

Texas IVF patients scramble in wake of Alabama decision

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Heather Burzlaff has four embryos in a freezer in Dallas and she doesn't know what to do with them. After seven years of medications, egg retrievals and waiting, the embryos are all the 38-year-old Flower Mound resident has left from the grueling in-vitro fertilization process, which resulted in no children. The embryos have genetic abnormalities that make it virtually impossible for them to result in a viable pregnancy. It's

a heartbreaking reality many IVF patients face in the pursuit of starting a family.

States away, the Alabama Supreme Court decided frozen embryos created through IVF—each only a cluster of cells made from a fertilized egg stored outside the uterus—are legally children and people can be held liable for their destruction. Already, Alabama clinics have halted IVF treatments while they determine whether they're at legal risk.

Texas has issued no such ruling. But IVF patients like Burzlaff are scrambling to make a plan for their embryos in case that changes. Does she move her embryos to another state? Does she budget to pay for their storage for the rest of her life? Does she implant them at a point in her menstrual cycle when she's least likely to get pregnant?

Burzlaff and her husband are in the middle of the adoption process through the foster care system. The Alabama decision, she said, adds another layer of complications to an already draining situation.

"The paperwork alone is overwhelming. Now you throw this into the mix and I just kind of want to shut down and stop," Burzlaff said. "I don't even want to build my family anymore. It's too much."

Texans raised concern over the future of IVF after the fall of *Roe vs. Wade* in 2022, but doctors and politicians alike assured them the procedure would not be a target of abortion restrictions. The move by Alabama's top court has undone any sense of security IVF patients had.

The decision came from a pair of wrongful death cases where couples' embryos were destroyed in an accident at a fertility clinic. Justices, citing anti-abortion language in the state's constitution, determined parents could sue over the death of a minor child "regardless of their location."

It's unclear the exact situations in which a fertility clinic or person could be found legally liable under the ruling. Out of caution, a spokesperson for the University of Alabama at Birmingham said the health system will continue offering egg retrievals but won't fertilize them, NBC News reported.

The Lone Star State has time and again secured its place at the center of the decades-long reproductive rights debate. Nearly a year before the U.S. Supreme Court overturned the federal right to abortion, Texas instituted the "Heartbeat Act," which bans abortion after roughly six weeks and allows private individuals to bring civil suits against anyone who performs or aids the procedure.

Whether Texas will follow Alabama's suit is yet to be seen. When asked during an interview on CNN whether IVF patients in the state should be worried, Gov. Greg Abbott said he supports IVF but that the question was complex.

Southern Methodist University professor and health law expert Seema Mohapatra said, at least in her reading of current Texas law, embryos have to be implanted in a pregnant person in order to be considered a child. That doesn't mean legislators won't try to change the definition of a child.

"Do I think there might be attempts? Yes. Do I think that they're going to be successful? I would be surprised," Mohapatra said. "But there's a lot of things that have happened in Texas that I would not have thought would have happened two years ago related to abortion restrictions."

IVF appears to have cross-aisle backing that other reproductive rights issues, like abortion, lack. Republican candidates across the country, including former President Donald Trump, have vocalized their support of the medical procedure in the days following the Alabama decision.

IVF is an increasingly common tool for couples looking to conceive. One in 10 women between the ages of 15 and 44 had received some sort of fertility service as of 2021, while 2% of infants in Texas, or 7,315 babies, were born in 2021 with the help of assisted reproductive technology.

Using IVF is also seen as more morally acceptable than other reproductive health procedures and research, according to a 2013 study by Pew Research Center. About 49% of U.S. adults said having an abortion was morally wrong, while only 12% said the same about using IVF.

Danielle Rugoff, 40, who gave birth to her son in June after two years of IVF treatment, said the Alabama ruling is an example of an extreme policy that doesn't represent the wants of the American public. The Dallas native ran a campaign for a Republican candidate and has voted Republican, Democrat and Independent in her lifetime. There are people across the political spectrum, she said, who don't want to limit a family's ability to have children.

"The unfortunate thing about the ruling is that it not only instilled a lot of fear across the board, but also, in particular, fear for families like mine, where the future of their families hangs in the balance," Rugoff said.

In response, Rugoff moved up her appointment to discuss when she can implant one of her two remaining embryos.

Texans hoping to start families with medical assistance are left with uncertainty, waiting to see what, if anything, the state does about the definition of human life.

Patients immediately began calling the Fertility Specialists of Texas, a Dallas-Fort Worth clinic, asking what the Alabama ruling means for

their family decisions. Dr. Jerald Goldstein, founder and medical director of the practice, said he and other fertility specialists are in the practice of creating families, and threats to that are concerning.

Goldstein, who is Rugoff's doctor, has not yet advised patients to move their embryos out-of-state or change their plans because of what's happened a few states over.

"It's frustrating. Patients are really under a lot of stress just because of the fact that they're having to go through this process, and this has to be an additional consideration," Goldstein said. "Hopefully, there will be things on the state level or national level that would make it where the process of IVF is protected."

One of Goldstein's patients is caught in the whirlwind process of determining what her next step should be in the process of getting pregnant. Meredith, who requested not to use her last name because she has not publicly shared she's undergoing IVF, has four embryos, only one of which is considered genetically normal.

Already, Meredith, 37, has spent between \$20,000 and \$30,000 on egg retrievals and a December embryo implantation that was ultimately unsuccessful. She doesn't know what she'll do with the embryos that aren't viable, which she said cost her about \$1,000 a year to store.

"You can donate them to science, but, again, I don't know if there's certain things that they want or don't want, if they would accept that donation. And then there's a discard," Meredith said. "I'm not sure what the discarding looks like. Of course, I'm attached to these embryos, but not to the point where I feel like they are a living being yet."

Burzlaff said she, too, is emotionally attached to her remaining embryos, even though they're nonviable.

"They're all that's left, because I don't have any more rounds covered by insurance and I can't afford out-of-pocket," she said.

Burzlaff doesn't feel ready to make a decision about what to do with her embryos, but she said the risk of Texas entering a similar situation as Alabama has forced her hand. She's looking at storage facilities in California, where she has an aunt she could lean on should she decide to make the transfer.

"Once I started this process, I didn't expect to go to round two. I didn't expect to go to round three, round four, round five," Burzlaff said. "I definitely didn't expect to be sitting there essentially empty-handed and trying to navigate laws and all of this while building my family."

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