PROGRAM MATERIALS
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Estate Planning Modern Considerations: Integrating LGBTQ+ and Assisted Reproductive Technology (ART) Issues into Estate Planning

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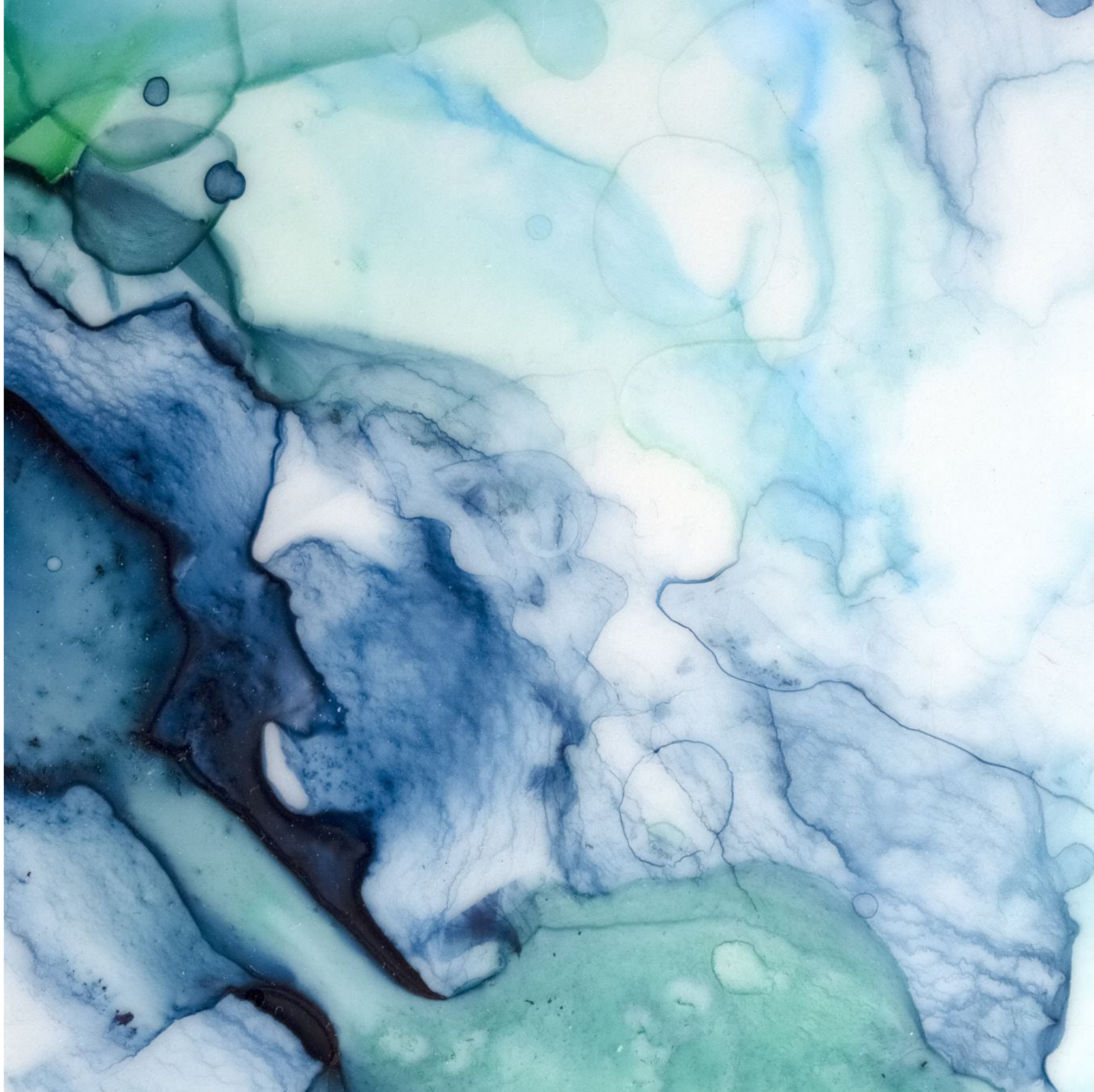
Estate Planning Modern Considerations

Integrating LGBTQ+ and Assisted Reproductive Technology (ART) Issues into Estate Planning



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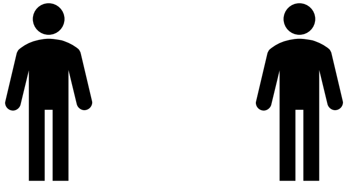
- JD '12 Northwestern
- Member of the LGBTQ community
- Author, UNLOCKING THE WEALTH POTENTIAL: A Guide for LGBTQ+ Estate Planning
- Founder, Fertility+ Concierge
- Author, Independent Administration Treatise on Lexis Nexis

Your Estate

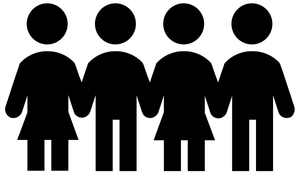
Often cited Purposes of Estate Planning

- Protect at risk beneficiaries and minor children
- Gifting of assets
- Planning for illness/incapacitation
- Asset protection
- Avoidance of probate
- Minimization of taxes
- Paying medical and long-term care bills
- Other desires (i.e. charitable, special needs, business succession, etc.)

No Estate Planning: Parents of minors



50% (immediately accessible)



50% (not accessible until 18 y/o)

Basic Estate Planning Documents

- Will
- Revocable Trust

Main Document: the Trust

- Distribution
  - To the right people
  - At the right time (not necessarily all at once)
  - Keeping the wrong people out
- Management
  - For you if you are disabled
  - After you are gone, for beneficiaries who need help

- Preservation

  Avoid probate

  - Probate required if you have over $150,000 in assets or real estate (IL)
  - Delay
  - Privacy
  - Cost
  - Claims
- If unmarried, protect against claims of live-in partner (and their beneficiaries)
- If married reduce or eliminate estate taxes
- Asset protection for your beneficiaries

Small-Estate Affidavit Thresholds

50 states + DC — dollar amount (or test) that qualifies an estate to skip full probate

Alabama	$37,075
Alaska	$50,000
Arizona	$200,000
Arkansas	$100,000
California	$208,850
Colorado	$86,000
Connecticut	$40,000
Delaware	$30,000
District of Columbia	$80,000
Florida	$75,000
Georgia	Structural test
Hawaii	$100,000
Idaho	$100,000
Illinois	$150,000
Indiana	$100,000
Iowa	$50,000
Kansas	$75,000
Kentucky	$30,000
Louisiana	$125,000
Maine	$51,100
Maryland	$50,000
Massachusetts	$25,000
Michigan	$51,000
Minnesota	$75,000
Mississippi	$75,000
Missouri	$40,000
Montana	$100,000
Nebraska	$100,000
Nevada	$25,000
New Hampshire	Structural test
New Jersey	$20,000
New Mexico	$50,000
New York	$50,000
North Carolina	$20,000
North Dakota	$100,000
Ohio	$35,000
Oklahoma	$50,000
Oregon	$75,000
Pennsylvania	$50,000
Rhode Island	$15,000
South Carolina	$25,000
South Dakota	$100,000
Tennessee	$50,000
Texas	$75,000
Utah	$100,000
Vermont	$45,000
Virginia	$75,000
Washington	$100,000
West Virginia	$50,000
Wisconsin	$50,000
Wyoming	$400,000

Source: SmallEstateMap.us — statute-cited reference, last verified 2026-05-04. Figures change frequently; confirm current amount before relying on it.

+ Reduce or Eliminate Estate Taxes

No spousal portability — a credit shelter / bypass trust preserves the first spouse's exemption

+ **Connecticut**	$15,000,000 →	**$30,000,000**
+ **Illinois**	$4,000,000 →	**$8,000,000**
+ **Maine**	$7,160,000 →	**$14,320,000**
+ **Massachusetts**	$2,000,000 →	**$4,000,000**
+ **Minnesota**	$3,000,000 →	**$6,000,000**
+ **New York**	$7,350,000 →	**$14,700,000**
+ **Oregon**	$1,000,000 →	**$2,000,000**
+ **Rhode Island**	$1,838,056 →	**$3,676,112**
+ **Vermont**	$5,000,000 →	**$10,000,000**
+ **Washington**	$3,076,000 →	**$6,152,000**
+ **Washington, DC***	$4,988,400 →	**$9,976,800**

** DC is not a state but taxes estates on the same non-portable basis.* ***Hawaii and Maryland*** *also tax estates but DO allow portability, so this trust-doubling strategy isn't needed there.*

Trusts: a recap

- A trust is a written set of instructions to someone you trust (your Trustee) on how to manage your property.
- Once a client signs a trust, they re-title property into the name of the trust, making it subject to that specific set of instructions
- A client can have more than one trust, for example, a client can have a Revocable Trust for certain property and an Irrevocable trust for other property

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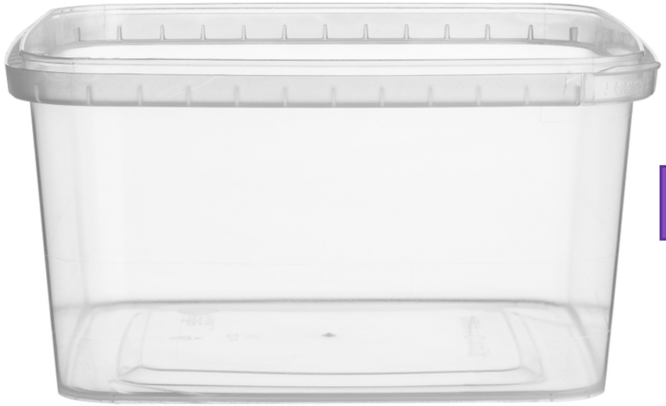
Example

Empty Trust

On death, a family member must open a probate court case, liquidate the house, and distribute the proceeds among family members according to the state's laws

Effective Trust



Property stays in trust for the spouse or beneficiaries

On death, the Trustee will follow the decedent's instructions on how to distribute the house as specified in the trust.

Often overlooked documents

- Power of Attorney – Property
- Power of Attorney – Health
- Living Will
- HIPAA Release

LGBT (*Anything other than non-questioning, cis gendered heterosexual)

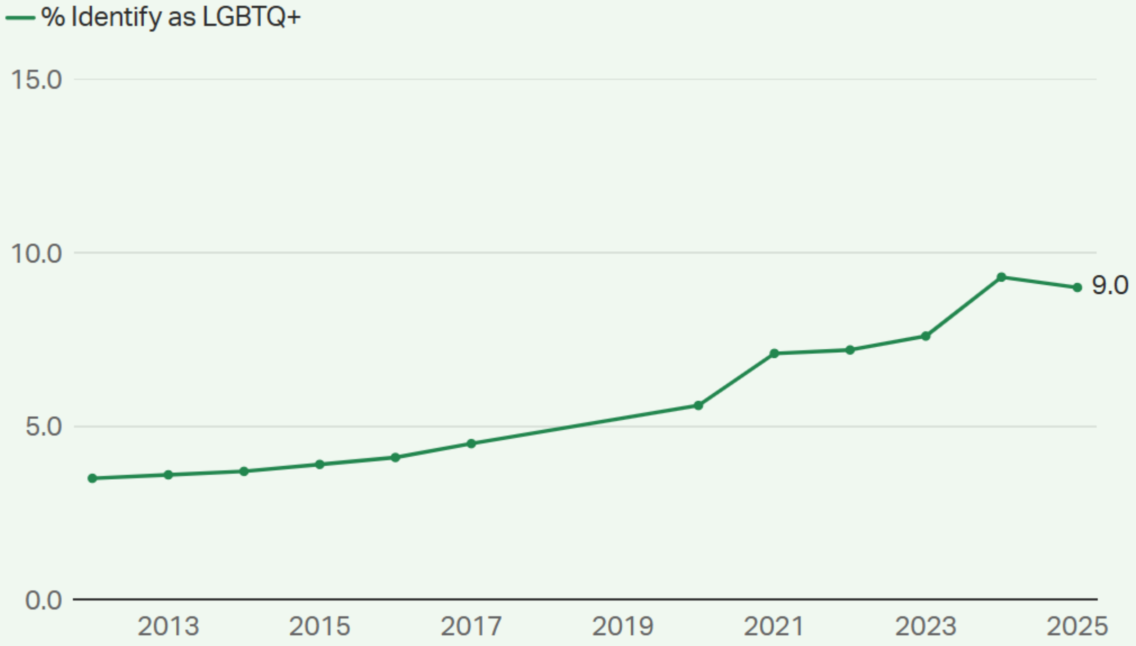
- The number of LGBT folks is trending upwards
- 9% of adults identify as LGBT
- 23% of Gen Z identify as LGBT

Generation	%
Generation Z (born 1997-2006)	23.1
Millennials (born 1981-1996)	14.2
Generation X (born 1965-1980)	5.1
Baby boomers (born 1946-1964)	3.0
Silent Generation (born 1945 or earlier)	1.8

What do Trixie and Katya have to say

Americans' Self-Identification as Lesbian, Gay, Bisexual, Transgender or Something Other Than Heterosexual, 2012-2025

Which of the following do you consider yourself to be? You can select as many as apply. Straight or heterosexual, Lesbian, Gay, Bisexual, Transgender



Respondents who volunteer another identity (e.g., queer, same-gender-loving, pansexual) are recorded as "Other LGBTQ+" by interviewers. These responses are included in the LGBTQ+ estimate. Data were not collected in 2018 and 2019.

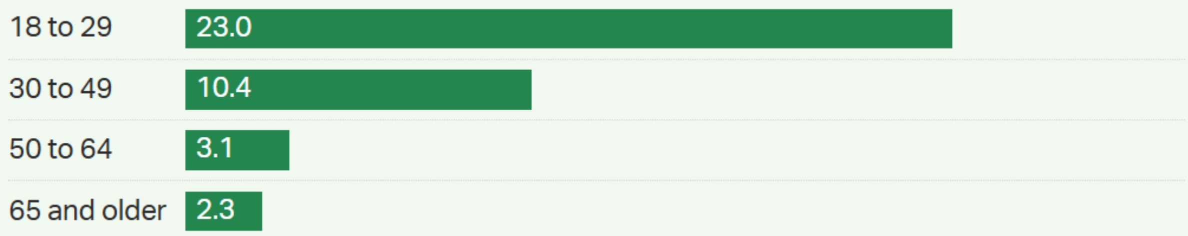
2012-2017 wording: *Do you, personally, identify as lesbian, gay, bisexual or transgender?*

Get the data • Download image

GALLUP

U.S. Adults' Self-Identification as LGBTQ+, by Age

% Lesbian, gay, bisexual, transgender or something other than heterosexual



Figures are based on aggregated data from 2025 Gallup telephone polls.

Get the data • Download image

GALLUP

Estate Planning Concerns Specific to LGBTQ+ Folks

- **Discrimination.** Project 2025 called for stripping "SOGI," DEI, gender, abortion, and reproductive-rights language from federal rules, contracts, regulations, and legislation.

  What's actually happened since Jan. 2025: agencies acted fast — roughly 360 federal data collections have dropped sexual-orientation / gender-identity questions and HHS rescinded its gender-affirming-care guidance. A June 2026 federal court order has since blocked key parts of this rollback; the administration has appealed.

- **Marriage Concerns.** Dobbs v. Jackson Women's Health Organization (2022), overturned Roe v. Wade (1973), ending the nearly 50-year constitutional right to abortion.

  Same-sex marriage has only been federally protected since 2015. Dobbs raises the concern that this signals a broader trend toward federalism and that 14th Amendment protections, including same-sex marriage, may be next to erode.

Healthcare Discrimination Concerns

- According to Human Rights Watch, LGBT patients report a multitude of experiences with discrimination, including being denied fertility treatment, counseling, routine screening, and even pediatric care for their children.
- 15% of LGBT patients postpone or avoid medical treatment due to fear of discrimination.
- The transgender population, in particular, suffers from even more pervasive discrimination. 3 in 10 postpone or avoid medical treatment due to discrimination, and 1 in 3 report the need to teach providers about their sexual identity in order to receive adequate care.

Guardianship Concerns

- "by the point at which you are no longer able to make … decisions and you begin forgetting things, what if I forget I'm trans? If they are dressing me differently in this place because of my body, then am I gonna know the difference? And who's gonna advocate for me?"

Mitch, 55, Seattle, WA, 2016

Solutions Estate Planning offers

- Healthcare Powers of Attorney appointing trusted agents to advocate for individuals including gender-affirming treatment
- Ensuring Power of Attorney nominates a guardian if the principal needs one.
- Trusts to devise property to same-sex spouses and their families to preserve marital rights and inheritance even if the right to marry vanishes

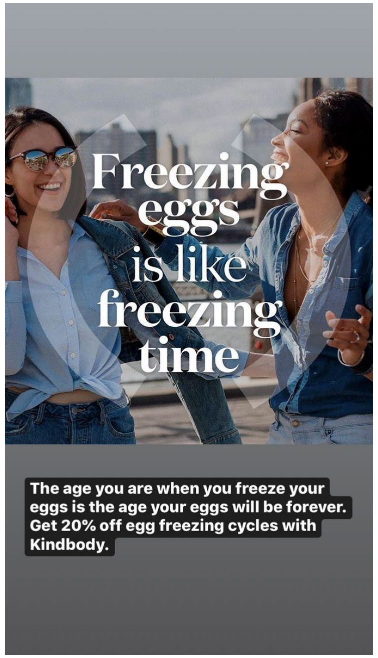
ART(Assisted Reproductive Technology)

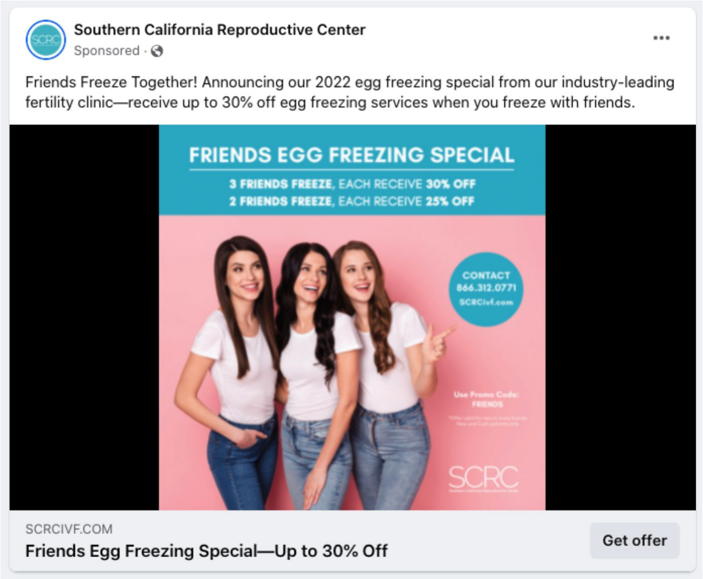
- Egg Freezing
- Genetic Material is Property (for now?)

Egg Freezing Boomed During Pandemic

- Zoom appointments made consultations easy
- It was harder to meet people
- Companies are providing egg-freezing as a perk

Instagram Ads for Freezing Eggs





ART is increasing legally…Fertility Mandates Are Spreading

25 states + D.C. now require some fertility coverage but the limits vary widely

State	What the Mandate Covers
Massachusetts	Health insurance must cover up to 6 egg retrievals… the country's oldest mandate (1987)
Illinois	All group plans w/ pregnancy benefits must cover 4 retrievals (6 if live birth)
California	Large-group plans must cover 3 IVF cycles; explicitly includes LGBTQ+ & single patients
New York	Health Insurance must cover 3 IVF cycles
New Jersey	Insurance must cover up to 4 IVF attempts; unlimited IUI
Connecticut	Insurance must cover 2 IVF cycles

! **The catch:** state mandates don't reach self-funded (ERISA) employer plans — and roughly 67% of workers with employer coverage nationally are on self-funded plans. "My state mandates it" and "My plan covers it" are two different questions.

Source: RESOLVE: The National Infertility Association (state coverage map); MAP Equality Maps — Fertility Healthcare Coverage; KFF Employer Health Benefits Survey 2025; state statutes.

Szafranski v. Dunston : Who is entitled to determine the disposition of pre-embryos?

- Jacob Szafranski goes on a break from his girlfriend and gets together with Karla Dunston
- Karla had been diagnosed with lymphoma which would likely render her infertile
- Karla asked Jacob to created pre-embryos so that she would be able to have a child with her own DNA post-treatment

- Jacob agrees orally and provides sperm to fertilize Karla's eggs.
- Jacob and Karla sign an Informed Consent with Northwestern.
- Several pre-embryos are formed and stored at Northwestern.
- Jacob dumps Karla via text message.
- Jacob tries to get back together with his ex but when she finds out he has created pre-embryos with Karla, she balks

- Ashley told Jacob to tell Karla that if he wanted a relationship with Ashley, he would have to tell Karla not to use the pre-embryos.
- Ashley testified that that was when "Jacob realized that [neither Ashley] nor any woman would want to be with somebody who had embryos with someone else"
- Jacob sued Karla to enjoin her from using the pre-embryos.

The Informed Consent

- Northwestern advised the parties to seek legal counsel to draw up an agreement that it would honor, regarding the use of the pre-embryos

- “Because of the possibility of you and/or your partner’s separation, divorce, death or mental incapacitation, it is important, if you choose to cryopreserve your embryos, for you to decide what should be done with any of your cryopreserved embryos that remain in the laboratory in such an eventuality.”
- “Embryos are understood to be your property, with rights of survivorship. No use can be made of these embryos without the consent of both partners (if applicable)”
- “In the event both partners die or are legally incapacitated… the embryos shall become the sole and exclusive property of NMFF”

Analysis: Who is entitled to determine the disposition of pre-embryos?

- After going up and down and back up through the courts, the appellate court stated that Illinois uses a contract approach to determine what happens to cryopreserved pre-embryos.
- If there is no contract, courts should resolve the issue by weighing the parties' relative interests.

Holding : Who is entitled to determine the disposition of pre-embryos?

- Contract Test: Jacob entered into an oral contract for Karla to use the embryos post-treatment when he agreed to provide his sperm.
- Weight of Interests: "Karla's desire to have a biological child, in the face of the impossibility of having one without using the embryos, outweighs Jacob's privacy concerns, which are now moot, and his speculative concern that he might not find love"

Dicta

+ Our opinion in Szafranski I emphasized the importance of honoring advance agreements between IVF participants. Central to our holding in that case was the idea that advance agreements allow parties to settle their rights and obligations before an issue over rights or obligations arise” (emphasis in original)

ART Implications for Estate Planning: Posthumous children

- ART allows for the possibility that an embryo can be made and a person born from the embryo after the death of its genetic parents.
- In IL intestacy, a posthumous child conceived within 36 months after the decedent's death inherits if:
  - Born of the decedent's gametes (embryo may formed before or after death)
  - Decedent gave written consent, while alive, to be a parent of a child born this way
  - Estate's administrator receives notice of consent within 6 mos. of death certificate
- Under IL testacy, a posthumously conceived child is presumed excluded unless the document specifically says otherwise. Generic language like "children" or "descendants" isn't enough.

ART Implications for Estate Planning: Inheritance of Genetic Material

- Estate Planning most commonly brings to mind distribution of property: homes, cars, jewelry
- Genetic Material is considered property in Illinois
- Who owns the property during life is subject to a contract test, and if there is no contract, to a weighing of interests.
- Who owns the property at death is unknown territory.

When Are Frozen Embryos “Children”?

LePage v. Center for Reproductive Medicine, P.C. (Ala. 2024)

- **Alabama:** In December 2020, a hospital patient wandered through an unsecured door into a fertility clinic's cryogenic nursery and removed several stored embryos. The subzero temperature freeze-burned the patient's hand, causing them to drop and destroy the embryos.

- **What the court held –** The Alabama Supreme Court (7–2) ruled that Alabama's Wrongful Death of a Minor Act applies to “unborn children” regardless of location, including frozen embryos outside the uterus. The families could sue the clinic and hospital for wrongful death, not just ordinary negligence.

! **The aftermath:** IVF clinics in Alabama paused services within days. About three weeks later, the legislature passed a law shielding IVF providers from civil and criminal liability for embryo loss. But that law left the court's underlying holding untouched: frozen embryos are still “children” under Alabama's wrongful death statute.

Source: LePage v. Center for Reproductive Medicine, P.C., No. SC-2022-0579 (Ala. Feb. 16, 2024); Alabama Wrongful Death of a Minor Act, Ala. Code § 6-5-391.

Trends: Anti-abortion views on embryos

- "The key point in this whole debate is that a human embryo is a human person and has all the biology, all the DNA, all the chromosomes a human person has. The sex is decided at the single sell. As a human person and as a human being, it deserves respect, and to use them for experiments – to deliberately and directly kill a human embryo for whatever reason – it's immoral, it's illegal." – Bob Best, former leader of Culture of Life Foundation, C-SPAN interview

Property or Person? The Line Keeps Moving

A cryopreserved embryo doesn't fit neatly into either category… and which one it gets depends on which body of law is asked

PROPERTY — Contract law — Inheritance law — Personhood law — PERSON

1. **Closest to "property" –** In disputes between the people who created them, courts largely treat embryos like a divisible asset, enforcing the couple's advance agreement over disposition, and only balancing interests if no agreement exists.

2. **A conditional, in-between status –** Inheritance law treats a stored embryo as a property but converts it into an heir with legal rights if strict conditions are met: written consent, timely notice, birth within a set window. (e.g., Illinois's 755 ILCS 5/2-3).

3. **Full "person", no conditions attached –** Wrongful-death and fetal-personhood reasoning in some states erases the line entirely. An embryo is a legal person from the moment of fertilization, regardless of location, intent, or what any contract says (e.g., Alabama's LePage v. Center for Reproductive Medicine).

! **The takeaway:** the same embryo can be property, a conditional almost-person, or a full legal person depending only on the state, not on anything that changed about the embryo itself. That instability is exactly why every estate plan involving stored genetic material needs explicit instructions, not reliance on default law to sort it out.

Questions to Ask Clients Now

Add these to intake for any client who may have stored genetic material — don't wait for them to bring it up

- ✓ *"Do you have frozen eggs, sperm, embryos, or other stored genetic material?"*
- ✓ *"Have you signed documents in connection with storing genetic material or IVF?"*
- ✓ *"If you have or plan on storing genetic material, what are your wishes for the use, destruction, donation, or inheritance of the material?"*
- ✓ *"Do you consent to posthumous reproduction?"*

Get the answers on paper — *before default law decides for your client instead.*

Thank you!

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