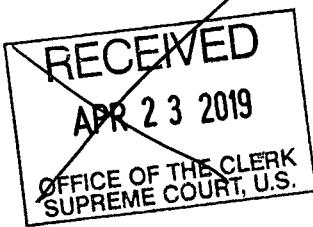


No. 18-8315



Supreme Court of the United States

Tatyana Evgenievna Drevaleva

Petitioner Pro Se

vs.

FILED

APR 19 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

- 1) The U.S. Department of Veterans Affairs
- 2) Mr. Robert Wilkie in his capacity as an acting Secretary of the U.S.

Department of Veterans Affairs

Respondents

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Ninth
Circuit

PETITION FOR REHEARING,

Rule 44(2) of the Rules of the U.S. Supreme Court

Tatyana E. Drevaleva

Petitioner Pro Se

Petition for Rehearing.

Petitioner Pro Se Tatyana E. Drevaleva is hereby submitting a Petition for Rehearing pursuant to Rule 44(2) of the Rules of the U.S. Supreme Court. Tatyana Drevaleva moves this Court to grant this Petition for Rehearing and to consider this case with merits briefing and oral argument.

Reasons for Granting the Petition.

This Petition shall be granted because Tatyana Drevaleva is required by law to get immediately reinstated back to work after being discriminated against my desire to get pregnant, against my sex (I am a female), against my age, and against my temporary disability that was related to taking time off to undergo an In-Vitro Fertilization procedure in Russia. All anti-discrimination statutes such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 direct the Courts to reinstate a victim of employment discrimination back to work and to award the victim a full compensation of a lost salary, benefits, and other lost opportunities. It is a clear intention of the Congress to end discrimination at a work place. No one employer including the Federal Government is immune for being sued for discrimination. All employers including the Federal Government are liable for committing the Title VII discrimination crime and both the ADEA and the Rehabilitation Act discrimination.

Moreover, I am submitting the Order of the Court of Appeals for the 9th Circuit dated February 28, 2019 that affirmed the Order of the District Court to deny my Motion for Preliminary Injunction. The 9th Circuit didn't explain the reasons of the denial and prohibited me to submit any further filings. Therefore, I can't obtain the relief from any other Court excepting the U.S. Supreme Court. Therefore, I am respectfully asking the U.S. Supreme Court to grant my Petition for Rehearing and to immediately reinstate me back to work at any VAMC.

Statement of Facts.

I was thrown out of my full time job as a Medical Instrument Technician (EKG) from the Raymond G. Murphy VAMC in 2017 for taking time off to undergo an In-Vitro Fertilization procedure in Russia. After firing me, Manager Ms. Dunkelberger hired two young male Monitor Technicians to substitute me. Obviously, the male employees will not have problems with pregnancy.

Legal Standard.

First cause of action – Pregnancy Discrimination. The Agency discriminated and fired me for my attempt to get pregnant.

Read 42 U.S.C. §2000e(k), “The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise.”

Read 29 CFR Appendix to Part 1604, Questions and Answers on the Pregnancy Discrimination Act, Public Law 95-555, 92 Stat. 2076 (1978),

“5. Q. If, for pregnancy-related reasons, an employee is unable to perform the functions of her job, does the employer have to provide her an alternative job? A. An employer is required to treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition in the same manner as it treats other temporarily disabled employees, whether by providing modified tasks, alternative assignments, disability leaves, leaves without pay, etc...

6. Q. What procedures may an employer use to determine whether to place on leave as unable to work a pregnant employee who claims she is able to work or deny leave to a pregnant employee who claims that she is disabled from work? A. An

employer may not single out pregnancy-related conditions for special procedures for determining an employee's ability to work. However, an employer may use any procedure used to determine the ability of all employees to work. For example, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statement. Similarly, if an employer allows its employees to obtain doctor's statements from their personal physicians for absences due to other disabilities or return dates from other disabilities, it must accept doctor's statements from personal physicians for absences and return dates connected with pregnancy-related disabilities.

7. Q. Can an employer have a rule which prohibits an employee from returning to work for a predetermined length of time after childbirth? A. No.

8. Q. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, may her employer require her to remain on leave until after her baby is born? A. No. An employee must be permitted to work at all times during pregnancy when she is able to perform her job.

9. Q. Must an employer hold open the job of an employee who is absent on leave because she is temporarily disabled by pregnancy-related conditions? A. Unless the employee on leave has informed the employer that she does not intend to return to work, her job must be held open for her return on the same basis as jobs are held open for employees on sick or disability leave for other reasons.”

In 1976, in *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976), the Supreme Court confronted the question of whether pregnancy discrimination qualified as discrimination “because of sex” under Title VII of the 1964 Civil Rights Act. The Court concluded that “[t]he legislative history of Title VII’s prohibition of sex discrimination[,] . . . notable primarily for its brevity,” shed little light on this question. In place of legislative history, the Court turned to “tradition” for guidance in interpreting the statute.

“Traditionally,” the Court asserted, discrimination was defined as the division of individuals into two groups on the basis of a protected trait — as when Jim Crow laws reserved some water fountains for whites and others for blacks. Thus, the Court reasoned that an employment practice would not have been considered discrimination “because of sex,” circa 1964, unless it divided men and women into two groups, perfectly differentiated along biological sex lines. The Court suggested that to interpret Title VII’s sex provision in any other way would be “to depart from the longstanding meaning of ‘discrimination,’” which must have guided Congress when it passed the Civil Rights Act. Pledging deference to the legislature, and fidelity to tradition, the Court held in *Gilbert* that pregnancy discrimination did not constitute discrimination “because of sex” because it did not fall within the longstanding parameters of that term.”

Read *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976), “*Geduldig* established the proposition that a pregnancy classification [429 U.S. 125, 149] standing alone cannot be said to fall into the category of classifications that rest explicitly on “gender as such,” 417 U.S., at 496 n. 20.”

Read *Hall v. Nalco Co.*, No. 06-3684, 7th Circuit (2008), “Cheryl Hall maintains she was fired by Nalco Company for taking time off from work to undergo in vitro fertilization after being diagnosed with infertility.... Although infertility affects both men and women, Hall claims she was terminated for undergoing a medical procedure-a particular form of surgical impregnation-performed only on women on account of their childbearing capacity. Because adverse employment actions taken on account of childbearing capacity affect only women, Hall has stated a cognizable sex-discrimination claim under the language of the PDA.”

Read the case law cited by the 7th Circuit in *Hall v Nalco* to support its holding that the infertility treatment violates the Pregnancy Discrimination Act:

1) *Accord Erickson v. Bd. of Governors of State Colls. & Univs. for Ne. Ill. Univ.*, 911 F.Supp. 316, 320 (N.D.Ill.1995) (discharge of woman for undergoing infertility

treatment constitutes discharge because of her capacity to become pregnant, stating a claim under Title VII)

2) *Pacourek v. Inland Steel Co.*, 858 F.Supp. 1393, 1403 (N.D.Ill.1994) (termination for undergoing IVF violates Title VII because “employers are to treat a woman's medical infertility with neutrality-the same general command of the PDA regarding pregnancy itself”).

Second case of action – Sex Discrimination. The Agency fired me for being a woman, and the Agency hired two male employees to substitute me.

Read Title VII, Civil Rights Act of 1964, as amended (42 U.S. Code § 2000e–16 - Employment by Federal Government),

“(a) *Discriminatory practices prohibited; employees or applicants for employment subject to coverage.* All personnel actions affecting employees or applicants for employment ... shall be made free from any discrimination based on race, color, religion, sex, or national origin.”

“(e) *Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity.* Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.”

Read the Executive Order 11478 -- Equal employment opportunity in the Federal Government,

“Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Section 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

Sec. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.”

Read the Pregnancy Discrimination Act of 1978,

“That section 701 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise..."

Third cause of action – Age Discrimination. The Agency fired me because I was 50 yo and hired two employees who were 30 and 35 yo.

Read the Age Discrimination in Employment Act (ADEA) or 29 U.S. Code § 633a
- Nondiscrimination on account of age in Federal Government employment,

"(c) Civil actions; jurisdiction; relief

Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter."

Read 29 CFR 1625.2 - Discrimination prohibited by the Act, "It is unlawful for an employer to discriminate against an individual in any aspect of employment because that individual is 40 years old or older."

Fourth cause of action – Disability Discrimination, Failure to Provide me with Reasonable Accommodations in violation of the Rehabilitation Act of 1973. The Agency failed to provide me with a reasonable accommodation for my trip to Russia to undergo an IVF procedure.

Read The Americans with Disabilities Act of 1990 (ADA) – 42 U.S.C. §12102,

"(1) *Disability.* The term "disability" means, with respect to an individual—

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment (as described in paragraph (3)).

(2) *Major life activities*

- (B) Major bodily functions. For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including ... reproductive functions.

(3) *Regarded as having such an impairment.* For purposes of paragraph (1)(C):

- (A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.”

(4) *Rules of construction regarding the definition of disability*

- (C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(9) *Reasonable accommodation.* The term “reasonable accommodation” may include—

- (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, ... and other similar accommodations for individuals with disabilities.”

Read 42 U.S.C. §12112. Discrimination

“(a) *General rule.* No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”

Read the Opinion of the U.S. Supreme Court in *Bragdon v Abbott*, 524 U.S. 624 (1998),

“From the outset, however, the case has been treated as one in which reproduction was the major life activity limited by the impairment. It is our practice to decide cases on the grounds raised and considered in the Court of Appeals and included in the question on which we granted certiorari. See, e.g., *Blessing v. Freestone*, 520 U.S. 329, 340, n. 3 (1997) (citing this Court’s Rule 14.1(a)); *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). We ask, then, whether reproduction is a major life activity.

We have little difficulty concluding that it is. As the Court of Appeals held, “[t]he plain meaning of the word ‘major’ denotes comparative importance” and “suggest[s] that the touchstone for determining an activity’s inclusion under the statutory rubric is its significance.” 107 F.3d, at 939, 940. Reproduction falls well within the phrase “major life activity.” Reproduction and the sexual dynamics surrounding it are central to the life process itself.”

“...the Rehabilitation Act regulations support the inclusion of reproduction as a major life activity, since reproduction could not be regarded as any less important than working and learning.”

Read the Opinion of the U.S. Supreme Court in *Geduldig v. Aiello*, 417 U.S. 484 (1974), “Disabilities caused by pregnancy, however, like other physically disabling conditions covered by the Code, require medical care, often include hospitalization, anesthesia and surgical procedures, and may involve genuine risk to life. Moreover, the economic effects [417 U.S. 484, 501] caused by pregnancy-related disabilities are

functionally indistinguishable from the effects caused by any other disability: wages are lost due to a physical inability to work, and medical expenses are incurred for the delivery of the child and for postpartum care.”

Under *Geduldig*, employers are obligated to provide employees with a Sick Leave and Accumulated Annual Leave to treat pregnancy-related disabilities, “Therefore, it follows that any alleged financial burden on the State will be greatly diminished when employers adhere to Title VII and treat pregnancy-related disabilities the same as other disabilities by allowing women to use accumulated sick leave and possibly annual leave as well.” Brief for United States Equal Employment Opportunity Commission as Amicus Curiae 21 n. 12.” (Footnote 8).

Read the description of the In-Vitro Fertilization procedure on the web-site of Mayo Clinic (Exhibit 1). A prerequisite for an In-Vitro Fertilization procedure includes a complete physical examination including blood and urine tests, Electrocardiogram, the blood tests for the level of female hormones according to the days of the menstrual cycle, the surgical examination of the uterine cavity and taking a sample of endometrium for a pathology analysis (it is done in the Operating Room under general anesthesia, and a woman is hospitalized for one day for this procedure), and many other tests, The IVF procedure itself is usually performed during 10 - 14 days. During this time, the woman is given synthetic female hormones to induce the growth of follicles, and the woman undergoes multiple ultrasound examinations to observe the growth of the follicles, If the follicles grow, the physician performs a surgical procedure to puncture the abdominal cavity and remove the follicles from the ovaries. The follicles contain oocytes – the female cells that are designed to be combined with sperm. The puncture is done under general anesthesia in an Operating Room. The woman is hospitalized for one day. If the oocytes are received, the embryologist performs fertilization which could be either insemination (combining the oocyte with sperm) or intracytoplasmic sperm injection (the doctor inserts one healthy sperm cell into the oocyte). If a healthy embryo is received, it is inserted into the uterine cavity in a few days. If the woman becomes pregnant, she still

needs to be very careful not to perform heavy lifting or other job related hazards. The woman can choose to freeze the embryo and hire a surrogate Mom if it is appropriate.

In order to undergo all prerequisites and an IVF procedure itself, a woman often needs to take time off work because it could be impossible to combine multiple tests, surgical procedures such as to examine the uterine cavity, ultrasound examinations, and performing job related tasks.

How the Plaintiff was affected by the discriminatory actions of the Agency.

As a result of discrimination, I have experienced the following adverse events:

- 1) Being unemployed for almost two years, losing my EKG reading skills
- 2) Losing a source of income and the Unemployment Insurance benefits
- 3) Not being able to pay for another IVF attempt and for the surrogate mother
- 4) Not being able to create a family and to have children
- 5) Not being able to purchase property such as a car and a house
- 6) Not being able to pay my debts off
- 7) Not being able to study, to obtain a degree in the United States, and to obtain a better paid job
- 8) Suffering from depression, mental anguish, chest pains, and other physical and emotional conditions that negatively affect my well-being.

Plaintiff's Demand for Damages.

Read 2 U.S. Code § 1311 - Rights and protections under title VII of Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967, Rehabilitation Act of 1973, and title I of Americans with Disabilities Act of 1990,

(a) Discriminatory practices prohibited. All personnel actions affecting covered employees shall be made free from any discrimination based on—

- (1) race, color, religion, sex, or national origin, within the meaning of section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2);
- (2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or
- (3) disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102 through 104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112-12114).

(b) Remedy

(1) Civil rights. The remedy for a violation of subsection (a)(1) shall be—

- (A) such remedy as would be appropriate if awarded under section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)); and
- (B) such compensatory damages as would be appropriate if awarded under section 1981 of title 42, or as would be appropriate if awarded under sections 1981a(a)(1), 1981a(b)(2), and, irrespective of the size of the employing office, 1981a(b)(3)(D) of title 42.

(2) Age discrimination. The remedy for a violation of subsection (a)(2) shall be—

- (A) such remedy as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)); and
- (B) such liquidated damages as would be appropriate if awarded under section 7(b) of such Act (29 U.S.C. 626(b)).

In addition, the waiver provisions of section 7(f) of such Act (29 U.S.C. 626(f)) shall apply to covered employees.

(3) Disabilities discrimination. The remedy for a violation of subsection (a)(3) shall be—

(A) such remedy as would be appropriate if awarded under section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)) or section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)); and

(B) such compensatory damages as would be appropriate if awarded under sections 1981a(a)(2), 1981a(a)(3), 1981a(b)(2), and, irrespective of the size of the employing office, 1981a(b)(3)(D) of title 42.”

Governmental Agency is not relieved from liability for violation of Title VII.

Read 42 U.S. Code §2000e-16 - Employment by Federal Government,

“(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e-5(e)(3) of this title applicable to compensation discrimination

Section 2000e-5(e)(3) of this title shall apply to complaints of discrimination in compensation under this section.”

Read 42 U.S. Code §2000e-5(3),

“(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this subchapter, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1981a of this title, liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.”

Read 42 U.S.C. 2000e-5(g),

“(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, **reinstatement or hiring of employees**, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate.”

Read 29 U.S. Code § 794a (the Rehabilitation Act) - Remedies and attorney fees

“(a) (1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e–5(f) through (k)) (and the application of section 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims of discrimination in compensation), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint....

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e–5), applied to claims of discrimination in compensation) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.”

The victims of employment discrimination shall be hired to substantially equivalent or better jobs. See *Donlin v. Philips Lighting North America Corporation d/b/a Philips Lighting Company*, Nos. 07-4060, 07-4081, 3rd Circuit (2009), “the law requires that she find new employment that is “better or substantially equivalent.” *Ford Motor*, 458 U.S. at 236, 102 S.Ct. 3057. “Substantially equivalent” employment affords “virtually identical promotional opportunities, compensation, job responsibilities, and status as the position from which the Title VII claimant has been discriminatorily terminated.” *Booker v. Taylor Milk Co.*, 64 F.3d 860, 866 (3d Cir.1995).”

Conclusion.

I am respectfully asking the U.S. Supreme Court to grant my Petition for Rehearing and to reinstate me back to work at any VAMC.

I declare under the penalty of perjury and under the Federal laws that all foregoing is true and correct. Executed at San Francisco, CA on April 19, 2019.

Respectfully submitted,



s/ Tatyana Drevaleva

Plaintiff-Appellant Pro Se

1063 Gilman Dr., Daly City, CA, 94015

415-806-9864, tdrevaleva@gmail.com

Date: April 19, 2019

CERTIFICATE OF COMPLIANCE.

This Petition was prepared using 4350 words.

Respectfully submitted,



s/ Tatyana Drevaleva

Plaintiff-Appellant Pro Se

1063 Gilman Dr., Daly City, CA, 94015

415-806-9864, tdrevaleva@gmail.com

Date: April 19, 2019

CERTIFICATION OF PETITIONER TATYANA E. DREVALEVA,

Rule 44(2) of the Rules of the U.S. Supreme Court.

Petitioner Pro Se Tatyana E. Drevaleva is hereby certifying that the grounds for this Petition for Rehearing are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented in my Petition for a Writ of Certiorari. This Petition for Rehearing is presented in good faith and not for the purpose of delaying the proceeding.

I declare under the penalty of perjury and under the Federal laws that all foregoing is true and correct. Executed at San Francisco, CA on April 19, 2019.

Respectfully submitted,

s/ Tatyana Drevaleva

Tatyana Drevaleva

Plaintiff-Appellant Pro Se

1063 Gilman Dr., Daly City, CA, 94015

415-806-9864, tdrevaleva@gmail.com

Date: April 19, 2019

Signature



Appendix

Exhibit 1.

The description of the In-Vitro
Fertilization procedure
described on the web-site of
the Mayo Clinic.



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In vitro fertilization (IVF) is a complex series of procedures used to treat fertility or genetic problems and assist with the conception of a child.

During IVF, mature eggs are collected (retrieved) from your ovaries and fertilized by sperm in a lab. Then the fertilized egg (embryo) or eggs are implanted in your uterus. One cycle of IVF takes about two weeks.

IVF is the most effective form of assisted reproductive technology. The procedure can be done using your own eggs and your partner's sperm. Or IVF may involve eggs, sperm or embryos from a known or anonymous donor. In some cases, a gestational carrier — a woman who has an embryo implanted in her uterus — might be used.

Your chances of having a healthy baby using IVF depend on many factors, such as your age and the cause of infertility. In addition, IVF can be time-consuming, expensive and invasive. If more than one embryo is implanted in your uterus, IVF can result in a pregnancy with more than one fetus (multiple pregnancy).

Your doctor can help you understand how IVF works, the potential risks and whether this method of treating infertility is right for you.

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In vitro fertilization (IVF) is a treatment for infertility or genetic problems. If IVF is performed to treat infertility, you and your partner might be able to try less invasive treatment options before attempting IVF, including fertility drugs to increase production of eggs or intrauterine insemination — a procedure in which sperm are placed directly in your uterus near the time of ovulation.

Sometimes, IVF is offered as a primary treatment for infertility in women over age 40. IVF can also be done if you have certain health conditions. For example, IVF may be an option if you or your partner has:

- **Fallopian tube damage or blockage.** Fallopian tube damage or blockage makes it difficult for an egg to be fertilized or for an embryo to travel to the uterus.
- **Ovulation disorders.** If ovulation is infrequent or absent, fewer eggs are available for fertilization.
- **Premature ovarian failure.** Premature ovarian failure is the loss of normal ovarian function before age 40. If your ovaries fail, they don't produce normal amounts of the hormone estrogen or have eggs to release regularly.
- **Endometriosis.** Endometriosis occurs when the uterine tissue implants and grows outside of the uterus — often affecting the function of the ovaries, uterus and fallopian tubes.
- **Uterine fibroids.** Fibroids are benign tumors in the wall of the uterus and are common in women in their 30s and 40s. Fibroids can interfere with implantation of the fertilized egg.
- **Previous tubal sterilization or removal.** If you've had tubal ligation — a type of sterilization in which your fallopian tubes are cut or blocked to permanently prevent pregnancy — and want to conceive, IVF may be an alternative to tubal ligation reversal.
- **Impaired sperm production or function.** Below-average sperm concentration, weak movement of sperm (poor mobility), or abnormalities in sperm size and shape can make it difficult for sperm to fertilize an egg. If semen abnormalities are found, your partner might need to see a specialist to determine if there are correctable problems or underlying health concerns.
- **Unexplained infertility.** Unexplained infertility means no cause of infertility has been found despite evaluation for common causes.
- **A genetic disorder.** If you or your partner is at risk of passing on a genetic disorder to your child, you may be candidates for preimplantation genetic diagnosis — a procedure that involves IVF. After the eggs are harvested and fertilized, they're screened for certain genetic problems, although not all genetic problems can be found. Embryos that don't contain identified problems can be transferred to the uterus.

- **Fertility preservation for cancer or other health conditions.** If you're about to start cancer treatment — such as radiation or chemotherapy — that could harm your fertility, IVF for fertility preservation may be an option. Women can have eggs harvested from their ovaries and frozen in an unfertilized state for later use. Or the eggs can be fertilized and frozen as embryos for future use.

Women who don't have a functional uterus or for whom pregnancy poses a serious health risk might choose IVF using another person to carry the pregnancy (gestational carrier). In this case, the woman's eggs are fertilized with sperm, but the resulting embryos are placed in the gestational carrier's uterus.

Request an Appointment at Mayo Clinic

Risks

Specific steps of an in vitro fertilization (IVF) cycle carry risks, including:

- **Multiple births.** IVF increases the risk of multiple births if more than one embryo is implanted in your uterus. A pregnancy with multiple fetuses carries a higher risk of early labor and low birth weight than pregnancy with a single fetus does.
- **Premature delivery and low birth weight.** Research suggests that use of IVF slightly increases the risk that a baby will be born early or with a low birth weight.
- **Ovarian hyperstimulation syndrome.** Use of injectable fertility drugs, such as human chorionic gonadotropin (HCG), to induce ovulation can cause ovarian hyperstimulation syndrome, in which your ovaries become swollen and painful.

Signs and symptoms typically last a week and include mild abdominal pain, bloating, nausea, vomiting and diarrhea. If you become pregnant, however, your symptoms might last several weeks. Rarely, it's possible to develop a more-severe form of ovarian hyperstimulation syndrome that can also cause rapid weight gain and shortness of breath.

- **Miscarriage.** The rate of miscarriage for women who conceive using IVF with fresh embryos is similar to that of women who conceive naturally — about 15 to 25 percent — but the rate increases with maternal age. Use of frozen embryos during IVF, however, may slightly increase the risk of miscarriage.
- **Egg-retrieval procedure complications.** Use of an aspirating needle to collect eggs could possibly cause bleeding, infection or damage to

the bowel, bladder or a blood vessel. Risks are also associated with general anesthesia, if used.

- **Ectopic pregnancy.** About 2 to 5 percent of women who use IVF will have an ectopic pregnancy — when the fertilized egg implants outside the uterus, usually in a fallopian tube. The fertilized egg can't survive outside the uterus, and there's no way to continue the pregnancy.
- **Birth defects.** The age of the mother is the primary risk factor in the development of birth defects, no matter how the child is conceived. More research is needed to determine whether babies conceived using IVF might be at increased risk of certain birth defects. Some experts believe that the use of IVF does not increase the risk of having a baby with birth defects.
- **Ovarian cancer.** Although some early studies suggested there may be a link between certain medications used to stimulate egg growth and the development of a specific type of ovarian tumor, more recent studies do not support these findings.
- **Stress.** Use of IVF can be financially, physically and emotionally draining. Support from counselors, family and friends can help you and your partner through the ups and downs of infertility treatment.

How you prepare

The Centers for Disease Control and Prevention and the Society for Assisted Reproductive Technology provide information online about U.S. clinics' individual pregnancy and live birth rates.

When choosing an in vitro fertilization (IVF) clinic, keep in mind that a clinic's success rate depends on many factors, such as patients' ages and medical issues, as well as the clinic's treatment population and treatment approaches. Ask for detailed information about the costs associated with each step of the procedure.

Before beginning a cycle of IVF using your own eggs and sperm, you and your partner will likely need various screenings, including:

- **Ovarian reserve testing.** To determine the quantity and quality of your eggs, your doctor might test the concentration of follicle-stimulating hormone (FSH), estradiol (estrogen) and antimullerian hormone in your blood during the first few days of your menstrual cycle. Test results, often used together with an ultrasound of your ovaries, can help predict how your ovaries will respond to fertility medication.
- **Semen analysis.** If not done as part of your initial fertility evaluation, your doctor will conduct a semen analysis shortly before the start of an IVF treatment cycle.

- **Infectious disease screening.** You and your partner will both be screened for infectious diseases, including HIV.
- **Practice (mock) embryo transfer.** Your doctor might conduct a mock embryo transfer to determine the depth of your uterine cavity and the technique most likely to successfully place the embryos into your uterus.
- **Uterine cavity exam.** Your doctor will examine your uterine cavity before you start IVF. This might involve a sonohysterography — in which fluid is injected through the cervix into your uterus — and an ultrasound to create images of your uterine cavity. Or it might include a hysteroscopy — in which a thin, flexible, lighted telescope (hysteroscope) is inserted through your vagina and cervix into your uterus.

Before beginning a cycle of IVF, consider important questions, including:

- **How many embryos will be transferred?** The number of embryos transferred is typically based on the age and number of eggs retrieved. Since the rate of implantation is lower for older women, more embryos are usually transferred — except for women using donor eggs.

Most doctors follow specific guidelines to prevent a higher order multiple pregnancy — triplets or more — and in some countries, legislation limits the number of embryos that can be transferred at once. Make sure you and your doctor agree on the number of embryos that will be transferred before the transfer procedure.

- **What will you do with any extra embryos?** Extra embryos can be frozen and stored for future use for several years. Not all embryos will survive the freezing and thawing process, although most will.

Cryopreservation can make future cycles of IVF less expensive and less invasive. However, the live birth rate from frozen embryos is slightly lower than the live birth rate from fresh embryos. Or, you might be able to donate unused frozen embryos to another couple or a research facility. You might also choose to discard unused embryos.

- **How will you handle a multiple pregnancy?** If more than one embryo is transferred to your uterus, IVF can result in a multiple pregnancy — which poses health risks for you and your babies. In some cases, fetal reduction can be used to help a woman deliver fewer babies with lower health risks. Pursuing fetal reduction, however, is a major decision with ethical, emotional and psychological consequences.

- **Have you considered the potential complications associated with using donor eggs, sperm or embryos or a gestational carrier?** A trained counselor with expertise in donor issues can help you understand the concerns, such as the legal rights of the donor. You also may need an attorney to file court papers to help you become legal

parents of an implanted embryo.

What you can expect

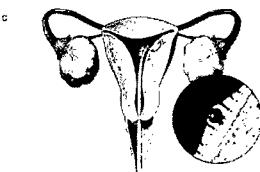
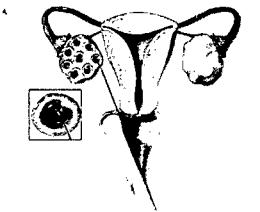
In vitro fertilization (IVF) involves several steps — ovulation induction, egg retrieval, sperm retrieval, fertilization and embryo transfer. One cycle of IVF can take about two weeks, and more than one cycle may be required.

Ovulation induction

If you're using your own eggs during IVF, at the start of a cycle you'll begin treatment with synthetic hormones to stimulate your ovaries to produce multiple eggs — rather than the single egg that normally develops each month. Multiple eggs are needed because some eggs won't fertilize or develop normally after fertilization.

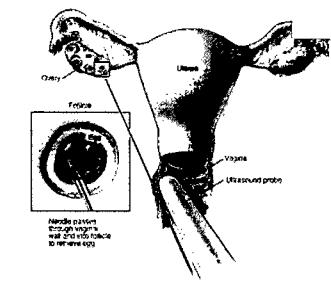
You may need several different medications, such as:

- **Medications for ovarian stimulation.** To stimulate your ovaries, you might receive an injectable medication containing a follicle-stimulating hormone (FSH), a luteinizing hormone (LH) or a combination of both. These medications stimulate more than one egg to develop at a time.
- **Medications for oocyte maturation.** When the follicles are ready for egg retrieval — generally after eight to 14 days — you will take human chorionic gonadotropin (HCG) or other medications to help the eggs mature.
- **Medications to prevent premature ovulation.** These medications prevent your body from releasing the developing eggs too soon.
- **Medications to prepare the lining of your uterus.** On the day of egg retrieval or at the time of embryo transfer, your doctor might recommend that you begin taking progesterone supplements to make the



In vitro fertilization

During in vitro fertilization, eggs are removed from mature follicles within an ovary (A). An egg is fertilized by injecting a single sperm into the egg or mixing the egg with sperm in a petri dish (B). The fertilized egg (embryo) is transferred into the uterus (C).



Egg retrieval technique

Typically, transvaginal ultrasound aspiration is used to retrieve eggs. During this procedure, an ultrasound probe is inserted into your vagina to identify follicles, and a needle is guided through the vagina and into the follicles. The eggs are removed from the follicles through the needle, which is connected to a suction device.

lining of your uterus more receptive to implantation.

Your doctor will work with you to determine which medications to use and when to use them.

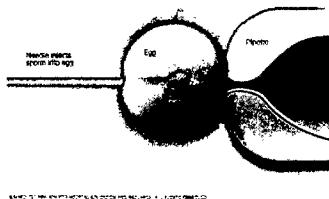
Typically, you'll need one to two weeks of ovarian stimulation before your eggs are ready for retrieval. To determine when the eggs are ready for collection, your doctor will likely perform:

- **Vaginal ultrasound**, an imaging exam of your ovaries to monitor the development of follicles — fluid-filled ovarian sacs where eggs mature
- **Blood tests**, to measure your response to ovarian stimulation medications — estrogen levels typically increase as follicles develop and progesterone levels remain low until after ovulation

Sometimes IVF cycles need to be canceled before egg retrieval for one of these reasons:

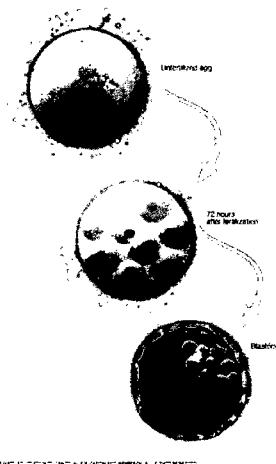
- Inadequate number of follicles developing
- Premature ovulation
- Too many follicles developing, creating a risk of ovarian hyperstimulation syndrome
- Other medical issues

If your cycle is canceled, your doctor might recommend changing medications or their doses to promote a better response during future IVF cycles. Or you may be advised that you need an egg donor.



ICSI

In intracytoplasmic sperm injection (ICSI), a single healthy sperm is injected directly into each mature egg. ICSI is often used when semen quality or number is a problem or if fertilization attempts during prior in vitro fertilization cycles failed.



Blastocyst

Three days after fertilization, a normally developing embryo will contain about six to 10 cells. By the fifth or sixth day, the fertilized egg is known as a blastocyst — a rapidly dividing ball of cells. The inner group of cells will become the embryo. The outer group will become the cells that nourish and protect it.

Egg retrieval

Egg retrieval can be done in your doctor's office or a clinic 34 to 36 hours after the final injection and before ovulation.

- During egg retrieval, you'll be sedated and given pain medication.

- Transvaginal ultrasound aspiration is the usual retrieval method. An ultrasound probe is inserted into your vagina to identify follicles. Then a thin needle is inserted into an ultrasound guide to go through the vagina and into the follicles to retrieve the eggs.
- If your ovaries aren't accessible through transvaginal ultrasound, an abdominal surgery or laparoscopy — a procedure in which a tiny incision is made near your navel and a slender viewing instrument (laparoscope) is inserted — may be used to guide the needle.
- The eggs are removed from the follicles through a needle connected to a suction device. Multiple eggs can be removed in about 20 minutes.
- After egg retrieval, you may experience cramping and feelings of fullness or pressure.
- Mature eggs are placed in a nutritive liquid (culture medium) and incubated. Eggs that appear healthy and mature will be mixed with sperm to attempt to create embryos. However, not all eggs may be successfully fertilized.

Sperm retrieval

If you're using your partner's sperm, he'll provide a semen sample at your doctor's office or a clinic through masturbation the morning of egg retrieval. Other methods, such as testicular aspiration — the use of a needle or surgical procedure to extract sperm directly from the testicle — are sometimes required. Donor sperm also can be used. Sperm are separated from the semen fluid in the lab.

Fertilization

Fertilization can be attempted using two common methods:

- **Insemination.** During insemination, healthy sperm and mature eggs are mixed and incubated overnight.
- **Intracytoplasmic sperm injection (ICSI).** In ICSI, a single healthy sperm is injected directly into each mature egg. ICSI is often used when semen quality or number is a problem or if fertilization attempts during prior IVF cycles failed.

In certain situations, your doctor may recommend other procedures before embryo transfer.

- **Assisted hatching.** About five to six days after fertilization, an embryo "hatches" from its surrounding membrane (zona pellucida), allowing it to implant into the lining of the uterus. If you're an older woman, or if you have had multiple failed IVF attempts, your doctor might

recommend assisted hatching — a technique in which a hole is made in the zona pellucida just before transfer to help the embryo hatch and implant.

- **Preimplantation genetic testing.** Embryos are allowed to develop in the incubator until they reach a stage where a small sample can be removed and tested for specific genetic diseases or the correct number of chromosomes, typically after five to six days of development. Embryos that don't contain affected genes or chromosomes can be transferred to your uterus. While preimplantation genetic testing can reduce the likelihood that a parent will pass on a genetic problem, it can't eliminate the risk. Prenatal testing may still be recommended.

Embryo transfer

Embryo transfer is done at your doctor's office or a clinic and usually takes place two to six days after egg retrieval.

- You might be given a mild sedative. The procedure is usually painless, although you might experience mild cramping.
- The doctor or nurse will insert a long, thin, flexible tube called a catheter into your vagina, through your cervix and into your uterus.
- A syringe containing one or more embryos suspended in a small amount of fluid is attached to the end of the catheter.
- Using the syringe, the doctor or nurse places the embryo or embryos into your uterus.

If successful, an embryo will implant in the lining of your uterus about six to 10 days after egg retrieval.

After the procedure

After the embryo transfer, you can resume your normal daily activities. However, your ovaries may still be enlarged. Consider avoiding vigorous activity, which could cause discomfort.

Typical side effects include:

- Passing a small amount of clear or bloody fluid shortly after the procedure — due to the swabbing of the cervix before the embryo transfer
- Breast tenderness due to high estrogen levels
- Mild bloating
- Mild cramping

- Constipation

If you develop moderate or severe pain after the embryo transfer, contact your doctor. He or she will evaluate you for complications such as infection, twisting of an ovary (ovarian torsion) and severe ovarian hyperstimulation syndrome.

Results

About 12 days to two weeks after egg retrieval, your doctor will test a sample of your blood to detect whether you're pregnant.

- **If you're pregnant**, your doctor will refer you to an obstetrician or other pregnancy specialist for prenatal care.
- **If you're not pregnant**, you'll stop taking progesterone and likely get your period within a week. If you don't get your period or you have unusual bleeding, contact your doctor. If you're interested in attempting another cycle of in vitro fertilization (IVF), your doctor might suggest steps you can take to improve your chances of getting pregnant through IVF.

The chances of giving birth to a healthy baby after using IVF depend on various factors, including:

- **Maternal age.** The younger you are, the more likely you are to get pregnant and give birth to a healthy baby using your own eggs during IVF. Women age 41 and older are often counseled to consider using donor eggs during IVF to increase the chances of success.
- **Embryo status.** Transfer of embryos that are more developed is associated with higher pregnancy rates compared with less developed embryos (day two or three). However, not all embryos survive the development process. Talk with your doctor or other care provider about your specific situation.
- **Reproductive history.** Women who've previously given birth are more likely to be able to get pregnant using IVF than are women who've never given birth. Success rates are lower for women who've previously used IVF multiple times but didn't get pregnant.
- **Cause of infertility.** Having a normal supply of eggs increases your chances of being able to get pregnant using IVF. Women who have severe endometriosis are less likely to be able to get pregnant using IVF than are women who have unexplained infertility.
- **Lifestyle factors.** Women who smoke typically have fewer eggs retrieved during IVF and may miscarry more often. Smoking can lower a woman's chance of success using IVF by 50 percent. Obesity can

decrease your chances of getting pregnant and having a baby. Use of alcohol, recreational drugs, excessive caffeine and certain medications also can be harmful.

Talk with your doctor about any factors that apply to you and how they may affect your chances of a successful pregnancy.

By Mayo Clinic Staff

Request an Appointment at Mayo Clinic

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Mayo Clinic is a not-for-profit organization. Make a donation.

Exhibit 2.

The Order of the Court of Appeals for the 9th Circuit that affirmed the December 03, 2018 Order of the District Court denying my Preliminary Injunction Appeal and prohibited me to submit further filings in this matter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 28 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TATYANA EVGENIEVNA
DREVALEVA,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS, and ROBERT
WILKIE, United States Secretary of
Veterans Affairs,

Defendants-Appellees.

No. 18-17343

D.C. No. 3:18-cv-03748-WHA
Northern District of California,
San Francisco

ORDER

Before: CANBY, GRABER, and McKEOWN, Circuit Judges.

A review of the record and the parties' briefs indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard); *Am. Hotel & Lodging Ass'n v. City of Los Angeles*, 834 F.3d 958, 962 (9th Cir. 2016) (denial of preliminary injunction reviewed for abuse of discretion).

Accordingly, we summarily affirm the district court's December 3, 2018 order denying preliminary injunctive relief.

Appellant's motion for sanctions is denied (Docket Entry No. 20).

All other pending motions are denied as moot.

No emergency motions for reconsideration of this order will be filed or entertained.

AFFIRMED.

PROOF OF SERVICE.

At the time of the service, I am over 18 yo and not a Party in this action.

My address is: 154 Alvarado Blvd
San Francisco, CA 94118

On April 19, 2019, I mailed a Petition for Rehearing by the U.S. mail to Assistant U.S. Attorney to the following address:

Ms. Kimberly Robinson
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495

I declare under the penalty of perjury and under the Federal laws that all foregoing is true and correct.

Tommy Chang
Name

Tommy Chang
Signature

Date: April 19, 2019.

PROOF OF SERVICE.

At the time of the service, I am over 18 yo and not a Party in this action.

My address is:

154 DeGraw St
San Francisco, CA 94102

On April 19, 2019, I mailed a Petition for Rehearing by the U.S. mail to the
Solicitor General of the United States to the following address:

Room 5616

Department of Justice

950 Pennsylvania Avenue, N. W.

Washington, DC 20530-0001

I declare under the penalty of perjury and under the Federal laws that all
foregoing is true and correct.

Tommy B. Davis

Name

Tommy Davis

Signature

Date: April 19, 2019.