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“CHI S’AIUTA, DIO L’AIUTA”¹: BALANCING ITALY’S RIGHT TO UTILIZE ASSISTED REPRODUCTIVE TECHNOLOGIES WITH THE TEACHINGS OF THE CATHOLIC CHURCH

INTRODUCTION

Prior to the death of her husband in 2003, Adelina Parrillo and her husband sought the help of in vitro fertilization (IVF) in order to start a family.² She diligently underwent treatments and had five embryos created and frozen for implantation in anticipation of starting a family.³ After her husband passed, however, she neither wished to have the embryos implanted nor desired to discard them.⁴ Rather, Parrillo was interested in donating them to aid in medical research.⁵

Four months after Parrillo’s husband passed away,⁶ while her embryos were still being cryopreserved,⁷ Italy passed Law 40,⁸ which criminalizes experimentation on human embryos.⁹ Article

1. An Italian proverb meaning: “God helps those who help themselves.” W. GURNEY BENHAM, A BOOK OF QUOTATIONS, PROVERBS AND HOUSEHOLD WORDS 784 (1907).

2. Parrillo v. Italy, 2015 Eur. Ct. H.R. 3.

3. *Id.*

4. *Id.*

5. Parrillo’s wishes were made clear: “[T]he applicant sought to donate [the embryos] to scientific research and thus contribute to promoting advances in treatment for diseases that are difficult to cure. . . . [The] applicant made a number of unsuccessful verbal requests for release of the embryos at the centre where they were being stored.” *Id.*

6. *Id.* at 34.

7. Cryopreservation is the use of very low temperatures to protect structurally intact living cells and tissues, including sperm, eggs, or embryos. Discovered in 1972, this technique requires embryos be frozen in a solution containing cryoprotectants, which lower the freezing point of the embryo. Preserving embryos in extremely cold temperatures allows the embryos to be used in the future, after they thaw. *Embryo Freezing After IVF: Human Blastocyst and Embryo Cryopreservation and Vitrification*, ADVANCED FERTILITY CTR. CHI., <http://www.advancedfertility.com/cryo.htm> (last visited Jan. 10, 2016).

8. Legge 19 febbraio 2004, n.40, G.U. Feb. 24, 2004, n.45 (It.).

9. Andrea Boggio, *Italy Enacts New Law on Medically Assisted Reproduction*, 20 HUM. REPROD. 1153, 1155 (2005), <http://humrep.oxfordjournals.org/content/20/5/1153.long>.

14 of Law 40 bans the cryopreservation of embryos under most circumstances,¹⁰ but, in the rare case that embryos are allowed to be cryopreserved, Law 40 requires implantation of the cryopreserved embryos into the womb “as soon as possible.”¹¹ Therefore, at the time Law 40 was passed, Parrillo’s cryopreserved embryos were breaking the law. Parrillo’s hands were seemingly tied: under Law 40, her embryos could no longer be cryopreserved, but they also could not be donated legally for research purposes. Parrillo explicitly stated she no longer wanted to become a parent, and she believed the embryos were past the point of viability.¹² The Italian government, however, believed the embryos could still be viable and could only be properly evaluated after they were thawed.¹³

Parrillo’s imposed legal restriction and emotional devastation brought her to the European Court of Human Rights (ECtHR), where she filed a claim against Italy and argued, *inter alia*,¹⁴ that Italy’s criminalization of the donation of embryos for scientific research violated her “right to private life”¹⁵ under Article 8

10. Under Article 14 of Law 40, the cryopreservation of male and female gametes is legal only if the transfer of embryos is not possible due to serious concerns about the woman’s health that are documented, including infertility. In that case, the law provides that the cryopreserved embryos must be implanted “as soon as possible.” L. n. 40/2004 (It.).

11. *Id.*

12. Parrillo v. Italy, 2015 Eur. Ct. H.R. 3, 34.

13. *Id.* at 32.

14. Although outside the scope of this Note, Parrillo also claimed that the Italian law violated Article 1 of Protocol 1 to the Convention, which entitles a person “to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR].

15. In *Niemietz v. Germany*, the ECtHR refused to define the concept “private life,” acknowledging the broad scope encompassed within the definition:

It would be too restrictive to limit the notion [of private life] to an “inner circle” in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings.

Niemietz v. Germany, 251 Eur. Ct. H.R. (ser. B) at 10 (1992).

of the European Convention on Human Rights (ECHR).¹⁶ Despite her efforts, the ECtHR disagreed with her argument.¹⁷ On August 27, 2015, the court formally issued its opinion, which upheld the Italian ban on the donation of embryos to scientific research.¹⁸ The court found that, while Parrillo's "right to private life" under Article 8 was relevant,¹⁹ it was not violated²⁰ because the ban was "necessary in a democratic society,"²¹ as defined within Article 8 of the ECHR, essentially meaning the court was deferring to Italy's determination. As a result, the Italian ban on the donation of embryos to research was upheld, and Parrillo was unable to donate her embryos.²²

Parrillo v. Italy is merely an example of the ECtHR's attempts to keep up with reproductive technology.²³ Assisted reproductive technology enables women to diagnose their infertility conditions and conceive a child when their anatomies would otherwise limit their ability to bear children.²⁴ The European Society of

16. Article 8 of the ECHR provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ECHR, *supra* note 14, art. 8.

17. *Parrillo v. Italy*, 2015 Eur. Ct. H.R. 3, 43.

18. *Id.*

19. *Id.* at 36–38.

20. *Id.* at 43.

21. *Id.*

22. Legge 19 febbraio 2004, n.40, G.U. Feb. 24, 2004, n.45 (It.).

23. See also *Costa & Pavan v. Italy*, App. No. 54270/10, Eur. Ct. H.R. 1, HUDOC (Nov. 2, 2013), <http://hudoc.echr.coe.int/eng?i=001-112993> (holding that a couple's use of in vitro preimplantation genetic diagnosis (PGD) to have a child free from cystic fibrosis is protected under Article 8).

24. *In Vitro Fertilization (IVF): Overview*, MAYO CLINIC, <http://www.mayoclinic.org/tests-procedures/in-vitro-fertilization/basics/definition/prc-20018905> (last visited Jan. 16, 2016).

Human Reproduction and Embryology (ESHRE)²⁵ estimates that one in six couples worldwide experience at least one type of infertility problem during their reproductive lifetime.²⁶ A report from the Society for Assisted Reproductive Technology²⁷ estimated that, in the United States alone, fertilization clinics performed at least 165,172 assisted reproductive procedures that resulted in 61,470 births in 2012.²⁸ The ESHRE estimates that more than five million babies have been born worldwide as a result of IVF since the first IVF birth in 1978.²⁹ Italy was once considered to have some of the most liberal sets of laws pertaining to reproductive procedures and treatments in all of Europe.³⁰ This changed in 2004, with the enactment of Law 40, which created strict guidelines regarding any type of assisted reproductive procedure.³¹ Many speculated that these guidelines were approved due to the overwhelming Christian history and influence

25. The ESHRE is a society encompassing the general public, scientists, clinicians, and patient associations that is dedicated to the advancement of reproductive biology and medicine in Europe. To pursue this goal, the ESHRE promotes research and the publication of this research in its annual publication, *Human Reproduction*. Eur. Soc'y of Human Reprod. & Embryology, *About Us*, ESHRE.EU, <https://www.eshre.eu/Home/About-us.aspx> (last visited Jan. 10, 2017).

26. *In Vitro Fertilization (IVF): Overview*, *supra* note 24.

27. The Society for Assisted Reproductive Technology is an organization of professionals in the United States that is dedicated to the practice of assisted reproductive technologies and whose goal is "to set up and help maintain the standards for assisted reproductive technologies in an effort to better serve our members and our patients." Soc'y for Assisted Reprod. Tech., *Homepage*, SART.ORG, <http://www.sart.org/> (last visited Jan. 10, 2017).

28. Jen Christensen, *Record Number of Women Using IVF to Get Pregnant*, CNN (Feb. 18, 2014), <http://www.cnn.com/2014/02/17/health/record-ivf-use/>.

29. *ART Fact Sheet*, EUR. SOC'Y HUM. REPROD. & EMBRYOLOGY, <https://www.eshre.eu/~media/sitecore-files/Annual-meeting/Lisbon/ART-fact-sheet.pdf?la=en> (last visited Jan. 13, 2016).

30. Celestine Bohlen, a New York Times reporter, noted in 1994 prior to the implementation of Law 40, "Italy is virtually the only country in Europe that still has no law, no controls, not even any minimum regulations governing more than 100 private clinics that perform various fertilization procedures." Celestine Bohlen, *Almost Anything Goes in Birth Science in Italy*, N.Y. TIMES, Apr. 4, 1995, at A14, <http://www.nytimes.com/1995/04/04/world/almost-anything-goes-in-birth-science-in-italy.html>.

31. Boggio, *supra* note 9, at 1153.

in Italy,³² which stresses that life starts at inception and therefore precludes the experimentation and destruction of embryos.³³

Prior to *Parrillo*, the ECtHR evaluated, on numerous occasions, the compatibility of Article 8 of the ECHR in conjunction with the ideas of self-determination and the rights of couples to choose whether to become parents.³⁴ The court in *Parrillo* similarly debated these concepts, weighing the interests of Adelina Parrillo against those of the Italian government.³⁵ When the ECtHR upheld Law 40, banning Parrillo from donating her embryos to science, the court blatantly undermined the emphasis on self-determination that it sought to establish in both prior case law as well as the *Parrillo* decision.³⁶ The court afforded Italy the discretion to weigh the interests of the unborn ahead of the civil rights of Parrillo, despite the ECtHR's prior efforts to establish the importance of weighing the rights of the mother against the rights of the unborn.³⁷ The purpose of the ECtHR is to prevent member states from infringing on the rights enumerated under the ECHR, yet, the court in *Parrillo* failed to prevent Italy from violating her right to personal autonomy under Article 8.³⁸

The ECtHR's decision to uphold Italian law and disregard Parrillo's right to a private life blatantly disregarded the purpose of the court, which is to "oversee European States' and to 'respect

32. *Id.* at 1157.

33. See Congregation for the Doctrine of the Faith, Instruction on Respect for Human Life (Feb. 22, 1987) [hereinafter *Donum Vitae*], http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html.

34. See *S. H. & Others v. Austria*, 2011-V Eur. Ct. H.R. 295 (2011) (holding that Article 8 formally protects the right of a couple to use medically assisted procreation to conceive a child); *Costa & Pavan v. Italy*, App. No. 54270/10, Eur. Ct. H.R. 1, HUDOC (Nov. 2, 2013), <http://hudoc.echr.coe.int/eng/?i=001-112993> (holding that Article 8 protects a couple's right to use in vitro preimplantation genetic diagnoses); *Dickson v. United Kingdom*, 2007-V Eur. Ct. H.R. 99.

35. *Parrillo v. Italy*, 2015 Eur. Ct. H.R. 3, 40–43.

36. *Id.* at 37–38.

37. See, e.g., *Vo v. France*, 2004-VIII Eur. Ct. H.R. 67 (2005) (holding that, if the unborn do have a right to life, the right is limited by the rights and interests of the mother).

38. See ECHR, *supra* note 14, art. 8.

[the] social and economic rights' of their respective citizens."³⁹ If the European Union remains unwilling to set a uniform standard for its citizens in the regulation of assisted reproductive technologies,⁴⁰ and the ECtHR refuses to step in when states implement legislation that disregards the rights of their people, then individuals like Parrillo will continue to be vulnerable to violations of their human rights without any possibility of redress or restitution.

Italy needs to be proactive and implement a system similar to that of Switzerland. In Switzerland, individuals are permitted to donate their embryos for research purposes, but the laws in place also strictly regulate the process by which these embryos can be donated. Switzerland's system would address many concerns of the Catholic Church, including, but not limited to: restricting the number of embryos produced, requiring both the informed verbal and written consent of both parties, and mandating that the doctor who secures the consent of the couples be different than the physician used to perform the procedure. This would enable Italians to reap the benefits of embryonic stem research while also allowing Italy to benefit financially. Unless Italy changes its current law regarding the donation of embryos, the human rights and autonomy of Italian women will continue to be violated.

Part I of this Note will discuss the history and purpose of in vitro fertilization in Italy and examine the influence of the Catholic Church and how the strict teachings of the Church poses a significant hurdle for individuals like Parrillo to exercise personal autonomy in the context of reproductive rights. Part II will discuss the history of the ECtHR, provide a historical overview of cases adjudicated by the ECtHR in response to challenges by parties under Article 8 of the ECHR, and establish the inconsistency of the *Parrillo* decision compared to prior case law. Additionally, this Part will argue that Italy should proactively adjust its reproductive laws rather than rely on the ECtHR to protect the rights of its citizens. Part III will then propose that Italy

39. *European Court of Human Rights*, INT'L JUST. RESOURCE CTR., <http://www.ijrcenter.org/european-court-of-human-rights/> (last visited Dec. 27, 2015).

40. For clarification, IVF is merely one example of an assisted reproductive technology. This Note, however, will only focus on IVF specifically.

implement legislation similar to Switzerland, which places various restrictions on the research of embryos,⁴¹ as a solution to appease both individuals who wish to exert their rights to personal autonomy and supporters of the Catholic Church, who are weary of assisted reproductive technology and its future implications. Switzerland addresses many concerns of the Catholic Church, including, but not limited to: limiting the number of embryos produced, requiring both the informed verbal and written consent of the parties, and mandating that the doctor who secures the consent of the couples be different than the physician used to perform the procedure.

I. IN VITRO FERTILIZATION IN ITALY: THE CONTENTIOUS RELATIONSHIP BETWEEN ASSISTED REPRODUCTIVE TECHNOLOGIES AND THE CATHOLIC CHURCH

Before examining the legal aspects of the ECtHR's decision in *Parrillo*, it is important to understand the scientific process behind IVF, how IVF has helped women counteract fertility complications, and why embryonic cell research is considered groundbreaking. Italian legislation and the Catholic Church have both reacted to the increasingly sophisticated assisted reproductive technologies such as IVF by producing Law 40. Although many Italians showed their disagreement with Law 40 by voting to dismantle the law,⁴² Italians soon learned that they faced many hurdles in changing the legislation, as not enough Italians rallied to abrogate Law 40 through a referendum. The referendum's failure to recruit enough voters may specifically be attributed to the government and Church's united front and concerted efforts to keep Italians from voting. The failed referendum suggests that Italians are not in a position to change the provisions of Law 40 themselves.

41. BUNDESGESETZ ÜBER DIE FORSCHUNG AN EMBRYONALEN STAMMZELLEN [FEDERAL ACT ON RESEARCH INVOLVING EMBRYONIC STEM CELLS], Dec. 19, 2003, RS 810.31, art. 1 (Switz.), <https://www.admin.ch/opc/en/classified-compilation/20022165/index.html>.

42. Approximately 75 to 89 percent of all Italians who voted to repeal Law 40 voted in favor of dismantling the law. The referendum, however, was deemed invalid because not enough Italians participated in the vote. *See Italian Fertility Vote Invalid*, STANDARD BROADCASTING SERV. (June 14, 2005), <http://www.sbs.com.au/news/article/2005/06/14/italian-fertility-vote-invalid>.

A. *The Process Behind Creating an Embryo*

According to the U.S. National Library for Medicine,⁴³ IVF consists of four steps: stimulation, egg retrieval, insemination and fertilization, and embryo culture and embryo transfer.⁴⁴ The Society for Assisted Reproduction estimates that this process takes place over a four- to six-week period.⁴⁵

During the stimulation phase, the patient is injected with hormones that will enable her ovaries to produce multiple eggs.⁴⁶ Normally, the ovaries only produce about one egg per month.⁴⁷ Once the patient undergoes the stimulation of her ovaries, a physician then attempts to remove approximately eight to fifteen eggs⁴⁸ from the follicles using a large needle that is attached to a suction device.⁴⁹ After the eggs are removed from the ovaries, embryologists place the eggs and the sperm together in a process known as "insemination."⁵⁰ The egg and sperm are subsequently placed in an incubator in order to allow for fertilization.⁵¹ Alternatively, the embryologist can inject individual sperm into each

43. The U.S. National Library for Medicine is the world's largest biomedical library. According to their homepage, the U.S. National Library for Medicine "maintains and makes available a vast print collection and produces electronic information resources on a wide range of topics that are searched billions of times each year by millions of people around the globe. It also supports and conducts research, development, and training in biomedical informatics and health information technology." *About the National Library of Medicine*, U.S. NAT'L LIBR. MED., <https://www.nlm.nih.gov/about/index.html> (last visited Jan. 10, 2017).

44. *In Vitro Fertilization*, U.S. NAT'L LIBRARY MED., <https://www.nlm.nih.gov/medlineplus/ency/article/007279.htm> (last reviewed Apr. 4, 2016).

45. Soc'y for Assisted Reprod. Tech., *ART: Step by Step Guide*, SART.ORG, <http://www.sart.org/detail.aspx?id=1903> (last visited Dec. 29, 2015) [hereinafter *ART: Step by Step Guide*].

46. *IVF-The Stimulation Phase*, CTR. REPROD. HEALTH, <http://www.crhivf.com/ivf/ivfstimulation.aspx> (last visited Dec. 28, 2015).

47. *In Vitro Fertilization*, *supra* note 44.

48. *ART: Step by Step Guide*, *supra* note 45.

49. *In Vitro Fertilization*, *supra* note 44.

50. *IVF Step-by-Step*, UNIV. ROCHESTER MED. CTR., <https://www.urmc.rochester.edu/ob-gyn/fertility-center/our-services/infertility-treatment/ivf/ivf-step-by-step.aspx> (last visited Jan. 4, 2016).

51. *In Vitro Fertilization: What You Can Expect*, MAYO CLINIC, <http://www.mayoclinic.org/tests-procedures/in-vitro-fertilization/basics/what-you-can-expect/prc-20018905> (last visited Jan. 10, 2017).

mature egg in a technique known as “intracytoplasmic sperm injection.”⁵² Embryologists then examine the fertilized egg to determine whether the embryo has begun to split into multiple cells.⁵³ Normally, a doctor will use a catheter⁵⁴ to transfer and insert the embryos into the patient’s uterus three to five days later.⁵⁵

In addition to reproductive value, embryonic stem cells also have scientific value. These cells, which can be obtained from embryos formed via IVF,⁵⁶ are often called “super cells.”⁵⁷ They are considered imperative to scientific and medical research because of their ability to become almost any other cell made by the human body.⁵⁸ Many researchers prefer to study embryonic stem cells rather than adult stem cells,⁵⁹ which are obtained from the tissues and organs of the human body.⁶⁰ This is because adult stem cells can only form cells from their tissue of origin.⁶¹ Some researchers believe the key to understanding the demise of diseased cells is by studying the development of embryonic stem cells.⁶² Additionally, researchers believe that the transplantation of human embryonic stem cells in a patient with defective cells could restore normal functions to the body.⁶³ Thus,

52. *In Vitro Fertilization*, *supra* note 44.

53. *ART: Step by Step Guide*, *supra* note 45.

54. *Id.*

55. *In Vitro Fertilization*, *supra* note 44.

56. *An Overview of Stem Cell Research*, CTR. BIOETHICS & HUM. DIGNITY, <https://cbhd.org/stem-cell-research/overview> (last updated Aug. 2009).

57. Guido de Wert & Christine Mummery, *Human Embryonic Stem Cells: Research, Ethics and Policy*, 18 HUM. REPROD. 672, 672 (2003), <http://hum-rep.oxfordjournals.org/content/18/4/672.full.pdf+html>.

58. Terry Devitt, *Embryonic Stem Cell Fact Sheet*, UNIV. WIS.-MADISON NEWS (Nov. 5, 1998), <http://news.wisc.edu/3319>.

59. JOSEPH P. HESTER, *THE TEN COMMANDMENTS: A HANDBOOK OF RELIGIOUS, LEGAL AND SOCIAL ISSUES* 190 (2003).

60. The California Institute for Regenerative Medicine defines “adult stem cells” as cells found in the various tissues and organs of the human body. *See Stem Cell Key Terms*, CAL. INST. REGENERATIVE MED., <https://www.cirm.ca.gov/patients/stem-cell-key-terms> (last updated Dec. 2016).

61. *The Difference Between Embryonic, Adult Stem Cells*, NPR (Aug. 24, 2010), <http://www.npr.org/templates/story/story.php?storyId=129406274>.

62. *Testing the Use of Human Embryonic Stem Cells in Tissue Regeneration*, STANFORD MED.: INST. STEM CELL BIOLOGY & REGENERATIVE MED., http://stem-cell.stanford.edu/research/embryonic_stem_cells.html (last visited Dec. 28, 2015).

63. Wert & Mummery, *supra* note 57, at 672.

embryos formed during IVF have significant value beyond facilitating reproduction and can enable great strides in medical research.

B. A Brief History of In Vitro Fertilization in Italy

Although IVF has only been a household name in reproductive technology since the late 1970s,⁶⁴ there are cases as early as the 1880s acknowledging the possibility of artificial insemination.⁶⁵ IVF procedures were initially developed in order to study maternal effects on the embryo before and after birth.⁶⁶ Later, in the 1960s,⁶⁷ these techniques were used in the context of breeding animals.⁶⁸ On July 25, 1978, however, the first human baby was successfully conceived through IVF in England,⁶⁹ and less than a decade later in 1986, the first Italian baby was conceived through the same procedure.⁷⁰

Although IVF became a common practice, Italy reacted slowly to this new procedure, opting not to place restrictions on IVF procedures. As a result, Italy was once considered one of the most liberal countries in the world with respect to assisted conception, or using assisted reproductive technologies to assist in

64. Tian Zhu, *In Vitro Fertilization*, EMBRYO PROJECT ENCYCLOPEDIA, <https://embryo.asu.edu/pages/vitro-fertilization> (last updated Sept. 25, 2013).

65. *Timeline: The History of In Vitro Fertilization*, PBS, <http://www.pbs.org/wgbh/americanexperience/features/timeline/babies/1/> (last visited Jan. 4, 2016) (“In the first recorded case of artificial insemination by donor, Philadelphia physician William Pancoast treat[ed] a couple’s infertility by injecting sperm from a medical student into the woman while she [was] under anesthesia; she g[ave] birth to a boy nine months later.”).

66. EMBRYO EXPERIMENTATION xiii (Peter Singer et al. eds., 1990).

67. The 1950s and 1960s were considered the golden age of in vitro fertilization after researchers studied the reproductive procedures of certain animals, including rabbits, mice, hamsters, and rats. Barry D. Bavister, *Early History of In Vitro Fertilization*, 124 REPROD. 181, 181 (2002), <http://www.reproduction-online.org/content/124/2/181.long>.

68. EMBRYO EXPERIMENTATION, *supra* note 66, at xiii.

69. Edward Edelson, *First Test Tube Baby is Born in 1978*, N.Y. DAILY NEWS (Jul. 28, 1978), <http://www.nydailynews.com/news/world/test-tube-baby-world-born-1978-article-1.2299256>.

70. Theresa Ferro, the first Italian baby born via in vitro fertilization, was born on November 29, 1986. Her parents used in vitro fertilization because her mother’s fallopian tubes were blocked, which affected her ability to conceive a child. *Italy Greets First Test-tube Baby*, ORLANDO SENTINEL (Nov. 30, 1986), http://articles.orlandosentinel.com/1986-11-30/news/0270410214_1_blocked-fallopian-tubes-teresa-ferro.

fertility procedures,⁷¹ and was given the nickname “the Wild West of IVF treatment.”⁷² Up until the mid-2000s, artificial reproductive technologies in Italy were practically unregulated.⁷³ Italian fertility doctors regularly helped diagnose fertility issues and impregnate women.⁷⁴ Doctors even assisted some patients who were too old to become pregnant on their own, including patients in their late sixties.⁷⁵ The lack of legislation enabled professionals, like gynecologist Severino Antinori,⁷⁶ to attempt to create the first cloned human,⁷⁷ despite such actions violating the beliefs of the Catholic Church.⁷⁸

Subsequently, in 2004, Italy passed Law 40 to impose stricter rules for fertility treatments.⁷⁹ Law 40 imposes notable restrictions,⁸⁰ including provisions that mandate a maximum of only three embryos to be created at a time and that all embryos

71. See Bohlen, *supra* note 30.

72. JOHN L. ALLEN, *THE CATHOLIC CHURCH: WHAT EVERYONE NEEDS TO KNOW* 154 (2014).

73. Sabrina Arena Ferrisi, *Italians Tackle Unregulated In Vitro Fertilization Industry*, NAT'L CATHOLIC REGISTER (Jan. 4, 2004), http://www.ncregister.com/site/article/italians_tackle_unregulated_in_vitro_fertilization_industry.

74. In 1994, Rosanna Della Corte, an Italian woman, gave birth to a child in Italy when she was sixty-two years old with the help of in vitro fertilization, and this subsequently caused public outcries for stricter laws governing reproductive technologies. *When Mamma is Old Enough to be a Grandma*, GUARDIAN (Nov. 26, 2005), <http://www.theguardian.com/world/2005/nov/27/italy.theobserver>.

75. *Italian Fertility Vote Invalid*, *supra* note 42.

76. Severino Antinori was famous for helping a sixty-two year old grandmother become pregnant. ALLEN, *supra* note 72, at 154–155.

77. Antinori claimed he would utilize cloning technology in an attempt to combat infertility. See *Profile: Dr. Antinori*, BBC NEWS (Aug. 7, 2001), <http://news.bbc.co.uk/2/hi/sci/tech/1477698.stm>; Gretchen Vogel, *IVF Restrictions Upheld in Italy*, SCI. MAG. (June 14, 2005), <http://news.sciencemag.org/2005/06/ivf-restrictions-upheld-italy>.

78. The Catholic Church opposes any form of human cloning, believing that it violates the dignity of a human embryo. Giovanni Frazzetto, *Embryos, Cells and God*, 5 EUR. MOLECULAR BIOLOGY ORG. REP. 553, 553 (2004).

79. Legge 19 febbraio 2004, n.40, G.U. Feb. 24, 2004, n.45 (It.).

80. Although some of the restrictions go beyond the scope of this Note, Law 40 also banned the donation of eggs and sperm, the use of surrogate mothers, and limited the availability of fertility treatment to heterosexual couples with “stable relationships.” See *id.*; Tracy Wilkinson, *Fertility Law Divides Italians*, L.A. TIMES (June 11, 2005), <http://articles.latimes.com/2005/jun/11/world/fg-fertility11>.

created must be implanted.⁸¹ Law 40 also bans freezing embryos and conducting research on embryonic stem cells obtained through IVF.⁸²

Italy's highest court, the Constitutional Court, has since revisited Law 40 a number of times after its adoption in 2004. In April 2009, the Constitutional Court liberally interpreted Law 40 to provide more flexibility for women seeking to become pregnant.⁸³ In response to a constitutional challenge to certain provisions of Law 40, the court struck down the provision in Law 40⁸⁴ that required that only three embryos could be produced at a time,⁸⁵ which also necessitated that all of the embryos created would have to be implanted into the womb.⁸⁶ In 2014, the Constitutional Court ruled that the ban on donor insemination was unconstitutional because the ban violated the Italian Constitution, which ensures equal rights to all citizens and provides for equal medical care, and violated a National Health System law that guarantees healthcare for all citizens without discrimination.⁸⁷ One year later, in 2015, the Constitutional Court granted the right to access IVF to couples who are fertile but carriers of genetic diseases.⁸⁸ While the Constitutional Court has struck down certain Law 40 provisions, many other restrictive provisions of

81. L. n. 40/2004 (It.).

82. *Id.*

83. Italy's Constitutional Court was created when its formal constitution was enacted in 1948. Article 134 of the constitution allows the Constitutional Court to hear, among others, "cases relating to the constitutional legitimacy of laws, and acts having the force of law, of the State and the Regions. . . ." Art. 134 Costituzione [Cost.] (It.), https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

84. The Italian Constitutional Court struck down this provision because it violated Article 3 of the Italian Constitution as well as Article 32, because of the potential health risk it poses to the woman, as well as the fetus. Giuseppe Benagiano et al., *The Italian Constitutional Court Modifies Italian Legislation on Assisted Reproduction Technology*, 20 REPROD. BIOMED. ONLINE 398, 400 (2010), [http://www.rbmojournal.com/article/S1472-6483\(09\)00280-6/pdf](http://www.rbmojournal.com/article/S1472-6483(09)00280-6/pdf).

85. *Italy's Top Court Changes Strict Fertility Rules*, VICTORIA ADVOC. (Apr. 1, 2009), <https://www.victoriaadvocate.com/news/2009/apr/01/bc-eu-italy-assisted-fertility/>.

86. *Id.*

87. Irene Riezzo et al., *Italian Law on Medically Assisted Reproduction: Do Women's Autonomy and Health Matter?*, BMC WOMEN'S HEALTH 3 (2016), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4958410/pdf/12905_2016_Article_324.pdf.

88. *Id.*

Law 40 remain unchanged and fully enforced today, including, but not limited to: disallowing the use of surrogate mothers, limiting fertility treatment to heterosexual couples who are married or live together, and, most relevant to this Note, banning the freezing of embryos and research on embryonic stem cells.⁸⁹ The *Parrillo* decision thus highlights merely one individual in a larger class of Italian citizens whose reproductive rights are restricted by Law 40.

C. Conflict Between Church and State Regarding Assisted Reproductive Technologies

Although Italy does not have a lengthy legislative history regarding the regulation of reproductive technologies, the Catholic Church⁹⁰ adamantly asserts that reproductive technologies, such as IVF, do not coincide with the teachings of Catholicism.⁹¹ The Catholic Church believes human life begins at the moment of conception.⁹² Therefore, the Catholic Church believes embryos have the same rights as living human beings.⁹³

One of the first instances where the Catholic Church elicited a response to assisted reproductive technologies was in a papal encyclical⁹⁴ issued by the Vatican in 1987 titled *Donum Vitae*.⁹⁵ Pope John Paul II reiterated the Catholic Church's belief, proclaiming: "The human being must be respected, as a person,

89. *Italy's Top Court Changes Strict Fertility Rules*, *supra* note 85.

90. Under Article 7 of the Constitution of the Italian Republic, "[t]he State and the Catholic Church are independent and sovereign, each within its own sphere. Their relations are regulated by the Lateran Pacts. Amendments to such Pacts which are accepted by both parties shall not require the procedure of constitutional amendments." Art. 7 Costituzione [Cost.] (It.), https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

91. *See Donum Vitae*, *supra* note 33.

92. John Paul II, *Evangelium Vitae* para. 60 (Mar. 25, 1995) [hereinafter *Evangelium Vitae*], http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html.

93. *Id.* para. 63.

94. A papal encyclical is a letter from the pope that can be addressed to clergy members of a specified country or region or the clergy of the entire world. The pope crafts an encyclical in an attempt to specifically address an aspect of Catholic teaching. David Gibson, *What is an Encyclical? Questions Answered as Pope's Statement on the Environment Approaches*, HUFFINGTON POST (June 17, 2015), http://www.huffingtonpost.com/2015/06/17/what-is-an-encyclical_n_7599072.html.

95. *Donum Vitae*, *supra* note 33.

from the very first instant of his existence.”⁹⁶ Additionally, he declared that assisted reproductive procedures that do not provide any therapeutic benefit to the embryos, such as IVF, artificial insemination, and experimentation performed on embryos, all disrespect human life.⁹⁷

Later, in 1995, Pope John Paul II penned *Evangelium Vitae*,⁹⁸ a papal encyclical that called for “absolute respect for every human life.”⁹⁹ The pope expressed his views concerning biomedical research in conjunction with his objections to procured abortion and euthanasia, claiming these topics to be related in their disrespect for human life.¹⁰⁰ The pope announced that the Catholic Church would not condone experimentation on human embryos, even if the research was exclusively done in order to help the lives of others.¹⁰¹ Specifically, he addressed artificial reproduction, noting that, although the technology was created in order to develop life, the technology would “actually open the door to new threats against life.”¹⁰² For example, IVF was thought to involve the creation of more embryos than necessary for impregnation, and it was perceived that the creation of extra embryos would “then [be] destroyed or used for research which, under the pretext of scientific or medical progress, in fact [would] reduce[] human life to the level of simple ‘biological material’ to be freely disposed of.”¹⁰³

96. *Id.*

97. *Id.*

98. See generally *Evangelium Vitae*, *supra* note 92.

99. *Id.* para. 89.

100. *Id.*

101. Expressing the Catholic Church’s stance on human embryo experimentation, Pope John Paul II stated:

This moral condemnation also regards procedures that exploit living human embryos and fetuses, sometimes specifically “produced” for this purpose by in vitro fertilization, either to be used as “biological material” or as providers of organs or tissue for transplants in the treatment of certain diseases. The killing of innocent human creatures, even if carried out to help others, constitutes an absolutely unacceptable act.

Id. para. 63.

102. *Id.* para.14.

103. *Id.*

Pope John Paul II's remarks have been subsequently reiterated and reaffirmed by successive popes and high-ranking clergy members. In 2003, the Congregation for the Doctrine of the Faith, an organization whose purpose is to "spread sound doctrine and defend those points of Christian tradition which seem in danger because of new and unacceptable doctrines,"¹⁰⁴ issued a doctrinal note¹⁰⁵ titled *The Participation of Catholics in Political Life*, which reminded Catholics of "the duty to respect and protect the rights of the human embryo."¹⁰⁶ In 2008, Pope Benedict XVI condemned any type of assistive reproductive technologies that alter the structure of an embryo.¹⁰⁷ Most recently, in 2014, Pope Francis reiterated these beliefs and also voiced his disapproval of reproductive technologies, expressing the Catholic Church's belief that conducting research and experimentation on embryos was a "bad experiment."¹⁰⁸ The Catholic Church's unwavering belief that conducting research on embryonic stem cells violates the principles of Catholicism creates a large hurdle for Italians seeking stronger protections for their assisted reproductive rights and choices.

104. *Congregation for the Doctrine of the Faith*, VATICAN, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_pro_14071997_en.html (last visited Dec. 29, 2015).

105. The note was "directed to the Bishops of the Catholic Church and, in a particular way, to Catholic politicians and all lay members of the faithful called to participate in the political life of democratic societies." Congregation for the Doctrine of Faith, *Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life* (Nov. 24, 2002), <https://www.ewtn.com/library/CURIA/CDFPOLIF.HTM>.

106. *Id.*

107. The pope is quoted as having moral objections against "the freezing of human embryos, stem cell research and human cloning." *Pope Condemns Human Cloning and Stem Cell Research*, DAILY MAIL (Jan. 31, 2008), <http://www.dailymail.co.uk/news/article-511554/Pope-condemns-human-cloning-stem-cell-research.html>.

108. When Pope Francis met with the Association of Italian Catholic Doctors in 2014, he proclaimed: "We are living in a time of experimentation with life. But a bad experiment. Making children rather than accepting them as a gift, as I said. Playing with life. Be careful, because this is a sin against the Creator: against God the creator, who created things this way." *Pope Urges Doctors to Witness to Sanctity of Life*, VATICAN RADIO (Nov. 15, 2014), http://en.radiovaticana.va/news/2014/11/15/pope_urges_doctors_to_witness_to_sanctity_of_life/1111251.

D. The Catholic Church's Influence Poses a Legislative Hurdle for Italians

Although many Italians, such as Parrillo, recognize the need for reform, Italian citizens may feel as though they are not in a position to invoke change. In 2005, the year after Law 40 was implemented, Italy held a referendum vote¹⁰⁹ in order to soften the restrictions on reproductive technologies outlined by Law 40.¹¹⁰ Italy's Constitutional Court approved the referendum after the Radical Party¹¹¹ collected more than 500,000 signatures in favor of the referendum.¹¹² The four-part referendum specifically addressed "the ban on embryo research, giving legal rights to the human embryo, the ban on gamete donation, and the requirement that only three IVF embryos can be created, all of which must be implanted."¹¹³ The voting took place over two days,¹¹⁴ and only about 13 percent of registered Italian voters cast their votes on the first day.¹¹⁵ The vote ultimately was declared invalid due to a low turnout of voters,¹¹⁶ as approximately

109. Under Article 75 of the Italian constitution, a general referendum can be held to repeal a law in whole or in part. In order to hold a referendum, it must be requested by 500,000 electors or five regional councils, and it is only valid if at least a majority of electors goes to the polling station. Art. 75 Costituzione [Cost.] (It.), https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

110. *Italians to Vote on Fertility Law*, BBC NEWS (Jan. 13, 2005), <http://news.bbc.co.uk/2/hi/europe/4171837.stm>.

111. I Radicali Italiani, or "the Radical Party," is a political party in Italy that is committed to, among other objectives, defending the rule of law and democracy, secularism and religious freedom, environmentalism, antiauthoritarianism, and democratic liberalism. The party is well-known for their historic reforms in Italy, such as the legalization of divorce and abortion, the closure of nuclear power plants, and the reform of the electoral system, to name a few. *Chi Siamo*, I RADICALI ITALIANI, <http://www.radicali.it/chi-siamo/> (last visited Jan. 10, 2017).

112. *Poor Turnout for Italy's Fertility Referendum*, BIO NEWS (June 13, 2005), http://www.bionews.org.uk/page_12394.asp.

113. Vogel, *supra* note 77.

114. Tracy Wilkinson, *With Too Few Voting, Effort to Ease Italian Fertility Law Fails*, L.A. TIMES (June 14, 2005), <http://articles.latimes.com/2005/jun/14/world/fg-fertility14>.

115. Paddy Agnew, *Italian Vote on Assisted Fertility Set to Fall*, IRISH TIMES (June 13, 2005), <http://www.irishtimes.com/news/italian-vote-on-assisted-fertility-set-to-fall-short-of-quorum-1.454856>.

116. Ian Fisher, *Italian Vote to Ease Fertility Law Fails for Want of Voters*, N.Y. TIMES, June 14, 2005, at A1.

26 percent of registered voters participated in the referendum.¹¹⁷ In order for the vote to have been declared valid, at least 51 percent of the electorate was required to vote.¹¹⁸ Of the Italians that did vote, 75 to 89 percent of voters voted "yes" on all four sections to dismantle the law.¹¹⁹ Although this referendum ultimately did not pass, this referendum indicated a large group of Italians were in favor of change.

While there is no evidence that the low turnout in voters is solely attributable to the actions of the Catholic Church, it took several affirmative steps to dissuade Italian voters. For example, many different players from the Catholic Church urged Italians not to vote for the referendum. Priests used the campaign slogan, "Life cannot be put to a vote: Don't vote,"¹²⁰ which embodied the Catholic Church's views on the referendum and assisted reproductive technologies in general. In addition, church officials stood guard at polling places and posted images of an aborted fetus sucking its thumb.¹²¹ Camillo Ruini, the president of the Italian bishops' conference,¹²² asked Italians to refrain from participating in the referendum.¹²³ Pope Benedict XVI endorsed the boycott as well,¹²⁴ proclaiming: "It is very important that Christian families speak out publicly on the inviolability of human life from contraception to its natural term, the unique and irreplaceable value of the family based on marriage."¹²⁵ Instead of speaking out, many Italian politicians refused to publicly endorse or criticize the boycott and simply urged voters to decide "according to their consciences."¹²⁶

117. *Id.*

118. Wilkinson, *supra* note 114.

119. *Italian Fertility Vote Invalid*, *supra* note 42.

120. *Id.*

121. Mary Rodgers Bundren, *The Influence of Catholicism, Islam and Judaism on the Assisted Reproductive Technologies ("ART") Bioethical and Legal Debate*, 84 U. DET. MERCY L. REV. 715, 731–32 (2007).

122. ALLEN, *supra* note 72, at 154.

123. Sarah Delaney, *Low Turnout Sinks Bid to Repeal Italian Fertility Rules*, WASH. POST (June 14, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/13/AR2005061300258.html>.

124. Joel Roberts, *Italy Keeps Tough Fertility Law*, CBS NEWS (June 13, 2005), <http://www.cbsnews.com/news/italy-keeps-tough-fertility-law/>.

125. Wilkinson, *supra* note 80.

126. Fisher, *supra* note 116; *Update: Italians Vote for Second Day in Fertility Referendum*, DOW JONES INT'L (June 13, 2005), <https://advance.lexis.com/api/permalink/02c83a12-fbab-4bde-8e91-125398c1c8c7/?context=1000516>.

Many in the Italian scientific community also publicly endorsed the Catholic Church's position on assisted reproductive technologies and embryonic stem cell research. For example, Angelo Vescovi, a researcher from the Stem Cell Research Institute at the University of Milan-Bicocca, was one of many researchers who publicly claimed that human embryonic stem cells were not required in order to continue research.¹²⁷ Statements such as those by Angelo Vescovi indicated that some in the Italian scientific community were also opposed to the referendum.

Even though many Italians believe Italy should be free from the influence of Catholicism,¹²⁸ it is easy to understand why the Catholic Church maintains a strong influence in Italy. While Vatican City is considered its own country, it is located in the middle of Italian territory.¹²⁹ About 90 percent of children in Italian state schools are placed in Catholic religious education classes, regardless of their personal religious affiliation.¹³⁰ The Catholic Church is able to broadcast Catholic television and radio programs on all channels of Italian state television and radio service and can broadcast on private television networks at no cost.¹³¹ Italy and the Catholic Church are intertwined in many

127. Vogel, *supra* note 77.

128. An Associated Press poll taken prior to the referendum vote found that nearly two-thirds of Italians believed that religious leaders should refrain from influencing government decisions. *Low Turnout Kills Italian Fertility Law Referendum*, CHRON. (June 13, 2005), <http://www.chron.com/news/nation-world/article/Low-turnout-kills-Italian-fertility-law-referendum-1524866.php>. As of 2012, a Facebook page titled, "Italy should be free from the influence of any religion," has garnered nearly 500,000 "likes" of Facebook users. Alex Roe, *How the Vatican Influences Italy*, IT. CHRON. (Feb. 27, 2012), <http://italychronicles.com/the-vatican-influences-italy/>.

129. *Geography*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/note-general/geografia.html> (last visited Sept. 6, 2016); *State and Government*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo.html> (last visited Sept. 6, 2016).

130. Alessandro Ferrari & Silvio Ferrari, *Religion and the Secular State: The Italian Case*, in RELIGION AND THE SECULAR STATE: NATIONAL REPORTS 431, 431 (Javier Martínez-Torrón & W. Cole Durham Jr. eds., 2010), <http://www.iclrs.org/content/blurb/files/Italy.pdf>.

131. Giulio Ercolessi, *Italy: Born as a Secular State in the XIX Century, Back to a Clerical Future in the XXI Century?*, in SEPARATION OF CHURCH AND STATE IN EUROPE 139, 145 (Fleur de Beaufort, Ingemund Hägg, & Patrick van Schie eds., 2008).

facets of life, thereby allowing the Vatican to maintain a strong influence over the lives of Italians.

Critics of this contention may argue that there are other possible explanations for the low voter turnout, but the Catholic Church's views toward the subject matter of the referendum and its pleas urging Italians not to vote undeniably influenced the results of the referendum. Some may argue that one reason for the poor voter turnout was because the vote was conducted during a time when many Italians take their summer vacations,¹³² that Italians did not vote due to apathy, as, at the time of the vote, no Italian referendum had reached the required turnout since 1995,¹³³ or that Italians did not vote due to laziness.¹³⁴ Although many of these counterarguments could be true, critics also cannot conclusively deny that the sole reason the referendum failed was due to the Vatican's pleas for voters to stay home.¹³⁵ Regardless of the reason for the low voter turnout, the referendum demonstrates that Italians likely cannot invoke change on their own and explains Parrillo's decision to sue in the neutral forum of the ECtHR to protect her personal autonomy.

II. THE ECtHR: THE *PARRILLO* DECISION AND WHY ITALY SHOULD NOT RELY ON THE COURT TO PROTECT THE RIGHTS OF ITS CITIZENS

In order to understand the ECtHR decision, it is imperative to examine the history of the court and why it was created. This history, in addition to the court's prior case law addressing Article 8 protections, all factored heavily in the *Parrillo* decision and helps to explain why Italy mistakenly is relying on the ECtHR to protect the rights of the Italian public.

A. *The History and Purpose of the ECHR and ECtHR*

The ECtHR, which presided over Parrillo's case, is an international court whose purpose is to enforce the list of human rights afforded to citizens within the court's jurisdiction as enumerated in the ECHR.¹³⁶ The court maintains jurisdiction over the countries and their respective citizens who are signatories to the

132. *Poor Turnout for Italy's Fertility Referendum*, *supra* note 112.

133. *Low Turnout Kills Italian Fertility Law Referendum*, *supra* note 128.

134. *Id.*

135. Delaney, *supra* note 123.

136. See ECHR, *supra* note 14, art. 19.

ECHR.¹³⁷ Although the court maintains jurisdiction over signatories to the ECHR, under Article 35 of the ECHR, the ECtHR may only hear a case after “all domestic remedies have been exhausted.”¹³⁸ By tracing the ECHR’s history as well as the creation of the ECtHR, it becomes increasingly clear the court’s true purpose is to ensure states do not take advantage of their position of power and trample over the basic rights of their citizens, which seemingly occurred when the court refused to intervene in Parrillo’s case.

The concept of international human rights law arose in response to the end of the World War II and the creation of the United Nations in 1945.¹³⁹ Prior to World War II, states were expected to protect the human rights of their people, and the concept of national sovereignty discouraged the international community from intervening when states failed to protect these rights.¹⁴⁰ The Council of Europe, an intergovernmental organization that was created in 1949¹⁴¹ with the purpose of protecting human rights and democracy and upholding the ECHR,¹⁴² felt as though it needed to create some type of mechanism to protect human rights in response to the numerous human rights violations committed during World War II.¹⁴³

In 1946, the Commission on Human Rights, a group of eighteen prominent world leaders who assembled to outline a list of rights that should be guaranteed and upheld for all of the people within its jurisdiction,¹⁴⁴ considered what would be necessary in order to create an International Bill of Rights. Ultimately, the world leaders decided that the International Bill of Rights

137. *Id.*

138. *Id.*

139. EDWARD BATES, *THE EVOLUTION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS: FROM ITS INCEPTION TO THE CREATION OF A PERMANENT COURT OF HUMAN RIGHTS* 33 (2010).

140. David Whetham & Bradley J. Strawser, *The Moral Responsibility to Aid Others*, in *RESPONSIBILITIES TO PROTECT: PERSPECTIVES IN THEORY AND PRACTICE* 4–5 (David Whetham & Bradley J. Strawser eds., 2015).

141. *Founding Fathers*, COUNCIL EUR., <http://www.coe.int/en/web/about-us/founding-fathers> (last visited Jan. 2, 2016).

142. *The Council of Europe*, COUNCIL EUR., <http://www.coe.int/en/web/tbilisi/the-coe/about-coe/history> (last visited Sept. 6, 2016).

143. *Universal Declaration of Human Rights: History of the Document*, UNITED NATIONS, <http://www.un.org/en/sections/universal-declaration/history-document/index.html> (last visited Jan. 2, 2015).

144. *Id.*

should consist of a declaration where the signatories agree to be bound by the document, a convention that would contain the legal obligations for each country, and a system to ensure the enforcement of the International Bill of Rights.¹⁴⁵ The first draft of the declaration was created in September of 1948,¹⁴⁶ and approximately three months later,¹⁴⁷ the U.N. General Assembly adopted the Universal Declaration of Human Rights (UDHR).¹⁴⁸ The ultimate goal of the UDHR was to demonstrate “the universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone, and that every one of us is born free and equal in dignity and rights.”¹⁴⁹

After the creation of the UDHR, the first draft of the ECHR was created in 1949.¹⁵⁰ In addition to creating a list of rights to be enjoyed by all people, the first draft of the ECHR also called for the creation of a court to adjudicate any violations of the rights enumerated in the ECHR.¹⁵¹ The first draft was then sent to the U.N. General Assembly’s Legal Committee, who consulted with various committees and senior officials from France, Italy, Belgium, Ireland, the Netherlands, the United Kingdom, Norway, Sweden, Greece, and Turkey before submitting a final draft to the Council of Europe.¹⁵² The ECHR was finalized by the Council of Europe in Rome on November 4, 1950, and officially came into force on September 3, 1953.¹⁵³

145. BATES, *supra* note 139, at 37–38.

146. *Universal Declaration of Human Rights: History of the Document*, *supra* note 143.

147. BATES, *supra* note 139, at 38.

148. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

149. *The Foundation of International Human Rights Law*, UNITED NATIONS, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> (last visited Dec. 28, 2015).

150. COUNCIL OF EUR., THE CONSCIENCE OF EUROPE: 50 YEARS OF THE EUROPEAN COURT OF HUMAN RIGHTS 18 (2010), http://www.echr.coe.int/Documents/Anni_Book_Chapter01_ENG.pdf.

151. *Id.*

152. *Id.*

153. Aisha Gani, *What is the European Convention on Human Rights?*, GUARDIAN (Oct. 3, 2014), <https://www.theguardian.com/law/2014/oct/03/what-is-european-convention-on-human-rights-echr>.

Subsequently, the ECtHR was created in 1959¹⁵⁴ to comply with Article 19 of the ECHR, which called for the creation of a court to enforce the rights enumerated in the ECHR.¹⁵⁵ Prior to 1998, in order to bring a claim before the ECtHR, claimants had to bring their claims before the European Commission of Human Rights, a committee that judged the admissibility of claims and decided whether the claim would be brought before the ECtHR.¹⁵⁶ In 1998, however, the ECHR was amended to include Protocol 11, which eliminated the European Commission of Human Rights.¹⁵⁷ As a result, this enabled applicants to bring their complaints directly before the ECtHR.¹⁵⁸ The ECtHR now vets the applications submitted, outlining a list of admissibility criteria for applicants,¹⁵⁹ and the ECtHR now holds the power to reject any application submitted throughout the proceedings.¹⁶⁰ As another safeguard to help the ECtHR vet through cases,¹⁶¹ the court may only hear a case after “all domestic remedies have been exhausted.”¹⁶² The ECtHR, despite its longstanding history, has therefore only been exposed to a fraction of the ECHR signatories’ cases due to the aforementioned safeguards in place.

Although the ECHR was created over fifty years ago, with the goal of recognizing and protecting certain individual freedoms, the convention is thought to be an evolving document, one that is flexible enough to remain controlling and relevant with the

154. PHILIP LEACH, *TAKING A CASE TO THE EUROPEAN COURT OF HUMAN RIGHTS* 5 (3d ed. 2011).

155. According to Article 19 of the ECHR, “[t]o ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a ECtHR, hereinafter referred to as ‘the Court’. It shall function on a permanent basis.” ECHR, *supra* note 14, art. 19.

156. LINDA C. REIF, *THE OMBUDSMAN, GOOD GOVERNANCE AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM* 128 (2004).

157. *Id.*

158. *Id.*

159. ECHR, *supra* note 14, art. 35.

160. *Id.*

161. The strict admissibility requirements could be due to the scope of the court’s jurisdiction: the ECtHR has jurisdiction over forty-seven Council of Europe Member States that ratified the ECHR, which includes approximately eight hundred million Europeans. Gani, *supra* note 153.

162. Article 35 also includes other admissibility criteria, including requiring a waiting period of six months from the date on which the final domestic decision was issued. *Id.*

changing times.¹⁶³ The ECtHR has, on some occasions, reflected this principle by changing its perspective on certain issues.¹⁶⁴ An example showcasing the constant evolution of the ECHR and the changing perspective of the ECtHR is the history of the right to privacy under Article 8 of the ECHR.

B. Article 8 of the ECHR

Under Article 8 of the ECHR, there are two provisions protecting the right to respect private and family life.¹⁶⁵ First, Article 8 provides an explicit right to respect for private and family life.¹⁶⁶ Second, notwithstanding the explicit right to privacy, Article 8 states that this right cannot be interfered with unless it falls within an exception that “is in accordance with the law and is necessary in a democratic society.”¹⁶⁷ The ECHR does not define this phrase, instead allowing the ECtHR to evaluate each case on a case-by-case basis.

Prior to the creation of IVF, the ECtHR analyzed the language of Article 8 to apply to abortions. In *Brüggemann and Scheuten v. Germany*, the applicants challenged a revision of a German

163. According to the Council of Europe, “the Court has made the Convention a living instrument; it has thus extended the rights afforded and has applied them to situations that were not foreseeable when the Convention was first adopted.” *ECHR in 50 Questions*, EUR. CT. HUM. RTS. 3 (Feb. 2014), http://www.echr.coe.int/Documents/50Questions_ENG.pdf.

164. See *Mata Estevez v. Spain*, 2001-VI Eur. Ct. H.R. 311 (2001) (holding that a relationship between a same-sex couple could not be considered under the “family life” definition provided by Article 8 of the ECHR); *Schalk & Kopf v. Austria*, 2010-IV Eur. Ct. H.R. 409, 436 (holding that a same-sex couple’s relationship satisfied the “family life” definition under Article 8); Jens M. Scherpe, *The Legal Recognition of Same-Sex Couples in Europe and the Role of the European Court of Human Rights*, 10 EQUAL RTS. REV. 83, 83, 87–88 (2013).

165. ECHR, *supra* note 14, art. 8.

166. Under the first provision, “[e]veryone has the right to respect for his private and family life, his home and his correspondence.” *Id.*

167. *Id.* (“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”).

statute criminalizing abortion after the twelfth week of pregnancy.¹⁶⁸ The ECtHR recognized that the applicant's privacy interests were at stake¹⁶⁹ and accordingly analyzed the statute under Article 8.¹⁷⁰ While the court did not provide Article 8 protections, the case was significant because it marked the first time where the court used Article 8 with respect to human anatomy and initiated a more substantive connection that would be addressed in future cases.

Over twenty years later, the ECtHR reaffirmed the connection between Article 8 and abortion in *Tysic v. Poland*,¹⁷¹ which involved a petitioner's right to an abortion for medical reasons. The ECtHR reasoned that "legislation regulating the interruption of pregnancy touches upon the sphere of private life, since whenever a woman is pregnant her private life becomes closely connected with the developing fetus."¹⁷² In 2010, the ECtHR clarified the connection between Article 8 and abortions in *A, B, and C v. Ireland*, holding that, while Article 8 does not provide a right to abort, the decision to obtain an abortion falls within one's "private life" as defined in Article 8.¹⁷³ Analyzing these cases as a whole, although the ECtHR did not find an explicit right to an abortion under Article 8's "right to a private life," the court's repeated practice of examining the right to an abortion under Article 8 demonstrates the ECtHR's belief that choices made about an individual's anatomy are considered "private" choices.

In the mid-2000s, the court analyzed Article 8 in relation to reproductive technologies. In *Evans v. United Kingdom*, Evans and her partner decided to undergo IVF treatment because she was diagnosed with precancerous tumors, which required her

168. *Brüggemann & Scheuten v. Germany*, App. No. 6959/75, 3 Eur. H.R. Rep. 244, 348 (1977).

169. *Id.* at 350.

170. *Id.* at 351.

171. In *Tysic v. Poland*, physicians informed the applicant that her pregnancy constituted a risk to her eyesight but refused to perform an abortion when she sought one, even though her situation fell within one of the exceptions to Poland's general ban on abortion. The court ultimately held that Poland's inability to perform an abortion violated her Article 8 right to respect for her private life. *Tysic v. Poland*, 2007-I Eur. Ct. H.R. 219, 226–227, 253.

172. *Id.* at 247.

173. See *A, B, & C v. Ireland*, 2010-VI Eur. Ct. H.R. 185 (upholding an Irish law banning abortion, but noting that the prohibition on abortions did fall within the sphere encompassed by "private life").

ovaries to be removed.¹⁷⁴ After six embryos were created and placed in storage,¹⁷⁵ their relationship subsequently ended.¹⁷⁶ Under U.K. law, Evans' partner was entitled to refuse consent to the implantation of the embryos and destruction of the embryos.¹⁷⁷ The court acknowledged that the right to privacy under Article 8 incorporates the right to respect both the decision to become and not become a parent.¹⁷⁸ The ECtHR added to this distinction in *S. H. and Others v. Austria*, where an Austrian couple challenged Austria's highly restrictive laws on assisted reproduction, arguing that the laws only permitted IVF or insemination using ova and sperm from spouses or partners.¹⁷⁹ The ECtHR held that Article 8 formally protects the right of a couple to use medically assisted procreation in order to conceive a child.¹⁸⁰ Although all of the aforementioned ECtHR cases do not involve Italian claimants and Italian laws, the analyses and holdings created by the ECtHR are still applicable to Parrillo and her case. Taking these cases together, the court considers the right to utilize assisted reproductive technologies as a "private" decision, one that may fall within the right to privacy explicitly enumerated under Article 8.

Over time, the ECtHR gradually applied the Article 8 right to privacy in assisted reproduction cases in a similar manner as those that relate to abortion, evaluating each case on a case-by-case basis. In both contexts the court now speaks of "the right to become or not to become a parent."¹⁸¹ In *Dickson v. United Kingdom*, a couple's request to use assisted reproduction was refused by the Secretary of State because, among other reasons, the mother and child would lack an adequate support network due to the father's incarceration.¹⁸² The court held that Article 8 was applicable¹⁸³ and that the Secretary of State's denial of assisted

174. *Evans v. United Kingdom*, 2007-I Eur. Ct. H.R. 353, 361.

175. *Id.* at 362.

176. *Id.*

177. *Id.*

178. The court opined on the difficulty of the conflict because the rights of both Evans and her partner were at stake under Article 8: the right to become a genetic parent and the right to not become a genetic parent. *Id.* at 381.

179. *S. H. & Others v. Austria*, 2011-V Eur. Ct. H.R. 295, 303.

180. *Id.* at 318.

181. *Evans v. United Kingdom*, 2007-I Eur. Ct. H.R. 353, 380.

182. *Dickson v. United Kingdom*, 2007-V Eur. Ct. H.R. 99, 107.

183. *Id.* at 101.

reproductive facilities to the couple violated their right to privacy under the ECHR.¹⁸⁴ This holding was reinforced in 2010 when the court in *A, B and C v. Ireland* held that private life encompasses “the decision both to have and not to have a child or to become genetic parents.”¹⁸⁵ Taking all of these assisted reproduction cases as a whole, the ECtHR’s continued practice of analyzing this right under Article 8 indicates the court’s belief that this right is not only important but also a private and intimate decision.

This is not the first time Italian laws have been scrutinized for possibly infringing on an Italian claimant’s Article 8 right to privacy. In *Costa and Pavan v. Italy*, the applicants were both carriers of cystic fibrosis¹⁸⁶ and wanted to use in vitro preimplantation genetic diagnosis (PGD) to enable them to have a child who would be free from the condition.¹⁸⁷ This was not allowed under Italian law, which only permitted PGD where there was a risk of hepatitis or transmission of a sexually transmissible disease.¹⁸⁸ After the case was litigated in Italy, the petitioners brought the case before the ECtHR, and the ECtHR held that Article 8 protected the use of PGD to conceive a child without cystic fibrosis because it was a “form of expression of their private and family life.”¹⁸⁹ This holding is extremely relevant to Parrillo’s case because the court not only recognized that the Italian law infringed on a woman’s right to access assisted reproductive technologies but also explicitly stated that the right to utilize technologies such as PGD fell within Article 8’s right to privacy. Following the ECtHR’s case law, Parrillo’s decision to dictate the future of her embryos seemingly should be considered a private decision, one protected by Article 8’s right to a private life.

C. Analyzing Parrillo Under Article 8 Case Law

Under the aforementioned Article 8 case law, Parrillo had the right to choose not to be a parent.¹⁹⁰ Yet, the ECtHR decided in

184. *Id.* at 133.

185. *A, B, & C v. Ireland*, 2010-VI Eur. Ct. H.R. 185, 255.

186. *Costa & Pavan v. Italy*, App. No. 54270/10, Eur. Ct. H.R. 1, HUDOC (Nov. 2, 2013), <http://hudoc.echr.coe.int/eng?i=001-112993>.

187. *Id.*

188. *Id.* at 2.

189. *Id.* at 11.

190. *See generally* *Evans v. United Kingdom*, 2007-I Eur. Ct. H.R. 353.

Parrillo that she did not have the right to choose the manner in which she did not become a parent. Ultimately, the ECtHR was not concerned with Parrillo's right not to become a parent, so the manner in which she accomplished this goal should have been irrelevant. Hypothetically, because Italy legalized abortion in 1978,¹⁹¹ Parrillo could have implanted the embryo and subsequently had an abortion, thereby not becoming a parent while simultaneously following the law. The argument follows that, if she decided to donate her embryos and not become a parent, then that should have been equally as acceptable a decision as having an abortion. The ECtHR was seemingly most concerned about allowing Parrillo to make the decision herself without knowing the wishes of her deceased husband,¹⁹² again weighing the interests of the nonliving before those of the living.

Instead of putting Parrillo's rights before that of her embryos, the court upheld the strict requirements of Law 40 and reasoned that the Italian government had "a wide margin of appreciation" to enact the law and that the ban "was necessary in a democratic society."¹⁹³ In *Parrillo*, the court noted that circumstances dictate how much margin of appreciation is afforded to states. The ECtHR noted that a state should be awarded a narrow margin of appreciation when "a particularly important facet of an individual's existence or identity is at stake," and the margin should be wider where "there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues. . . ." ¹⁹⁴ The court distinguished *Parrillo* from other Article 8 parenthood cases because Parrillo did not choose to become a parent, and, therefore, the decision to donate her embryos to scientific research did not concern her right to a private life.¹⁹⁵ Parrillo's predicament, however, seemingly implicates her right to a private life, as Parrillo's ability to decide the fate of her embryos involves an important piece of her identity, namely embryos con-

191. Silvana Salvini Bettarini & Silvana Schifini D'Andrea, *Induced Abortion in Italy: Levels, Trends and Characteristics*, 28 FAM. PLAN. PERSP. 267, 267 (1996).

192. *Parrillo v. Italy*, 2015 Eur. Ct. H.R. 43.

193. *Id.*

194. *Id.* at 39.

195. *Id.* at 40.

taining her DNA. The European Union's decision not to implement legislation regulating the donation of embryos to scientific research for all Member States, however, could theoretically justify giving a wider margin of appreciation to Italy. While a contributing factor to the ECtHR's decision in *Parrillo* may have been that many other Member States do not allow the donation of embryos for scientific research, the court's willingness to disregard her case simply because she would not ultimately become a parent conflicts with the court's prior holding that the decision to become or not become a parent is protected under Article 8's right to privacy. Considering that the ECtHR's purpose is to prevent states from infringing on the rights of its citizens, and the ECHR is an evolving document, designed to adapt to the changing times, the court seemingly failed to protect Parrillo's privacy rights with respect to the use of her embryos.

Ultimately, the ECtHR is not an effective mechanism to ensure and protect the rights of the Italian population. Around early January of 2014, there were approximately 99,900 outstanding cases on the ECtHR's docket.¹⁹⁶ This extensive caseload would likely prohibit Italians from obtaining a timely remedy. Considering a claimant must exhaust all domestic options and remedies before applying to the ECtHR, this period is followed by waiting to see if the case is accepted and then spending a few years waiting for the judgment. In theory, a claimant may wait more than ten years to obtain a remedy, assuming the ECtHR rules in his or her favor. Many people can neither invest the time nor resources to wait for a remedy that may never come. Under the Constitution of the Italian Republic, Italy "recognizes and guarantees the inviolable rights of the person,"¹⁹⁷ and more specifically, Italy is expected to "safeguard health as a fundamental right of the individual."¹⁹⁸ Thus, to ensure the protection of these rights, Italy should proactively reconfigure its laws to regulate assisted reproductive technologies instead of relying on the ECtHR.

196. Owen Bowcott, *Backlog at ECtHR Falls Below 100,000 Cases*, GUARDIAN (Jan. 30, 2014), <http://www.theguardian.com/law/2014/jan/30/european-court-human-rights-case-backlog-falls>.

197. Art. 2 Costituzione [Cost.] (It.), https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

198. *Id.* art. 32.

III. PROPOSAL TO IMPLEMENT REGULATIONS SIMILAR TO THOSE USED BY SWITZERLAND

There are two different schools of thought on conducting research on embryos obtained via IVF: those of the Catholic Church, which believes that life begins at conception, and, therefore, experimenting on embryos violates the preciousness of life; and those of many in the research and scientific community, who believe that embryonic stem research provides a unique benefit to the world, as they can learn more about diagnosing and curing certain diseases and fertility issues. Although these viewpoints may be considered competing ideas, Italy could potentially enable research on embryos obtained via IVF while placing restrictions on experimentation to alleviate the aforementioned fears enumerated by the Catholic Church. This would allow Italy, as well as its citizens, to benefit from the strides made through scientific research while also respecting the views of the Catholic Church.

In order for Italy to ensure the protection of its citizens' rights while also respecting the views of the Catholic Church, Italy would benefit from implementing a set of stringent regulations similar to those of Switzerland. Beginning with a brief history of how Switzerland adopted their current laws regulating IVF and the donation of embryos in section A, sections B and C will outline a few of the Swiss restrictions regulating the donation of embryos for research purposes, including a mandate that embryos not be created for the sole purpose of research as well as rigorous conditions parents must comply with in order to "consent" to the donation of embryos. These restrictions adequately address Italian concerns of embryos being produced solely for research and ensures that all patients make well-informed and unbiased decisions about the fate of their embryos. Sections D and E will then enumerate many of the benefits Italy would stand to gain, both financially and medically, from implementing a system similar to Switzerland. Implementing a similar law will help to address the number of Italians who are already flocking

to neighboring countries, including Switzerland,¹⁹⁹ to receive this type of fertility treatment.²⁰⁰

A. Switzerland's Legislative History Regarding Assisted Reproductive Technologies and Research

In response to the IVF movement, in 1987, Switzerland created a set of guidelines with respect to assisted reproductive technologies and research.²⁰¹ These guidelines, which Switzerland adopted, prohibited both conducting research on human embryos²⁰² and the indefinite storage of embryos, instead requiring disposal of embryos after one single in vitro fertilization procedure.²⁰³ Switzerland thus outlawed any form of intervention on the genetic material of human cells as well as the use of embryos for pharmaceutical purposes.²⁰⁴

Up until this point, Switzerland did not have any legislation preventing the cryopreservation of embryos outside the body. Eleven years after the Swiss Council prepared their guidelines on assisted reproduction and research,²⁰⁵ Switzerland passed the Reproductive Medicine Act, which banned “the storage and preservation of embryos in addition to their development outside of the body.”²⁰⁶ It should be noted that the Switzerland Constitution already protects “human dignity” from being misused by reproductive technologies, regenerative medical therapies and gene technology.²⁰⁷ As a result, the Reproductive Medicine Act

199. *Infertility Tourism: Cross-Border Reproductive Care in Europe*, INT'L MED. TRAVEL J. (July 7, 2010), <http://www.imtj.com/news/infertility-tourism-cross-border-reproductive-care-europe/#sthash.XafOUuGZ.dpuf>.

200. Giuseppe Benagiano et al., *Italian Constitutional Court Removes the Prohibition on Gamete Donation in Italy*, 29 REPROD. BIOMED. ONLINE 662, 662 (2014), [http://www.rbmojournal.com/article/S1472-6483\(14\)00489-1/pdf](http://www.rbmojournal.com/article/S1472-6483(14)00489-1/pdf).

201. Jason T. Corsover, *The Logical Next Step? An International Perspective on the Issues of Human Cloning and Genetic Technology*, 4 ILSA J. INT'L & COMP. L. 697, 724 (1998).

202. *Id.*

203. *Id.*

204. *Id.*

205. The Reproductive Medicine Act was passed in 1998. *Regulation of Stem Cell Research in Switzerland*, EUROSTEMCELL, <http://www.eurostem-cell.org/regulations/regulation-stem-cell-research-switzerland> (last updated Aug. 12, 2012).

206. *Id.*

207. Under Article 119 of the Swiss Constitution, “[h]uman beings shall be protected against the misuse of reproductive medicine and gene technology. The Confederation shall legislate on the use of human reproductive and genetic

seemingly clarified Switzerland's intention to prevent experimentation on embryos.

In 2001, the Swiss National Science Foundation decided to fund a research project involving human embryonic stem cells.²⁰⁸ The Swiss government subsequently required the Federal Department of Home Affairs²⁰⁹ to regulate this research involving surplus human embryos and embryonic stem cells by creating a piece of legislation.²¹⁰ While parliament discussed the possibility of implementing regulations, the government decided to allow surplus embryos to be used exclusively for obtaining stem cells.²¹¹ These regulations were transformed into a piece of legislation, known as the Stem Cell Research Bill, which was passed in 2003.²¹² Opponents of embryo research, including environmental, right-to-life, and religious organizations, successfully organized a petition that forced a referendum to be held in 2004.²¹³ The bill passed by obtaining approval from 66 percent of Swiss voters²¹⁴ and became known as the Federal Act on Research Involving Embryonic Stem Cells ("Stem Cell Research Act"), which went into effect in March of 2005.²¹⁵ Ultimately, the

material. In doing so, it shall ensure the protection of human dignity, privacy and the family. . . ." BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 119, paras. 1–2 (Switz.).

208. Fed. Office of Pub. Health, *Development of Legislation on Stem Cell Research*, SWISS CONFEDERATION, <https://www.bag.admin.ch/bag/en/home/themen/mensch-gesundheit/biomedizin-forschung/forschung-an-humanan-embryonalen-stammzellen/entstehung-gesetzgebung-stammzellenforschung.html> (last visited Mar. 22, 2017) [hereinafter *Development of Legislation on Stem Cell Research*].

209. The Federal Department of Home Affairs (FDHA) is a Swiss government department that oversees a range of issues, including social insurance, gender equality, culture, meteorology, and, most notably, the health system. Fed. Dept. of Home Affairs, *The Federal Department of Home Affairs (FDHA)*, SWISS CONFEDERATION, <https://www.admin.ch/gov/en/start/departments/departement-home-affairs-fdha.html> (last visited Mar. 22, 2017).

210. *Id.*

211. *Id.*

212. *Stem-Cell Research Approved - with Conditions*, SWISSINFO (Dec. 4, 2003), <http://www.swissinfo.ch/eng/stem-cell-research-approved—with-conditions/3658560>.

213. *Development of Legislation on Stem Cell Research*, *supra* note 208.

214. *Swiss Approve Stem Cell Research*, DEUTSCHE WELLE (Nov. 29, 2004), <http://www.dw.com/en/swiss-approve-stem-cell-research/a-1410782>.

215. BUNDESGESETZ ÜBER DIE FORSCHUNG AN EMBRYONALEN STAMMZELLEN [FEDERAL ACT ON RESEARCH INVOLVING EMBRYONIC STEM CELLS], Dec. 19, 2003, RS 810.31, art. 1, (Switz.) [hereinafter SWISS FEDERAL ACT ON RESEARCH

Stem Cell Research Act²¹⁶ outlines when it is permissible for medical professionals to create human embryonic stem cells from surplus embryos for research.²¹⁷

B. Embryos Cannot Be Created for the Purpose of Research

A set of regulations similar to Switzerland's could be seamlessly implemented in Italy because it addresses the fear of solely producing embryos for research purposes.²¹⁸ Whereas the Catholic Church may believe enabling research on embryonic stem cells will cause embryos to be produced solely for experimentation, Switzerland outlines strictly defined conditions when it is permissible to use surplus embryos from IVF treatments to derive human stem cell lines.²¹⁹ Under Article 3 of the Stem Cell Research Act, one is prohibited from "creat[ing] an embryo for research purposes, . . . deriv[ing] stem cells from such an embryo, or . . . us[ing] such cells."²²⁰ By implementing this type of restriction in Italy, this would ensure that any embryos utilized for scientific research purposes were not created for this sole purpose. Instead, only certain kinds of embryos, those defined as "surplus," could be utilized for this purpose. Switzerland goes the extra mile to define the term "surplus embryo."²²¹ The Stem Cell Research Act considers an embryo to be "surplus" if it is created specifically during IVF and "cannot be used to establish a pregnancy and therefore has no prospect of survival."²²² If implemented in Italy, this provision would alleviate the concerns of the Catholic Church by limiting the types of embryos used for research purposes from those that were initially created with the intention of implantation but which can no longer be used to create a successful pregnancy. Instead of letting these embryos reach the point of nonviability, the embryos from these sources could be used to further scientific research, with the hopes that

INVOLVING EMBRYONIC STEM CELLS], <https://www.admin.ch/opc/en/classified-compilation/20022165/index.html>.

216. *Regulation of Stem Cell Research in Switzerland*, *supra* note 205.

217. SWISS FEDERAL ACT ON RESEARCH INVOLVING EMBRYONIC STEM CELLS art. 1.

218. Under Article 3 of the Stem Cell Research Act, embryos cannot be produced solely for research purposes. *Id.* art. 3.

219. *Id.* art. 1.

220. *Id.* art. 3.

221. *Id.* art. 3.

222. *Id.*

the findings from this research may benefit the Italian public as a whole.

Implementing restrictions on the creation of embryos for research purposes would also alleviate the Catholic Church's concerns about the possibility of using these embryos to create organisms other than humans. Article 3 of the Stem Cell Research Act also explicitly prohibits the creation of a clone, chimera, or hybrid.²²³ Referring back to the *Donum Vitae*, the Catholic Church fears the possibility of creating these nonhuman beings as a result of allowing research and experimentation on embryos.²²⁴ By explicitly banning this possibility, Italy can both reap the benefits of this type of research and also conform to the beliefs of the Catholic Church by restricting the types of experimentation and research that can be done using embryos.

C. Switzerland Permits Individuals to Make an Independent and Informed Choice to Donate Surplus Embryos for Scientific Research

Switzerland's regulations also ensure that patients are not in a position to be coerced or lured into donating their embryos by medical professionals with an ulterior motive. Under Article 6 of the Stem Cell Research Act, the medical professional involved in the procurement of stem cells from a surplus embryo cannot be the same professional to facilitate the IVF procedure of the couple concerned.²²⁵ Referring back to *Donum Vitae*, the Catholic Church views the medical profession and practices in the medical field to be in strict contrast to those in the Catholic Church, as doctors and medical professionals have a unique position of power over their patients.²²⁶ Physicians, hypothetically, could also have a different motive than their patients: whereas a patient may want to become a parent, a physician may want to create embryos with the hopes of experimenting and conducting unique research that may receive notoriety. By mandating that a different medical professional discuss using surplus embryos for research purposes with the couple, Italy would be reassured

223. *Id.* art. 1.

224. See *Donum Vitae*, *supra* note 33.

225. SWISS FEDERAL ACT ON RESEARCH INVOLVING EMBRYONIC STEM CELLS art. 6.

226. *Donum Vitae*, *supra* note 33.

that the Italian people are not being taken advantage of by medical professionals driven by an ulterior motive.

While Switzerland requires that a separate medical professional educate patients on the possibility of utilizing surplus embryos for research purposes, Switzerland also requires informed consent by the couple. Under Article 5 of the Stem Cell Research Act, a couple must give consent freely and without coercion in order for a medical professional to obtain embryonic stem cells from the surplus embryo.²²⁷ Most importantly, in order to meet this requisite level of consent, the couple must be given information both verbally and in writing detailing the use of the surplus embryo.²²⁸ The embryo must also be labeled as "surplus" before a medical professional can discuss the possibility of donating the surplus embryos for research with the patient.²²⁹ In the context of Italy, requiring this information to be delivered both verbally and in writing would help to ensure that Italian couples have the opportunity to learn about this process independently and to ask a medical professional any questions they have about the process. Italy would have the comfort of knowing that Italians who choose to donate their surplus embryos are not the victims of biased medical professionals and are adequately informed about the subsequent process.

Switzerland also accounts for situations like Parrillo's, where one partner passes prior to the implantation of embryos. According to Article 5 of the Stem Cell Research Act, "[i]n the event of one partner's death, the decision concerning the use of the embryo for stem cell derivation shall be taken by the surviving partner; he or she must have regard to the declared or presumed wishes of the deceased."²³⁰ Article 5 thus allows individuals like Parrillo, who survive a deceased partner, to make an independent decision for both herself and her deceased partner with respect to embryos taken through assisted reproduction technology. Although it is unclear whether Parrillo could vouch for the specific wishes of her husband,²³¹ implementing legislation with this provision in Italy would invite more conversations about

227. SWISS FEDERAL ACT ON RESEARCH INVOLVING EMBRYONIC STEM CELLS art. 5.

228. *Id.*

229. *Id.*

230. *Id.*

231. The ECtHR noted that the wishes of Parrillo's husband were missing due to his untimely death. *Parrillo v. Italy*, 2015 Eur. Ct. H.R. 43.

what should be done in the event of an unexpected death. Implementing legislation similar to the Stem Cell Research Act also may reassure the Italian government that Italians understand the implications of donating embryos for research and will make legislatures hesitate before they decide to step in and intervene.

D. Italians Already Travel to Neighboring Countries to Obtain IVF Services

Italy should consider adopting legislation similar to Switzerland's because many Italians are already seeking IVF treatment in foreign countries.²³² After Law 40 was implemented, doctors reported that the clinical pregnancy rate declined from 24 to 18 percent in Italy.²³³ An Italian magazine estimated that the number of Italian women going abroad for assisted reproduction has tripled since the implementation of Law 40 in 2004.²³⁴ In a 2009 study conducted by the ESHRE Task Force, it was estimated that between eleven thousand and fourteen thousand people sought IVF treatment in Belgium, the Czech Republic, Denmark, Switzerland, Spain, and Slovenia alone,²³⁵ with the largest represented population being the Italians.²³⁶ Of the Italians who participated in the study, 70.6 percent said the reason they went abroad for treatment was to avoid the legal restrictions of Italy's assisted reproduction laws.²³⁷ Some Italian gynecologists are recommending and encouraging their patients go to other countries when they are seeking assisted fertility treatments.²³⁸ Further, the 2009 ESHRE survey also found that most Italians travelled to either Switzerland or Spain for IVF treatment.²³⁹

232. Benagiano et al., *supra* note 200, at 662.

233. Rodgers Bundren, *supra* note 121, at 733.

234. Wilkinson, *supra* note 80.

235. *Infertility Tourism: Cross-Border Reproductive Care in Europe*, *supra* note 199.

236. Approximately 31.8 percent of the total cross-border patients were Italians. F. Shenfield et al., *Cross Border Reproductive Care in Six European Countries*, 25 HUM. REPROD. 1361, 1363 (2010), <http://humrep.oxfordjournals.org/content/25/6/1361.full.pdf+html>.

237. *Id.* at 1363.

238. Wilkinson, *supra* note 80; Wilkinson, *supra* note 114.

239. *Infertility Tourism: Cross-Border Reproductive Care in Europe*, *supra* note 199.

If Italians are already flocking to Switzerland in an effort to assert their rights over their reproductive health, there is an incentive for Italy to make changes in an effort to accommodate Italians, as this would allow the country to benefit financially from providing the IVF treatments and from overseeing the application of these services to promote the wellbeing of its citizens. Ultimately, Italians are choosing to bypass Italian reproductive clinics and are going abroad to avoid these stringent laws,²⁴⁰ which minimizes the actual control Italy maintains over its citizens. Italy has the ability to not only strengthen its control over Italians undergoing reproductive technologies but also give Italians the ability to feel autonomous by implementing regulations similar to those of Switzerland.

Italy would also benefit financially and medically if it amends Law 40 or adopts regulations similar to Switzerland's Stem Cell Research Act. Italians are already crossing borders to receive this treatment, paying for the procedures, and returning to Italy impregnated. Italy's laws are not serving their intended purpose—to oversee the process by which Italians access assisted reproductive technologies. Additionally, other foreign countries, such as Switzerland, are benefiting financially for performing these services. According to a report by Allied Market Research, the global IVF market is projected to reach \$11.3 billion USD by 2021.²⁴¹ On average, IVF treatment in the major infertility treatment destinations can cost between \$3,000 to 6,000 USD,²⁴² and this figure does not take into consideration hormonal treatments that may be needed or the cost of donor eggs/sperm.²⁴³ There are also no guarantees that the first cycle will be successful.²⁴⁴ Taking this process into consideration as a whole, Italy could stand

240. Luca Gianaroli et al., *Reiterative Changes in the Italian Regulation on IVF: The Effect on PGD Patients' Reproductive Decisions*, 28 REPROD. BIOMED. ONLINE 125, 126 (2014), [http://www.rbmojournal.com/article/S1472-6483\(13\)00508-7/pdf](http://www.rbmojournal.com/article/S1472-6483(13)00508-7/pdf).

241. *World In-vitro Fertilization (IVF) Services Market - Opportunities and Forecasts, 2014 – 2021*, ALLIED MKT. RES. (June 2015), <https://www.alliedmarketresearch.com/IVF-in-vitro-fertilization-services-market>.

242. *What Is the Cost of Infertility Treatment Abroad?*, FERTILITY TREATMENT ABROAD, <http://fertility.treatmentabroad.com/going-abroad-for-treatment/what-does-ivf-cost> (last visited Jan. 6, 2016).

243. *Id.*

244. A 2009 study published by *the New England Journal of Medicine* estimated that the success rate for in vitro fertilization was about 40 percent for a

to gain a minimum of \$3,000 to 6,000 USD for one pregnancy alone. This figure could also be substantially larger if additional treatments are needed or if the IVF cycle is unsuccessful. Thus, Italy stands to benefit financially by allowing Italians, such as Parrillo, to have more control over their decisions regarding reproductive health.

Implementing these regulations would also enable Italian researchers to study human embryonic stem cell lines, which could lead to monumental research about disease development and disease treatment.²⁴⁵ As mentioned earlier, embryonic stem cells are incredibly valuable as they can transform into a number of different types of cells, which enables researchers to conduct different types of research.²⁴⁶ Any research and findings from the experimentation on embryonic stem cells could benefit both Italians seeking IVF and also Italian society as a whole.

CONCLUSION

Adelina Parrillo's long and heartbreaking journey through the Italian Court System and the ECtHR should not be perceived as a win for Italy. In the absence of legal reform, this arduous process will become the norm, and Italy will not be in a position to ensure the protection of its citizens' rights. Instead, Italians must seek such treatment elsewhere or risk a lengthy litigation process. The reproductive rights of Italians will remain vulnerable in their home country, and other Italian citizens will be without such a remedy.

In order to prevent such a situation, Italy should loosen some of the restrictions of Law 40 and implement the regulations employed by Switzerland. Adjusting the provisions of Law 40 could protect the rights of Italians seeking assisted reproductive technologies while also abiding by the teachings of the Catholic Church. Reforming this legislation would also benefit the Italian public, even those who are not undergoing IVF treatments or processes, both scientifically and financially. Parrillo's lengthy and exhausting litigation has highlighted Law 40's inability to

patient less than thirty-five years of age. Patti Neighmond, *Study: Sixth Time May Be Charm For In Vitro*, NPR (Jan. 21, 2009), <http://www.npr.org/templates/story/story.php?storyId=99654924>.

245. See generally *Stem Cell Research: Embryo Donation*, U. MICH., <http://www.stemcellresearch.umich.edu/donation/donors.html> (last visited Jan. 10, 2016).

246. Devitt, *supra* note 58.

properly protect the reproductive rights of Italians, and until such revisions are made, Italians' reproductive rights will remain unprotected.

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