

Alabama Supreme Court rules frozen embryos are children

February 21 2024, by Robin Foster



In a ruling that could drastically limit future infertility care, the Alabama Supreme Court has ruled that frozen embryos can be considered children under state law.

In the [decision](#), judges turned to what it called anti-abortion language in that state's constitution and concluded that an 1872 [state law](#) that allows parents to sue over the death of a minor child "applies to all unborn children."

"Unborn children are 'children' ... without exception based on [developmental stage](#), physical location, or any other ancillary characteristics," Associate Justice [Jay Mitchell](#) wrote in the ruling.

Reaction to the decision was swift and strident, as infertility experts stressed the ruling ultimately threatens the use of IVF treatments.

"By insisting that these very different biological entities are legally equivalent, the best state-of-the-art fertility care will be made unavailable to the people of Alabama. No [health care provider](#) will be willing to provide treatments if those treatments may lead to civil or [criminal charges](#)," [Dr. Paula Amato](#), president of the American Society for Reproductive Medicine, told the *Associated Press*.

"This ruling is stating that a fertilized egg, which is a clump of cells, is now a person. It really puts into question the practice of IVF," [Barbara Collura](#), CEO of RESOLVE: The National Infertility Association, told the *AP*.

The decision is a "terrifying development for the 1-in-6 people impacted by infertility" who need in-vitro fertilization, she said.

Following the ruling, it isn't clear whether future embryos created during fertility treatments can be frozen or if patients could ever donate or destroy unused embryos.

But [Sean Tipton](#), a spokesman with the American Society for Reproductive Medicine, told the *AP* that at least one Alabama fertility

clinic has been instructed by their affiliated hospital to pause IVF treatment for now.

The plaintiffs in the Alabama case had IVF treatments that created several embryos, some of which were implanted and led to healthy births, the *AP* reported. The couples paid to keep the unused embryos frozen in a storage facility, but a patient managed to wander into the area in 2020 and removed several embryos, dropping them on the floor and "killing them," the ruling said.

The justices ruled that the wrongful death lawsuits brought by the couples could proceed, although the clinic and hospital named as defendants in the case could appeal.

Michael Upchurch, a lawyer for the fertility clinic in the lawsuit, the Center for Reproductive Medicine, told the *AP* they are "evaluating the consequences of the decision and have no further comment at this time."

Meanwhile, an anti-abortion group applauded the decision.

"This ruling, which involved a wrongful-death claim brought by parents against a fertility clinic that negligently caused the death of their children, rightly acknowledged the humanity of unborn children created through in vitro fertilization [IVF] and is an important step towards applying equal protection for all," [Lila Rose](#), president and founder of Live Action said in a [statement](#).

Justice [Greg Cook](#), who filed the only full dissent to the ruling, said the 1872 law was being stretched from its original intent to cover frozen embryos.

"No court—anywhere in the country—has reached the conclusion the main opinion reaches," he wrote, adding the ruling "almost certainly

ends the creation of frozen embryos through in vitro fertilization [IVF] in Alabama."

White House press secretary Karine Jean-Pierre said Tuesday that the Alabama decision was yet another consequence of the U.S. Supreme Court overturning *Roe v. Wade* in June 2022, the *AP* reported.

"This president and this vice president will continue to fight to protect access to reproductive health care and call on Congress to restore the protections of *Roe v. Wade* in federal law for all women in every state," Jean-Pierre told reporters.

More information: The World Health Organization has more on [abortion](#).

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