomy necessary to make an educated and informed decision.

2. Requirements and Disqualifications for Egg Donors

Egg donation is the transaction in which a fertile woman donates an oocyte, or egg, to another woman in an effort to help the other woman conceive, either through in vitro fertilization or the donor can also serve as a surrogate and carry the embryo to full term.¹⁰ The general requirements for egg donation are the following. Donors must be between the ages of 18 and 35 and in physically healthy condition. Donors must have a BMI between the ranges of 19 and 29.¹¹ Donors must be a non-smoker, have regular monthly menstrual cycles, and not be using specified methods of birth control.¹² Donors must also have both ovaries, be psychologically stable and not use any psychoactive drugs. There must be no history of substance abuse or known family history of inheritable genetic disorders. The donor must be willing to self-administer injections and commit to numerous appointments.¹³ A donor does not need health insurance or a social

¹⁰ Am. Soc'y for Reprod. Med., *Frequently Asked Questions About Infertility*, <http://www.asrm.org/Patients/faqs.html#Q1> (October 2020) [hereinafter FAQ About Infertility]; see N.Y. STATE TASK FORCE ON LIFE AND THE LAW, ASSISTED REPRODUCTIVE TECHNOLOGIES: ANALYSIS AND RECOMMENDATIONS FOR PUBLIC POLICY]

¹¹ Egg Donor America, *Donors*, (October 2020) <https://www.eggdonoramerica.com/become-egg-donor/donor-egg-risks-complications>

¹² *Id.*

¹³ *Id.*

security number to donate.¹⁴ Health insurance will be provided for the process, if elected, and since tax is to be paid on the compensation, those who lack social security numbers will be offered an alternative method that will allow for the taxes to be paid.¹⁵

However, while these are the objective physical requirements there are additional factors that heavily influence the donor's eligibility, the main focus being education. Education and culture tend to make certain donors more favorable over others. After visiting the websites of several agencies and clinics, most of them candidly stated the need for a college education. Accomplished and educated women are considered "exceptional" or "high demand" donors and are paid more than the average donor. Attending certain colleges can also be more compensating than others.¹⁶

Common disqualifications for egg donation are inheritable genetic disorders, infectious diseases and behaviors that can increase the risks of infectious diseases. These behaviors include having multiple sex partners or engaging in sex work, even if the donor is doing so legally, like prostitution in Las Vegas.¹⁷ Other disqualifications are attributed to reproductive system disorders, substance abuse disorders, as well as inability to commit to the process's requirement of attending numerous appointments and administering the injections at the correct time.¹⁸ Thus, while the requirements and expectations might not seem extensive, they are certainly stringent in order to achieve a higher success rate for the recipient.

3. Selecting the Egg Donors – The Screening and Selection Process

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The Los Angeles Times, *Asian women command premium prices for egg donation in U.S.*, (May 2012), <https://www.latimes.com/health/la-xpm-2012-may-04-la-fi-egg-donation-20120504-story.html>

¹⁷ *Id.*

¹⁸ *Id.*

The screening process requires that the donor fills out an application that will inquire and request supporting documentation regarding the donor's medical and family history. The application extensively inquires about the donor's sexual history, including whether they have ever contracted an STD. The application also asks for the donor to specify their number of sexual partners, if they have ever had sex for money, and to list their sexual partners with some agencies or clinics contacting the listed partners.¹⁹

While things like a personal essay describing your personality, goals, and motivations are not required, the inclusion of these and extras, like a baby picture, do make for a more attractive donor. Donors tend to be very willing to have their secrets and medical history utilized given that the application process is so competitive with only about 20% of donors actually being chosen.²⁰ There are also required physical and gynecological exam, as well as several STD and blood tests. Lastly there is a psychological exam considering the ethical, social, moral, and religious pressures that surround egg donation.

Once a woman successfully passes the screening process, and is retained by an intended parent, she will have to enter into a contract.²¹ The young donor is assigned a fertility attorney for representation throughout the donor process, at the cost of the intended parents. Since eggs cannot legally be sold in the United States, donors are actually being compensated for their time, effort, discomfort, and inconveniences and not for the actual eggs themselves.²² Consequently,

¹⁹ *Id.*

²⁰ *TEX. L. REV.* 665, 691–92 (2007) (reviewing DEBORA L. SPAR, *THE BABY BUSINESS: HOW MONEY, SCIENCE, AND POLITICS DRIVE THE COMMERCE OF CONCEPTION* (2006)) (describing the business model of an embryo bank in San Antonio, Texas); Julie L. Sauer, *Competing Interests and Gamete Donation: The Case for Anonymity*, 39 *SETON HALL L. REV.* 919, 926 (2009).

²¹ Creative Love Egg Donor Agency, *Begin Your Egg Donation Process*, (2020), <https://cledp.com/donate-eggs/egg-donation-process/>

²² NAT'L CTRS. FOR DISEASE CONTROL & PREVENTION, 2013 ASSISTED REPRODUCTIVE TECHNOLOGY: NATIONAL SUMMARY REPORT 12 (2015); N.Y. TASK FORCE ON LIFE & THE LAW, THINKING OF BECOMING AN EGG DONOR?: GET THE FACTS BEFORE YOU DECIDE 12 (Apr. 2019) [hereinafter N.Y. EGG DONOR FACTS], <http://www.health.ny.gov/publications/1127.pdf>

contract law governs these transactions, and a written service agreement is what governs the engagement and protection for both parties. Thus, ultimately the donor is not engaging in the transaction of selling their eggs, instead they are donating their egg and being compensated for their service of providing the good, or egg.²³ Usually the intended Parent's attorney drafts the legal contract and addresses topics such as donor compensation, travel expenses, and the legal ownership of the eggs retrieved from the process.²⁴ After review of the contract, the donor's attorney can request any changes or negotiate any terms. Next is the "informed consent" form which requires the donor's signature and imposes on the performing doctor the duty to inform the donor of all known risks involved.²⁵ The doctor may not perform any procedure on the donor without informing them of all known pros and cons. The doctor's disclosure does not usually include much information regarding the long term effects as for the most part they are unknown.²⁶ The doctor may not perform any procedure on the donor without informing them of all known pros and cons, however it may be difficult to assure if a young donor has understood and become aware of all cons considering the tediousness and complexity of the egg donation procedure. The written and signed agreement then becomes key. Having both parties depend on the consent form provided by the clinic or agency can result in inadequate protection because general consent forms usually will not fully cover a donor and intended parents distinct situation.

4. Targeting College Women as Ideal Donors

However, while there are objective physical requirements imposed on donors, there are additional factors that heavily influence the donor's eligibility, the main focus being education.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

Such “High Demand” donors are paid more than the average donor. This had led to heavy advertising near colleges and in college newspaper.²⁷ Education and culture tend to make certain donors more favorable than others. After visiting the websites of several agencies and clinics, most of them candidly state the specific requirement of a college education. Attending certain colleges can be more compensating than others.²⁸ The University of California – Davis, Student Newspaper shared the stories and findings of several donors who attend UC Davis. Their findings showed that Harvard and Stanford donor eggs are worth more than the eggs of UC Davis students. Hopeful parents want the eggs of the most accomplished donors expecting for those attributes to be embedded in their child.²⁹

According to the Los Angeles Times, supply and demand has granted Asian women the leverage of commanding about \$10,000 to \$20,000 for their eggs, with women of other ethnic groups typically getting only about \$6,000.³⁰ This power is because Asian donors are harder to secure because culturally, they tend to be very close-minded about egg donations. Asian women with a Harvard degree have been compensated almost \$60,000 for an egg.³¹ This can lead to the conclusion that perhaps it is not as simple as a hopeful parent seeking an egg donation in order to conceive, but that they are seeking the “package” of the donor which extends beyond their egg and into their identity, lifestyle, habits, and beliefs.

Understanding the emphasis placed on education, age, and achievement, it is of no surprise that college newspapers have become a popular place for egg donation ads. The UC Davis Newspaper reports that they reach nearly 99% of the student population through their

²⁷ The Yale News, *Egg donor ads target women of Ivy League*, (March 2005), <https://yaledailynews.com/blog/2005/03/22/egg-donor-ads-target-women-of-ivy-league/>

²⁸ *Id.*

²⁹ Prize Writing, *Doing Your Homework: College Girls and Egg Donation*, (2009), <https://prizedwriting.ucdavis.edu/doing-your-homework-college-girls-and-egg-donation>

³⁰ The Los Angeles Times, *supra* at 2.

³¹ The Los Angeles Times, *supra* at 2.

newspaper, that is over 30,000 students.³² A representative for Tiny Treasures, an established egg donor agency confirms its effectiveness, “We have found that targeting the college populations is likely to attract young, bright and responsible women who would be ideal prospective donors” .³³ Recruiting for egg donors is so rampant on college campuses that The Stanford Daily reserves a classified section specifically for egg donors.³⁴ An ad that mentions a special need for a Jewish, Asian, or East Indian donor is routine business in The Yale Daily News as well as the Massachusetts Institute of Technology/s (MIT) college newspaper.³⁵ The growing rate of such ads in college newspapers is no mistake, these young women are being targeted for their education and age, and then preyed upon for their eggs.

The college administration that overlooks these ads and their placement have battled with the interests of students in exercising their right to donate eggs and contribute to reproduction, against the controversial financial inducement that for many, is too good to turn down.³⁶ Often colleges have boards that are enacted to approve or reject ads and some members have argued that it is not financial inducement but coercion understanding the necessity that exists for some of these women, coupled with their lack of options.³⁷ The 2017 chairman of The Tech, MIT’s college newspaper, Olivia Brode-Roger, says that these ads are approved because they do not fall under any of the three categories that usually result in rejection which are emulation of content, direct calls to harm, or an obvious scam.³⁸ Absent any of these criteria’s, college newspapers have regularly allowed for donor clinics and agencies to advertise in their newspapers.

³² Prize Writing, *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 2.

³³ Prize Writing, *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 2.

³⁴ Prize Writing, *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 2.

³⁵ The Yale News, *supra* note 27 at 3.

³⁶ The Yale News, *supra* note 27 at 3.

³⁷ The Yale News, *supra* note 27 at 3.

³⁸ The Yale News, *supra* note 27 at 3.

It is difficult to figure out if college students are actually falling prey and being induced by the dollar signs associated with egg donations due to an absence of information or research regarding this specific population of young women.³⁹ However, it is fair to conclude that a large percentage of egg donors are in fact college donors because after visiting the websites of multiple clinics and agencies, in different parts of the country, every single website had information tailored specifically to college students.⁴⁰ Whether it was in the “Egg Donors”, “About Us”, or “FAQ” – there was always information pertaining to students in particular, such as the time in which a donor is able to return to school post procedure or how the process can effect a donors academic schedule and responsibilities.⁴¹ Thus, despite there not being a hard line or statistics quantifying what percentage of donors are college students, the information being emphasized and made immediately available to potential egg donors clearly speaks to students and the specific obstacles they would phase in the donation process.⁴²

5. The Egg Extraction Process and Aftermath

Donors are required to take a series of fertility drugs that stimulate the ovaries to produce several eggs at once, this part is known as hyperstimulation of the ovaries.⁴³ In order to trigger this hyperstimulation, donors will need to self-administer a prescribed medication by injecting it,

³⁹ Andrea Preisler, Student Article, *Assisted Reproductive Technology: The Dangers of an Unregulated Market and the Need for Reform*, 15 DEPAUL J. HEALTH CARE L. 213, 213 (2013); see Michelle Bercovici, *Biotechnology Beyond the Embryo: Science, Ethics, and Responsible Regulation of Egg Donation To Protect Women’s Rights*, 29 WOMEN’S RTS. L. REP. 193, 193 (2008);

⁴⁰ *10 Signs You’d Make a Great Egg Donor*, <https://www.conceiveabilities.com/about/blog/signs-you-d-make-a-great-egg-donor>; see *Egg Donor Qualifications*, <https://eggdonor.com/donors/egg-donor-qualifications/> (describing the ideal egg donor in Texas, Florida, and California) (last visited Jan. 2, 2021)

⁴¹ *Id.*

⁴² *Id.*

⁴³ REPROD. HEALTH TECHNOLOGIES PROJECT, *OVARIAN STIMULATION AND EGG RETRIEVAL: PROCESS OVERVIEW & ISSUES TO CONSIDER 1–2 & tbl.1* (2009), <http://www.rhtp.org/fertility/assisted/documents/RHTP-OvarianStimulationandEggRetrievalPaperUpdated.pdf>.

usually, into their abdomen area.⁴⁴ The injections are to be administered at the exact time of day as instructed by the doctor, meeting the time requirement is crucial.⁴⁵ The egg donor needs to undergo a surgical procedure, under anesthesia, to remove the eggs from her uterus.⁴⁶ The egg retrieval is performed using an endovaginal ultrasound with a needle guide attached.⁴⁷ A needle is passed through the back wall of the vagina and into the ovary from where the eggs are removed. Once the agency or doctor confirms completion of the retrieval, the donor is paid and generally this part happens quickly.

A typical egg retrieval takes 10–15 minutes.⁴⁸ After about a thirty minute recovery time, donors are allowed to go home and back to their normal lives with the exception of not driving, engaging in much activity for the rest of the surgical day, or having sexual intercourse.⁴⁹ Restraining from sexual intercourse until their next menstrual cycle is important as young women are more susceptible to pregnancy during the time period following the donation.⁵⁰ About 60% of donors return to work or school the day after surgery.⁵¹

After donating, donors take no part in what happens next to the eggs. Infertile or damaged eggs may be used in research or discarded as medical waste.⁵² The recipient may become pregnant, may miscarry, or may carry through term. The donated eggs may also be frozen to be used months or years later.⁵³ According to The Donor Solution, one of the top egg donor agencies in the United States, the average rate of egg donations that actually result in a live

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

birth is slightly above 50%.⁵⁴ The main factor contributing to the donors success is the age of the donor as the age of the donor is closely related to whether or not that egg will fertilize, implant, and grow into a healthy baby.⁵⁵ This emphasis on age further the notion that the ideal candidate is a young woman with fresh and active eggs.

6. Egg Donors' Motivation – Why donate?

Egg donations does have benefits for all parties involved. There are couples or individuals who are not able to conceive children in a more natural and conventional manner perhaps because they are single, are a homosexual couple, are unable to conceive due to personal medical conditions, or because of age.⁵⁶ In this sense, a child is the most amazing gift hopeful parents could receive. The difference between egg donations and adoption is that with egg donations, the parents usually use the sperm of the father to create a biological connection to the child. As if the genetic connection is not already enough of an incentive, the ability to hand pick the child's qualities, genes, and traits is an inducement that is hard to overlook.⁵⁷ Unlike adoption, parents find comfort when they feel like they know and were involved in the process of creating the child they will be taking home.⁵⁸

For the donor it is usually the gratification of a huge paycheck that serves as the main motivating factor, with the idea of helping complete a family serving as the second motivation.⁵⁹ The donor goes home with thousands of dollars in exchange for an egg and some discomfort, and

⁵⁴ The Donor Solution, *Average Success Rates for Egg Donation*, (2020) <https://thedonorsolution.com/egg-donation/average-success-rates-for-egg-donation/#:~:text=Each%20stage%20of%20the%20process,is%20about%2055%2D65%25>

⁵⁵ *Id.*

⁵⁶ Amy L. Boutelle, *Donor Motivations, Associated Risks and Ethical Considerations of Oocyte Donation*, 18 *NURSING FOR WOMEN'S HEALTH* 112, 117–18 (2014).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

usually for these donors that quantity of money is significant.⁶⁰ Some donors are put at ease by knowing that even if they chose not to donate their egg, they would lose the egg naturally anyway during their menstrual cycle.⁶¹ Ultimately, this makes donors rationalize the fact that the egg would be lost regardless. So, a young woman who is not attempting to get pregnant on that specific month, has not necessarily lost anything but instead has gained. Other motivations that potential donors mention include an interest in science, wanting to find out about one's own fertility, and making up for a previous reproductive loss.⁶²

7. Why do College Students Donate?

To understand why a young college student would agree to procreating and relinquishing any engagement or responsibility for their biological child we must assess the responsibilities and obligations of the current day college student. According to a report published by Sallie Mae in 2019, families spent an annual average of a little over \$30,000 on college tuition and expenses.⁶³ Most of this money came from loans or from the parent's income and savings.⁶⁴ And as college tuition increases to rise, parents are being forced to consider retirement plans or their overall financial structure.⁶⁵ Then there is the population of students that do not have families or friends that can afford to finance their college education. Student loan debt has reached a record

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Sallie Mae, *How America Pays for College 2020*, (2020), <https://www.salliemae.com/about/leading-research/how-america-pays-for-college/>

⁶⁴ *Id.*

⁶⁵ *Id.*

amount, totaling to \$1.6 Trillion Dollars with college students graduating with an average student loan debt of \$32,731.⁶⁶

These heavy financial obligations that burden most college students usually come into effect before the student is even able to secure a job. Then, even when employment and an adequate salary is secured, the high loan payments force students to put off milestone accomplishments like purchasing their first home, buying a vehicle, or starting a business which are usually the motivating factors in even pursuing a formal education.⁶⁷ Egg donations result in thousands of dollars that eat away at the tremendous student debt in a manner that is not readily available in almost any other lawful transaction.⁶⁸ Egg donation checks equip young college students with financial freedom that allows them to provide for their future, cover the boarding and textbook expenses necessary to graduate, and help the overall financial nature of their families who are often also encumbered by the expenses.⁶⁹ It also affords them the magnificent opportunity to travel or study abroad, both luxuries that many college students dream of but are not viable given the costs.⁷⁰ Lastly, and heavily emphasized is the fact that these young women will shed these eggs naturally anyway and for a student not looking to conceive on that particular month the options come down to shedding the egg for free or shed the egg with some discomfort and inconvenience but receive thousands of dollars.⁷¹

II. Concerns and Risks Associated with Egg Donation

⁶⁶ *Id.*

⁶⁷ Boutelle, *supra* note 56 at 4.

⁶⁸ Boutelle, *supra* note 56 at 4.

⁶⁹ Boutelle, *supra* note 56 at 4.

⁷⁰ Boutelle, *supra* note 56 at 4.

⁷¹ Boutelle, *supra* note 56 at 4.

1. Ovarian Hyperstimulation Syndrome (OHSS)

Like all medical procedures, the egg donation process and retrieval are accompanied with risks ranging from physical dangers to psychological risks. One of the most known common risks is Ovarian Hyperstimulation Syndrome (OHSS) which occurs when a woman's ovaries responds overzealously to the medication given to increase egg production.⁷² OHSS can induce water to be drawn out of your bloodstream and into the abdomen.⁷³ In rare cases it can also lead to the development of fluid in the lungs, as well as result in kidney failure, or a stroke.⁷⁴ By enlarging the ovaries, OHSS can also create an increased susceptibility to developing blood clots.⁷⁵ Severe OHSS can cause bloating and swelling, nausea and vomiting, low urine output and bloat a woman's abdomen so much that their waist doubles in size.⁷⁶ The risks of OHSS increase if after taking the prescribed fertility medication that stimulates the ovaries, the donor does not undergo the retrieval process.⁷⁷ Another risk is excess bruising and discomfort at the injection sites.⁷⁸ The number of egg donors that experience OHSS is relatively low with only 1 to 2 percent of donors developing a serious case of OHSS.⁷⁹ However, it is important to note that the most serious cases can lead to hospitalization or be fatal. With a mild case of OHSS, a draining procedure is usually all that is required.⁸⁰

2. Ovarian Torsion

⁷² Egg Donor America, *Donor Egg Risks & Complications*, (October 2020)

<https://www.eggdonoramerica.com/become-egg-donor/donor-egg-risks-complications>

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Growing Generations, *What is Hyperstimulation*, (2020), <https://www.growinggenerations.com/resources-for-egg-donors/what-is-hyperstimulation/>

⁷⁹ *Id.*

⁸⁰ *Id.*

Another known but rare immediate risk is Ovarian Torsion where the ovaries rotate to a degree that blocks the ovarian artery or vein.⁸¹ Most commonly, this condition is observed in older donors, further necessitating the need for young donors.⁸² In cases of ovarian torsion, patients often report a sudden, severe pain that starts in the lower front abdomen and often extends to the back, sides, and sometimes the upper thigh area. Occasionally the patient will also experience nausea or vomiting.⁸³ The pain is the result of a lack of blood flow to the ovary.⁸⁴ Doctors will usually attempt to diagnose the rotation of the ovary with the use of an ultrasound, though positive diagnosis is usually not made until the torsion has to be corrected through surgery.⁸⁵ If the pain cannot be relieved, a doctor will likely recommend immediate surgery to uncoil the ovary.⁸⁶ Occasionally the ovary has to be secured in place in order to prevent a future torsion.⁸⁷

3. Psychological Risks and Concerns

Another important but often overlooked risk is the psychological impact that the egg donation process has on donors. According to a published report titled, *Assessing the Medical Risks of Human Oocyte Donation for Stem Cell Research*, some of the main psychological obstacles' donors face are concerns about children conceived from their eggs, and worries about their future fertility.⁸⁸ Some people experience remorse about not having a relationship with their offspring, and about not knowing if the donation actually resulted in pregnancy.⁸⁹ Although most

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ National Academic Press, *Assessing the Medical Risks of Human Oocyte Donation for Stem Cell Research*, (2007), <https://www.nap.edu/read/11832/chapter/1>

⁸⁹ *Id.*

donors do not carry the pregnancy, the child is still genetically related to them. Some donors may struggle knowing they cannot contact their genetic offspring.⁹⁰

Another aspect to consider is if the donor opts for an open, semi-open, or totally anonymous donation. Certain clinics and egg donation agencies only facilitate anonymous donations, while others facilitate open donations, semi-open donations, or a mixture of the two.⁹¹ This is usually stated clearly on their websites. With biotechnological advancements regarding DNA genetic testing and analysis on the rise, companies like 23andMe might inadvertently put an offspring in connection with donors who opted for an anonymous donation.⁹² This is because the DNA results usually reveal individuals who share the same genetic composition. This can put a donor in a position where they are paid an unexpected visit from a son or daughter they did not know existed. Another potential risk is the possibility of uncovering something in the medical screening that the applicant did not know about nor anticipate, particularly something that could affect their future fertility.⁹³ All of these incidents can psychologically affect a person.

4. Long Term Effects

The overall long term effects of egg donation are generally unknown. There simply is not enough long-term health information on donors and their effects to have solid, conclusive, and insightful information.⁹⁴ The efficiency and implementation of reproduction technology is too new to truly equip donors with the information that will allow them to make an informed decision.⁹⁵ Thus, we must bear the question of how informed is a donor's consent if they are not

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Boutelle, *supra* note 56, at 114.

⁹⁵ Boutelle, *supra* note 56, at 114.

fully informed as to the long term effects they are consenting to? An article titled “We simply don’t know’: Egg donors face uncertain long-term risks” points out that along with the lack of information on long term effects there’s really no incentive for anyone to conduct and follow along with such study because the current way in which the system stands seems beneficial for all parties involved.⁹⁶ The fertility clinics and industry get steady business, infertile couples or hopeful parents have the wonderful possibility of conceiving a child and the egg donors are celebrated through their high compensation. Simply stated “a for-profit business has found a willing group of consumers and sellers and run with it, there is no eagerness to find anything wrong”.⁹⁷

There is one study that was conducted on egg donors and it surveyed 80 women who had donated eggs as long as two decades earlier.⁹⁸ The survey revealed that thirteen donors were experiencing post-donation physical effects that they believe were caused by the donation.⁹⁹ Some of these effects are things like ovarian cysts, fibroids, and infertility issues that arose later in life.¹⁰⁰ But it was a small and unscientific sample, with no medical records to back up the women’s claims, and it seems like these cases were not taken seriously anyway.

5. Concerns and Risks Unique to College Students

The concept of egg donors amongst college students is accompanied by additional adverse effects that are particular and unique to the student population. Often, these young women are gullible and in dire financial situations which can create the risk of exploitation of

⁹⁶ Stats News, *We simply don’t know’: Egg donors face uncertain long-term risks*, (January 2017), <https://www.statnews.com/2017/01/28/egg-donors-risks/>

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

these young women who might be tempted to betray their own morals and beliefs for the pot of gold at the end of the donation.¹⁰¹ This is especially true considering the nonchalant manner in which clinics and agencies describe the health risks and procedure. The donation process can also take up to six months, requiring visits and commitment from the students which will naturally interfere with class schedule, study time, and time that would go towards professional development.¹⁰² There is also a social stigma that can cause embarrassment for these young women who might have to experience this process in isolation in order to avoid judgment on behalf of family and friends.¹⁰³ Very importantly, the lack of information regarding long term effects can be particularly dangerous to college students who are unaware of all risks but will likely begin to plan their own families post-graduation and should their own fertility be effected by the donation, the trauma and pain will be catastrophic.¹⁰⁴

Also, the decision a 19 year old woman makes will likely be different from the decision that same woman would make at 29 years old.¹⁰⁵ Thus, a college student who donates but continues to mature and grow can later in life feel immense guilt and regret for their prior decision and their inability to reconsider or mitigate the impact of their decision.¹⁰⁶ This guilt tends to lead to psychological distress which leads to grief, remorse, and even depression.¹⁰⁷ Lastly, college donors can and often do opt for an anonymous egg donation.¹⁰⁸ However, confidentiality is not guaranteed with secrets of this degree being difficult to keep or simple human error resulting in unintentionally sharing donor information.¹⁰⁹ The breach of this

¹⁰¹ Boutelle, *supra* note 56 at 4.

¹⁰² Preisler, *supra* note 39 at 222.

¹⁰³ Preisler, *supra* note 39 at 222.

¹⁰⁴ 45. N.Y. EGG DONOR FACTS, *supra* note 29, at 10–12.

¹⁰⁵ *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 3.

¹⁰⁶ *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 3.

¹⁰⁷ *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 3.

¹⁰⁸ *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 3.

¹⁰⁹ *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 3.

confidentiality will likely be more significant and stressful for young college students who engages in such transactions in secrecy. Also, files regarding donation identities may be opened at any time if they are challenged in court or if current laws change.¹¹⁰ Some donations end in feelings of satisfaction, indifference, or regret but there have been no surveys or studies conducted that tracks the student donor population and their after effects which solidifies the notion that after donation, these young women are emotionally discarded and forgotten about, only serving as a means to an end. This lack of concern for these young women is exactly why they need to be better informed and protected when they do engage in donations and it is the responsibility of the government to protect our young women.

As the prices of college tuition and its associated expenses continue to skyrocket, young college students find themselves with a financial obligation that is bigger and more daunting than the obligations of the students who came before them.¹¹¹ Rising financial expenses, and their detrimental impact, follow student's post-graduation and this has forced students to get creative in addressing such financial debt.

The extensive and aggressive screening process can also effect the self-confidence of the donors.¹¹² Female college students have reported conflicted feelings about the extensive screening as they are unsure if such intrusion into their private sexual lives is actually geared towards understanding their medical history or as a means to judge their personality and womanhood.¹¹³ With some college donors saying "I do not know if it is appropriate for them to be asking some of the questions that they did".¹¹⁴ However, clinics and agencies justify their

¹¹⁰ Preisler, *supra* note 39 at 222.

¹¹¹ Sallie Mae, *supra* note 63 at 2.

¹¹² *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 3.

¹¹³ *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 3.

¹¹⁴ Preisler, *supra* note 39 at 222.

intrusive search by saying that the true objective is to try to prevent birth defects or serious inherited diseases and those applicants who are unwilling to share or do not have access to such information will not be able to donate.¹¹⁵ Yet, it is difficult to fully conclude that clinics and agencies are approaching this medical history through a purely objective lens, when in many cases, a woman is not eligible to donate if she has had more than one sexual partner in the last six months – this aspect definitely makes it feel like they are judging you more than they are evaluating your health. Della Duncan, a third-year University of California student who became aware of the egg donation process and its financial gain from the UC Davis campus newspaper website, described the application process as “invasive”. Donors have also reported feeling like agencies were “tallying up” their worth, and that not being chosen for the process leaves them feeling hurt or inferior.¹¹⁶ Additionally, considering how heavily education and accomplishments influence a donor’s compensation price, a lower price can feel like a personal rejection.¹¹⁷

III. Current Regulation Protecting Egg Donors

1. The Contract Governs

This is when the written agreement comes into play as it the main instrument designed to consider, contemplate, and define all the terms of the egg donation transaction.¹¹⁸ Written agreement avoids the pitfall of assuming that all donations are alike and allows the intended parents the ability to protect themselves and their family in the future. As with most legal contracts designed to meet and consider a client’s unique needs and situation, these contracts are

¹¹⁵ Preisler, *supra* note 39 at 222.

¹¹⁶ *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 2.

¹¹⁷ *Doing Your Homework: College Girls and Egg Donation*, *supra* note 29 at 2.

¹¹⁸ Brittany L. Marvin, Note, *Regulating the Procurement of Female Gametes: Donors’ Health and Safety*, 16 MICH. ST. U. J. MED. & L. 119 (2011)

sophisticated and strategically drafted. They are written in a way that are usually beyond the scope of a young college student's educational comprehension and training.¹¹⁹ Nevertheless, these agreements must define the current and future of obligations of all parties involved. These agreements can entail the measures for disposition of any frozen embryos such as keeping them for future pregnancy or donating them to research or another patient.¹²⁰ Beyond the potential future destiny of the egg, a written agreement usually defines the future relationship of the egg donor and their offspring.¹²¹ Thus, if certain boundaries are set and the donor begins to feel remorse or curiosity towards their donation or child, these agreements severely and lawfully limit a donor's course of action and legal remedies. This lack of remedies narrows the options available to a donor who has a change of heart. Additionally, the contract laws that govern these agreements are completely different and separated from the jurisprudence that establishes an individual as a parent which is Family Law, a distinction that might shock a donor or intended parent who absent a law school education, will likely not anticipate, or understand these differences.

2. Federal Regulation

Aside from the laws that govern these individual donations and transactions through contract law, there is no federal regulation or jurisprudence that regulates the assistance reproductive technology (ART) of egg donation. Currently, the only federal laws related to egg donation are created to gather information that confirms if clinics, and the industry, are truthful when advertising their success rates.¹²² The Fertility Clinic Success Rate and Certification Act

¹¹⁹ *Id.*

¹²⁰ Egg Donation Friends, *IVF Egg donation law and legislation in USA*, (2020), <https://www.eggdonationfriends.com/country-month-usa/rules-regulations-usa/>

¹²¹ Marvin, *supra* note 3, at 120.

¹²² Pub. L. No. 102-493, 106 Stat. 3146 (codified as amended in scattered sections of 42 U.S.C.). The FCSRCA refers to clinics as "assisted reproductive technology programs." 42 U.S.C. § 263a-1(a) (2012).

of 1992 (FCSRCA) serves as the main body of legislation governing egg donation.¹²³ The FCSRCA requires that the CDC provides the Secretary of the U.S. Department of Health and Human Services (HHS) annual data reports with information obtained from fertility clinics to confirm accuracy of reported success rates.¹²⁴ The information obtained is also used by HHS to create guidelines for states who seek to implement a certification program for their fertility clinics.¹²⁵ However, states are not obligated to implement such guidelines or to create their own model regulation in lieu of adaption.¹²⁶ Thus, federal regulation of egg donation is essentially nonexistent affording fertility clinics enormous autonomy as they are relatively free to formulate their own policies and procedures. This can be risky as they are then also free to create a narrative that will entice college students and ultimately benefit their own interests.

The main purpose of the FCSRCA was intended for the protection of consumers.¹²⁷ The data collected from the CDC annual reports mainly concerns the pregnancy success rates of clinics in an attempt to keep them honest and the consumer informed.¹²⁸ The report also includes clinics that have been certified by state agencies, the CDC or other professional medical associations.¹²⁹ The legislation does not require the CDC to obtain any information on the egg donors except for their age and that information is used to determine the correlation between a donors age and the donations that result in a successful pregnancy.¹³⁰ However, reporting is not mandatory for

¹²³ *Id.*

¹²⁴ § 263a-1(a)(2012). 107.42 U.S.C. § 263a-1(a)(1).

¹²⁵ *Id.* § 263a-2(a)(1).

¹²⁶ See *id.* § 263a-2(b).

¹²⁷ Preisler, *supra* note 3, at 218

¹²⁸ 42 U.S.C. § 263a-5(1)(A)

¹²⁹ 42 U.S.C. § 263a-5(1)(B).

¹³⁰ Lucy Frith & Eric Blyth, *Assisted Reproductive Technology in the USA: Is More Regulation Needed?*, 29 REPRODUCTIVE BIOMEDICINE ONLINE 516, 517 (2014)

clinics and those that choose not to report only suffer the consequence of being listed as a “non-reporter” on the CDC’s website.¹³¹

The FCRSCA’s capability to extend egg donors protection is extremely limited because its own terms do not allow for the HHS, or any individual states, from imposing regulations that will have “the effect of exercising supervision or control over the practice of medicine in assisted reproductive technology programs.”¹³² The main body of regulation is composed to (1) ensure truthful advertising of pregnancy success rates to prospective consumers, (2) improving the quality of IVF and other procedures, (3) forbidding parties from exercising supervision or control over ART.¹³³ Nothing about the regulation or its goals are aimed towards protecting the privacy, medical, and psychological interests of donors involved. Nor does any existing regulation encourage states to take the initiative considering the lack of consequence.¹³⁴

3. State Regulation and Professional Association Guidelines

While many states laws are quiet as to egg donation, the states that have enacted any law mainly address the disposition of donated gametes, stem cell research, human cloning, parentage, and aspects of surrogacy.¹³⁵ There are certain states like California that have gotten involved by requiring egg donation advertisements offering monetary compensation to disclose certain risks in the same advertisement.¹³⁶ Arizona enforces the informed consent requirement and mandates that a physician-patient relationship exists between the doctor performing the egg

¹³¹ *Id.*

¹³² 42 U.S.C. § 263a-2(i).

¹³³ Judith Daar, *Federalizing Embryo Transfers: Taming the Wild West of Reproductive Medicine?*, 23 COLUM. J. GENDER & L. 257, 268 (2012); Preisler, *supra* note 3, at 218–19.

¹³⁴ See 21 C.F.R. § 1271.

¹³⁵ Kitty L. Cone, Note, *Family Law—Egg Donation and Stem Cell Research—Eggs for Sale: The Scrambled State of Legislation in the Human Egg Market*, 35 U. ARK. LITTLE ROCK L. REV. 189, 191–92 (2012).

¹³⁶ CAL. HEALTH & SAFETY CODE § 125325.

retrieval and the donor.¹³⁷ Arkansas requires clinics to be certified by the Arkansas Department of Health and conform to the guidelines released by the American College of Obstetricians.¹³⁸

None of the laws enacted directly serve to protect egg donors or their interests.

The most recognizable professional society providing guidelines for fertility clinic is the American Society of Reproductive Medicine (ASRM).¹³⁹ It offers a voluntary accreditation program for infertility clinics and provides a good basis for the development of future regulatory mechanisms.¹⁴⁰ The ASMR guidelines consist of vast recommendations such as extensive health screening and blood tests, genetic testing based on donor's background, ethnicity, and family history, as well as a psychological evaluation just to list a few. ASRM also tried to create an objective criteria regarding compensation stating that "that compensation above \$5,000 should require special justification and that payments above \$10,000 are never appropriate".¹⁴¹ But these guidelines have no legal authority and in 2016 ASRM settled a lawsuit in which a group of donors claimed that the compensation guidelines generated an unfair price-fixing practice.¹⁴² As a result, the Ethics Committee removed prescriptions for specific compensation sums from the 2016 version of its recommendations.¹⁴³

There is almost no data on donor outcomes or their donation experiences.¹⁴⁴ Due to this lack of insight, it is unknown how many medical professionals and clinics neglect the ASRM guidelines or engage in improper conduct with donors.¹⁴⁵ This absence of data stems from the

¹³⁷ ARIZ. REV. STAT. § 36-1702

¹³⁸ ARK. CODE. ANN. §§ 23-85-137, 23-86-118 (2014).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ American Society for Reproductive Medicine, *Egg Donation*, (2020), <https://www.asrm.org/topics/topics-index/egg-donation/>

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ See Boutelle, *supra* note 61, at 116–17.

¹⁴⁵ Vanessa Gruben, *Women as Patients, Not Spare Parts: Examining the Relationship Between the Physician and Women Egg Providers*, 25 CAN. J. WOMEN & L. 249, 270 (2013).

limited oversight by most states and the federal reporting requirements being limited to pregnancy outcomes.¹⁴⁶ None of the regulations at the federal level concern the egg donation process directly and it is this autonomy that the industry uses as leverage. Self-regulation by professional societies is ineffective due to a lack of supervision and enforcement.

IV. Adopt ASRM provisions to Expand Reporting

The current reporting requirements focus on accurate advertising and on equipping the consumer with information that further incentivizes them to trust the donation process. The reporting strategically neglects donors and because of this reporting should be expanded to include the personal and health information of donors. Federal regulation should be enacted that enforces doctors and clinics to abide by the ASMR guidelines pertaining to donors. Particularly, federal regulation requiring extensive health screening, blood tests, genetic testing, and psychological evaluation of the donor should be adopted as suggested by the ASMR. This personal and medical information can be collected by the CDC who is already tasked with producing annual reports. The obstacle is that the reporting will become more extensive and tedious but if doctors, clinics, and the CDC know they cannot escape these reports they will likely abide. The financial and professional interests of the doctors, clinics, and the fertility industry will be too grand to risk by not reporting.

The collection of the donor's information can be stored in a database and this will serve to protect their health and monitor their post donation effects. This reporting will protect them because clinics and doctors will be able to contact donors, post donation, should any adverse or negative long term effects be discovered or experienced on a large scale. If doctors and clinics

¹⁴⁶ *See id.* at 270.

know that they are to report information on the donor and that such information will serve as a means to hold them accountable and to monitor the industry, they will likely be more cautious with the donation process. The lack of information on egg donors has made it extremely difficult to obtain adequate statistics on the actual long term risks of egg donation in the United states.¹⁴⁷. There is also a lack of reporting on the amount of unprofessional conduct performed by clinics and physicians.¹⁴⁸ The lack of information regarding the risks to egg donors ,specifically, is due to the lack of follow-up post donation.¹⁴⁹ Clinics should be required by law to collect and report information on donors' backgrounds and standard medical information, such as age, height, weight, average blood pressure, as well as any other factors that could affect a donor's predisposition to poor donation outcomes, such as previous donation.¹⁵⁰ Requiring clinics to report on donors even after donation would ensure that both valuable information on donation outcomes is collected and help provide donors with recourse in the event of post-donation complications.¹⁵¹ These suggested regulations would not necessitate large regulatory bodies or require additional expenditures, just the expansion of a process already in place. This may not cure all issues and risks associated with egg donation, but it will be a start to monitoring and communicating with donors who are left with little protection and voice.

Fertility clinics and the industry overall should also be pressured by the government to engage in studies, surveys, and research that focuses on answering the question of long term risks. The lack of transparency and information is especially troubling since these donors are

¹⁴⁷ Cone, *supra* note 4, at 200; R Marvin, *supra* note 3, at 123.

¹⁴⁸ Marvin, *supra* note 3, at 131–34; OVERSIGHT OF ART, *supra* note 113, at 4–5, 9, 11.

¹⁴⁹ Boutelle, *supra* note 61, at 117.

¹⁵⁰ See ASRM, *Recommendations for Gamete and Embryo Donation*, *supra* note 140, at 53–58 (listing the criteria for screening requirements)

¹⁵¹ See Cone, *supra* note 4, at 214–15.

usually young women who will look to conceive for themselves in the future.¹⁵² ASMR Voluntary accreditation is not enough and certification should be mandatory as ASRM's ability to influence and monitor the behavior of non-members is significantly limited if not nonexistent. The concept of egg donation amongst college students is to help people because the intended parents complete their families and the student gains a financial reward that puts them ahead in life, but the issue is that a lack of regulation and oversight does not assure that the donation is done appropriately, so that young women are not exploited or taken advantage of. Agencies and clinics target college students because they are perceived as intelligent and most importantly because they are most likely in debt and need the money.¹⁵³ The narrative surrounding egg donation makes it seem like it just entails a small procedure in exchange for a substantial payout. Understanding that the money is heavily influential for the students and can blur a donor's willingness to understand the procedure, its risks, and where the eggs will eventually end up; more must be done to assure that donors are informed, educated on their rights and risks, surveyed, and researched so that ultimately these young women are protected.

V. Conclusion

Despite the ethical dilemmas and conflicting interests regarding egg donations by college students, it is easy to understand and appreciate the benefits it presents for college students. The financial freedom and autonomy gained by the donation is one to be celebrated. Especially by those who want to attack debt and prepare for their future in advance. A woman's right to reproduce, right to self-provide, and right to financial freedom are essential to American life. It is

¹⁵² See Boutelle, *supra* at 118.

¹⁵³ Prize Writing, *Doing Your Homework: College Girls and Egg Donation*, *supra* at 3.

not the donation of the eggs that should be eliminated nor should the price to be paid be capped.

If a young woman has worked extra hard to achieve extraordinary goals and accomplishments, they should be able to ask for extra compensation for their efforts, this is fair.

However, there should be more oversight of the process and more concern and protection shown to these young donors. This protection is especially warranted for college student donors because they are usually targeted for their status as a college student. College students are a population that engage hoping to mitigate the obstacles and challenges of receiving a college education.¹⁵⁴ A lack of jurisprudence leaves these women vulnerable to the multi-million dollar fertility industry and the rising cost of college debt. Federal regulation should be enacted so that the industry is offered less leverage when dealing with young and financially challenged college students.

¹⁵⁴ *Id.*