

# Hey, Miss Superstar, they're my frozen embryos too

A former fiancé fighting the actress Sofia Vergara to allow their two fertilised eggs to be given life has raised an intriguing question: just what are a man's rights?



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Imagine a woman desperate to become a mother. In her late thirties and in a committed relationship with her fiancé, she wants nothing more than to start a family with him. He already has a child, however, from a previous relationship, and is far more focused on his career. So they come to a compromise. Taking her eggs and his sperm, they will freeze those embryos until they are ready to become parents.

Imagine how that woman feels a year later when that relationship ends. Her partner moves on to a younger, more famous lover, whom he marries and tries for a family with. Now 41, she finds herself single and childless. She begs her former partner to allow their embryos to be born. He refuses.

A woman in such a predicament might attract our sympathy. So why do we feel differently when a man is in

her place? For that is the situation in which Nick Loeb, the former fiancé of the *Modern Family* actress Sofia Vergara, finds himself. The scenario has triggered a drawn-out legal battle in America, raising profound ethical questions.

Vergara and Loeb's saga started in 2013, when the couple created embryos through in vitro fertilisation at a Beverly Hills clinic. Loeb, 41, claims he was putting his dreams of having a family on ice while Vergara — 44 and the highest-paid actress on television — built her career. In May 2014 they separated. Vergara married the *Magic Mike* actor Joe Manganiello in November 2015. According to some reports, they are expecting a child.

Having failed to win custody of the embryos in California, Loeb last week tried a new tack: getting a right-to-live lawsuit filed in Louisiana against Vergara on behalf of the two fertilised frozen eggs. Named as plaintiffs "Emma" and "Isabella" in the lawsuit, court papers argue that, by virtue of not being born, the embryos are being denied a trust fund Loeb created for them. The case resulted in even stranger headlines, declaring that Vergara was being "sued by her own embryos".

Sofia Vergara and Nick Loeb created embryos in 2013 but split a year later



Shortly after launching his legal battle, Loeb wrote movingly in *The New York Times* of having “always dreamed of being a parent” following a difficult childhood. His parents had divorced when he was one. His financier father gained custody of him, but had little time for him. His mother, meanwhile, “disappeared from my life”. He was 20 when she died.

Later, Loeb claimed, a girlfriend had an abortion without consulting him, and “ever since, I have dreamed about a boy at the age he would be now”.

After undergoing IVF with Vergara, Loeb wrote: “I was so excited once the lives were created that I began to suggest names we could call our girls.” He also asks: “Does one person’s desire to avoid biological parenthood (free of any legal obligations) outweigh another’s religious beliefs in the sanctity of life and desire to be a parent?”

It is not by chance Loeb filed his latest case in pro-life Louisiana, where in law a fertilised egg is a “juridical person”. However, Vergara’s lawyer has described these “pre-embryos” as “not embryos, but rather frozen fertilised ova”.

In part it is this question of when life begins that is so unsettling about the case. Perhaps as intriguing, Loeb raises the question of what rights fathers have over unborn foetuses. Until now the abortion issue has largely centred on women. Men are unable to stop their unborn offspring being aborted.

Indeed, two attempts in the UK in 1987 and 2001 by men

wanting to prevent former partners from having abortions failed. But if such cases seem understandable, because they involve women’s rights over their bodies, the debate over frozen embryos — cells in petri dishes — feels more complex.

Loeb asks: “A woman is entitled to bring a pregnancy to term even if the man objects. Shouldn’t a man who is willing to take on all parental responsibilities be similarly entitled to bring his embryos to term?”

Legally, Loeb has an answer to some extent. He and Vergara signed a contract when the embryos were frozen, stipulating neither partner could use them without the other’s consent. His new court challenge attempts to circumvent this.

UK law is more precise. Natalie Gamble, a leading fertility lawyer, says Loeb’s situation could never arise here: “Under UK law embryos can only continue to be stored, or used to conceive a child, if both the egg and the sperm provider consent in writing. If a couple separates, either partner can give notice to the clinic asking for their embryos to be destroyed, and neither can use the embryos to conceive a child without the other’s agreement.”

Vergara’s lawyer says she wants to keep the embryos “frozen indefinitely”. She has said: “I wouldn’t want to bring kids to the world where it is already set everything wrong for them. It would be so selfish. . . I don’t want to allow this person to take more advantage of my career and try to promote himself.”

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