

VIEWPOINT

Diverse Families Under Threat: Reproductive Conservatism

LAURA DRAGNIC TOHÁ, PAULINA MACÍAS ORTEGA, AND GUILLERMINA PAPIER

Assisted reproductive technologies (ARTs) have played a transformative role in expanding the possibilities for diverse family structures. Yet as conservative approaches to reproduction gain influence, these advances are under threat.

In recent years, courts and legislatures around the world have increasingly embraced forms of reproductive conservatism—legal and ideological efforts to reassert control over reproduction by reinforcing normative boundaries about who can become a parent and under what conditions. This phenomenon manifests through two principal mechanisms: first, the restriction of parental rights for those outside heteronormative family structures, particularly LGBTQ+ individuals and single people; and second, the prohibition and even penalization of the use of ARTs. Reproductive conservatism consistently features biological essentialism about kinship, narrow definitions of parenthood, and opposition to the use of reproductive technologies. Aligning with broader conservative ideologies, reproductive conservatism emphasizes tradition, social values, and resistance to progressive shifts in reproductive and family rights.

Appeals to the protection of the “traditional family” frequently frame it as essential to social cohesion, positioning non-normative family models as a threat to societal stability. In this way, there is a global trend aiming to limit the rights of LGBTQ+ families through restrictions on kinship rights and the lack of recognition of parenthood. For instance, in October 2024, the Argentine Supreme Court issued a landmark ruling on surrogacy, rejecting a same-sex couple’s request to be recognized as the sole legal parents of a child born through a surrogacy arrangement, despite mutual agreement with the surrogate.¹ The court reaffirmed that, under current Argentine law, the woman who gives birth is recognized as the legal

LAURA DRAGNIC TOHÁ, LL.M., is a research assistant at the O’Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington, DC, United States.

PAULINA MACÍAS ORTEGA, LL.M., is a research assistant at the O’Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington, DC, United States.

GUILLERMINA PAPIER, LL.M., is a fellow at the O’Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington, DC, United States.

Please address correspondence to Paulina Macías Ortega. Email: pm1282@georgetown.edu.

Competing interests: None declared.

Copyright © 2025 Dragnic, Macías, and Pappier. This is an open access article distributed under the terms of the Creative Commons Attribution-Noncommercial License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits unrestricted noncommercial use, distribution, and reproduction in any medium, provided the original author and source are credited.

mother, regardless of private agreements.² While the absence of a comprehensive legal framework contributes to ongoing legal uncertainty, existing literature indicates that courts had generally ruled in favor of applicants in surrogacy-related cases. In contrast, among the relatively few cases where rectification was denied—including the 2024 decision—same-sex applicants were involved, raising concerns about a pattern of differential treatment.³

Bulgaria provides a striking example of the growing influence of reproductive conservatism and its impact on LGBTQ+ rights. In 2021, a same-sex couple, one of whom was Bulgarian, had a child via surrogacy in Spain, with both mothers listed on the birth certificate. However, when they sought Bulgarian identity documents for their child, the Sofia Municipality refused to issue a birth certificate. The authorities cited the absence of information about the biological mother and argued that listing two female parents violated Bulgarian public policy, as same-sex marriages are not recognized in the country.⁴ In December 2021, the Court of Justice of the European Union ruled that denying the child the right to one parent or hindering her ability to exercise her right to free movement due to her parents' same-sex marriage would violate fundamental rights under articles 7 and 24 of the Charter of Fundamental Rights of the European Union. As a result, Bulgarian authorities were required to recognize the child as part of the family, and a Bulgarian district court subsequently ordered the Sofia authorities to issue a birth certificate for the child.⁵

However, in 2023, the Supreme Administrative Court of Bulgaria overturned this decision, stating that under Bulgarian law, a mother's identity is determined by birth. The court argued that foreign acts could be recognized only if they do not contradict Bulgarian public order, and since same-sex marriages are not allowed in Bulgaria, the registration of two female parents was not possible.⁶ As a consequence, same-sex Bulgarian couples cannot obtain legal recognition for both parents, whether through surrogacy abroad or when one partner undergoes in vitro fertilization and gives birth in

Bulgaria, as only the birth mother will be legally recognized as a parent.

Italy is another example of intensified efforts to curtail the parental rights of same-sex couples, particularly those of non-biological parents. In July 2023, local authorities in Padua began removing non-biological lesbian mothers from birth certificates, aligning with the policies promoted by the government of Prime Minister Giorgia Meloni.⁷ This policy shift, which prioritizes biological kinship over social and legal parenthood, resulted in the removal of 27 mothers from birth records.⁸ Same-sex couples must now initiate civil lawsuits to obtain legal recognition of their parental status, either through adoption to recognize the second parent or by challenging the legal prohibitions directly.⁹ In October 2024, the Italian Parliament expanded these measures by criminalizing citizens who pursue surrogacy abroad, even in jurisdictions where the practice is lawful.¹⁰

In April 2025, the Spanish government issued a decree banning the direct registration of children born through surrogacy in its civil registry. This decree aims to prevent Spanish nationals from traveling to countries where surrogacy is legal and then attempting to have their parentage recognized in Spain. Under the new regulation, legal parentage will be recognized only in cases of biological parentage or adoptive parentage, and only when a family unit with sufficient legal and social guarantees is established.¹¹ Surrogacy contracts, whether altruistic or commercial, have been void in Spain since 2006. The new legislation could leave children born through surrogacy stateless.

India passed legislation in 2021 that bans commercial surrogacy, permitting only altruistic surrogacy to married heterosexual couples who have been childless for at least five years.¹² This framework explicitly excludes LGBTQ+ individuals, single parents, and unmarried couples.

In January 2025, a bipartisan bill was introduced in the Chilean Congress aimed at prohibiting gestational surrogacy.¹³ The proposed legislation establishes both civil and criminal penalties, including the nullification of surrogacy

contracts and the imposition of criminal sanctions on individuals, agencies, and clinics involved in promoting surrogacy arrangements.¹⁴ Additionally, the bill prohibits egg donation, thereby further restricting access to ARTs that enable diverse family formations.¹⁵ Notably, the bill remains silent on sperm donation, raising concerns regarding gender discrimination in its approach.¹⁶

In April 2025, the Greek minister of justice announced a reform that, if enacted, will limit surrogacy to women who are medically unable to carry a pregnancy, effectively excluding single men and male same-sex couples from accessing ARTs.¹⁷

Contemporary restrictions on ARTs and surrogacy are often justified through diverse discourses that serve to reinforce traditional norms surrounding reproduction and family. These justifications obscure the lived realities of LGBTQ+ individuals, single parents, and others for whom access to ARTs and surrogacy is not only a means of family formation but a matter of reproductive autonomy. Denying access to these technologies undermines their right to build families in ways that reflect their identities and life circumstances. This backlash is not merely about regulating technology; it constitutes a broader ideological challenge to reproductive justice, targeting nontraditional kinship models and reasserting state control over who may parent, and under what conditions.

The global spread of anti-surrogacy and anti-ART discourse is not unfolding in isolation. It is deeply intertwined with broader efforts to regulate family formation and curtail reproductive autonomy. These arguments—often framed in the language of human rights or ethics—are increasingly deployed to challenge the legitimacy of same-sex and non-traditional families.

It is crucial to distinguish between the diverse actors and motives driving opposition to ARTs because their underlying objectives and normative foundations vary significantly. Acknowledging these differences is essential for tailoring effective responses to each. For instance, it may be unproductive to engage with those committed to preserving a heteropatriarchal family model, but it is possible and necessary to develop constructive responses to

concerns about the exploitation of women in surrogacy arrangements.

References

1. C. Súnico, “Fallo: La Corte negó a dos hombres gay que subrogaron un vientre ser reconocidos como únicos progenitores del hijo nacido,” *La Nación* (October 22, 2024), <https://www.lanacion.com.ar/sociedad/fallo-la-corte-nego-a-dos-hombres-gay-que-subrogaron-un-vientre-ser-reconocidos-como-unicos-nid22102024/>.
2. *Ibid.*
3. P. López Turconi, “Assisted Regulation: Argentine Courts Address Regulatory Gaps on Surrogacy,” *Health and Human Rights* 25/2 (2023), p. 19.
4. Court of Justice of the European Union, “Press Release No 221/21” (December 14, 2021), <https://www.ilga-europe.org/files/uploads/2022/05/CJEU-PR-Judgment-in-case-Stolincha-obshtina-rayonPanchavero.pdf>; ILGA Europe, “Bulgaria’s Supreme Court Rejects Baby Sara’s Bulgarian Citizenship” (March 2, 2023), <https://www.ilga-europe.org/news/bulgarias-supreme-court-rejects-baby-saras-bulgarian-citizenship/>.
5. ILGA Europe (see note 4).
6. Supreme Administrative Court of the Republic of Bulgaria, Solution No. 2185, Administrative Case No. 6746/2022 (November 21, 2022), https://info-adc.justice.bg/courts/portal/edis.nsf/e_act.xsp?id=2060937&code=vas&guid=1443879393.
7. B. Latza and J. Guy, “Italy Starts Removing Lesbian Mothers’ Names from Children’s Birth Certificates,” *CNN* (July 21, 2023), <https://www.cnn.com/2023/07/21/europe/italy-lesbian-couples-birth-certificates-scli-intl/index.html>.
8. *Ibid.*
9. L. Bullens, “‘Ghost Parents’: Same-Sex Couples in Italy Are Losing Their Rights,” *France24* (September 14, 2023), <https://www.france24.com/en/europe/20230914-italian-pm-giorgia-meloni-wears-down-parental-rights-of-same-sex-couples>; M. Stancati, “Italy Strips Some Gay Couples of Parental Recognition,” *Wall Street Journal* (April 25, 2023), <https://www.wsj.com/articles/italy-strips-some-gay-couples-of-parental-recognition-4f3993c1>.
10. Reuters in Rome, “Italy Passes Law Clamping Down on Surrogacy Tourism,” *Guardian* (October 16, 2024), <https://www.theguardian.com/world/2024/oct/16/italy-makes-it-to-look-for-surrogacy-treatment-abroad>.
11. Government of Spain, “Instrucción de 28 de abril de 2025, de la Dirección General de Seguridad Jurídica y Fe Pública, sobre actualización del régimen registral de la filiación de los nacimientos mediante gestación por sustitución,” *Boletín Oficial del Estado* (2025), <https://www.boe.es/boe/dias/2025/05/01/pdfs/BOE-A-2025-8647.pdf>.
12. D. Srivastava, “The Surrogacy (Regulation)

Act 2021: An Overview,” *LegalOnus* (February 25, 2025), <https://legalonus.com/the-surrogacy-regulation-act-2021-an-overview/>.

13. Chile, Ley que modifica diversos cuerpos legales para prohibir y sancionar la maternidad subrogada (2025).

14. *Ibid.*

15. *Ibid.*

16. L. Dragnic, F. Nardi, and G. Pappier, “Surrogacy Under Scrutiny: A Conservative Shift in Legislative Debates,” *Sexual and Reproductive Health Matters* (February 7, 2025), <https://www.srhm.org/news/surrogacy-under-scrutiny-a-conservative-shift-in-legislative-debates/>.

17. Tovima, “Amendment Prohibits Same-Sex Couples from Having Children Via Surrogacy” (April 1, 2025), <https://www.tovima.com/society/amendment-prohibits-same-sex-couples-from>