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Under new Arizona law, custody of disputed embryos goes to whoever will help them 'develop to birth'



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Ruby Torres wanted to use her frozen embryos to have a baby, but a judge in her divorce proceedings ruled against her. (Carolyn Van Houten/Carolyn Van Houten)

With the number of frozen embryos in the United States soaring into the millions, disputes over who owns them are also on the rise.

By [Ariana Eunjung Cha](#)

The Washington Post

When their marriage fell apart, the most contentious issue between Ruby Torres and John Joseph Terrell was the fate of their frozen embryos. There were seven in storage, created with her eggs and his sperm before Torres underwent chemotherapy and radiation for breast cancer.

Torres, 37, wanted to use the embryos to have a baby. In divorce proceedings, she told the judge the embryos probably represented her only chance to have biological children. Terrell protested that he had no interest in having a child with Torres.




With the number of frozen embryos in the United States soaring into the millions, disputes over who owns them are also on the rise. Judges have often — but not always — ruled in favor of the person who does not want the embryos used, sometimes ordering them destroyed, following the theory that no one should be forced to become a parent.

Arizona, however, is taking the opposite approach. Under a first-in-the-nation law that went into effect July 1, custody of disputed embryos must be given to the party who intends to help them “develop to birth.”

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“Most people believe that frozen embryos should have a chance at life,” state Sen. Nancy Barto, a Phoenix Republican, said in introducing the bill inspired by Torres' case.

The legislation could alter the practice of fertility medicine and the debate over when life begins. It is already fueling an argument by some conservative groups that frozen embryos are not mere tissue over which people may exercise ownership rights but humans who should be accorded rights of their own.

The Thomas More Society, an anti-abortion-rights group, is assisting in cases across the nation, asking judges to consider the embryos “children” and to make decisions based on their best interest. The group argues that a person who creates an embryo in preparation for

in vitro fertilization has “voluntarily exercised his procreational rights” and the resulting embryos “cannot be legally terminated at the whim of others.”

Abortion-rights advocates say any legal endorsement of those arguments, if upheld, would effectively gut the right to an abortion. If a days-old embryo in a freezer has a right to life, why not a days-old embryo in utero?

Rich Vaughn, chair of the American Bar Association’s committee on fertility technology and founder of the International Fertility Law Group, called the legislation “flawed” and said it could have potentially disastrous consequences for reproductive freedom and personal choice. “The new law is in fact an end around aimed at establishing the ‘personhood’ of unborn embryos,” which is an important goal of anti-abortion-rights campaigners, he said.

Many other health, patient-advocacy and legal organizations have expressed similar views. In a letter to the Arizona House of Representatives, Barbara Collura, president of the national infertility group Resolve, wrote that it could be “exceedingly painful” to have children born against one’s wishes.

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Judges in numerous states, including Massachusetts, Tennessee, New Jersey and California, have been swayed by that argument.

When Mimi Lee and Silicon Valley investment executive Stephen Findley split in 2013, they argued bitterly about what to do with the five embryos they had created. Lee, a Harvard-educated doctor and musician, wanted to use them, arguing that she had been treated for cancer and was unlikely to be able to have children any other way.

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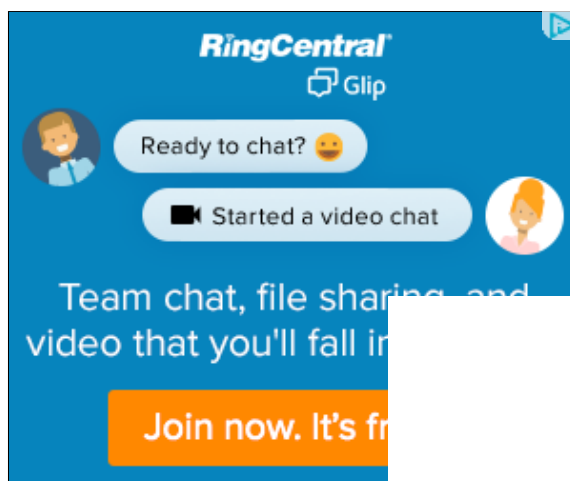
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Findley refused, arguing that he would feel obliged to participate in the resulting child's life and that he feared "18 years of interaction" with his ex-wife.

California Superior Court Judge Anne-Christine Massullo ruled in November 2015 that the embryos should be destroyed.

Decisions in other major cases have gone in different directions. In Illinois and Pennsylvania, embryos have been awarded to women because they could otherwise not reproduce. In others, embryos have been ordered to be donated to research or to remain frozen indefinitely until a time when there is "mutual agreement."

In the Arizona case, Maricopa County Superior Court Judge Ronee Korbin Steiner had to balance Torres' probable inability to have a child without the embryos with Terrell's desire to not be a father.



The couple had been dating off and on in 2014 when Torres was diagnosed with a severe form of breast cancer. The couple went to the Bloom Reproductive Institute in Scottsdale, where doctors retrieved 14 eggs from Torres and fertilized them with Terrell's sperm. Seven embryos were formed and frozen. Four days later, the couple married.

In testimony in family court, Terrell said he loved Torres at the time but argued that theirs was not a “full relationship” because they saw each other only occasionally. He said he married her because she needed health insurance. He said providing sperm for the embryos seemed “like an honorable thing just to do for her.”

Through his attorney, Claudia Work, Terrell declined a request for an interview.

Torres remembers things differently. She said she was a new lawyer and he was working nights at a Veterans Affairs hospital, so they didn't see much of each other except on weekends. But Terrell was supportive during her double mastectomy and radiation treatments, she said.

Three years after those treatments, Torres said her doctors cleared her to try to become pregnant. She found out around that time that Terrell had been having an affair with another woman, and they agreed to divorce.

At first, the split was relatively amicable. A mediator helped them sort through the kitchen appliances and the workout equipment. They got stuck on two things: the dog and the embryos. And so, a few months later, they found themselves in court.



Steiner resolved the dog issue in about two seconds by ordering it returned to Torres. The embryo situation was more complicated.

Some courts consider embryos property — or “chattel” in legal terms — but figuring out what to do with them was not as easy as dividing them evenly between the warring couple.

“I've researched the heck out of it,” the judge said at last, adding, “They are not people, but they are special because they're somewhere between a bunch of cells and the potential of being a person, so I do respect it.”

Torres offered every concession she could think of: She said Terrell would not bear any responsibility for the child, financial or otherwise. But if he wanted to be an active parent, she would accommodate that, too. She even suggested that she could pay him for use of the embryos, offering to turn over her entire retirement account.

“I offered anything and everything he could possibly want,” Torres said in the recent interview.

Terrell was resolute. “It’s like a ticking time bomb,” he said in court, because of “child support or that child when coming of age coming for me.”

And so, in August, the judge made the decision for them. She said Torres had no right to use the embryos. But, in a twist, the judge said they should not be destroyed. Instead, they should be put up for donation.

Torres could not bear her own baby — but a stranger could. She was shocked. “So both of us would have a child out there,” she said.

Torres appealed the decision; a ruling is expected soon.

News of the ruling soon reached the Arizona Legislature. Barto said she wanted to help people in Torres’ situation.

The American Society for Reproductive Medicine opposed the measure. To protect patient choice, the measure would force clinics to ship embryos out of state for storage, increasing the risk of accidents, the society argued. It said the measure would hurt stem-cell research because scarce embryos would be tied up in legal battles and not be available to be donated to science.

The Arizona Legislature acted quickly. The Senate passed it 18-12 in February, the House 33-25 in March. It was signed into law April 3.

The law cannot be applied retroactively and, therefore, should not directly affect the Torres case.

Ariana Eunjung Cha

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