

IN THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FIVE

In re the Marriage of
MAX DAVID BORENSTEIN,
Petitioner and Respondent,

Court of Appeal Case No.
B355195

Trial Court Case No.
22STFL08826

v.

SOFIYA ALEXANDRA
GOLDSHTEYN,
Respondent and Appellant.

On Appeal from Orders of the Superior Court,
County of Los Angeles, Honorable Scott J. Nord

APPELLANT'S OPENING BRIEF

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2 Henry de Bracton, <i>On the Laws and Customs of England</i> (George E. Woodbine ed., Samuel E. Thorne trans., 1968).....	41
2 Matthew Hale, <i>The History of the Pleas of the Crown</i> (Sollom Emlyn ed., 1736)	42–43

2 William Blackstone, Blackstone’s Commentaries (St. George Tucker ed., 1803)	41, 44
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INTRODUCTION

Do the state and federal constitutions protect a woman's right to procreate when she exercises that right through assisted reproductive technology? Here, the trial court held that the constitutions do not apply. Not so.

Sofiya began fertility injections on the day she learned she had breast cancer at the age of 33. RT 53:23–54:5. A Jewish refugee from Ukraine whose family had lost relatives to the Nazis, she fought to preserve her life and her chance to continue that family. RT 52:26–54:5, 68:9–11. Treatment left her unable to produce more eggs. 11 AA 2461. Destroying the embryos she helped create seemed to her “a sacrilege.” RT 68:23–26.

The trial court nevertheless ordered her last genetic embryo donated to medical research and awarded the donor-egg embryos to Max Borenstein “to do so as he sees fit.” 11 AA 2460–61. It discounted Sofiya's interest in the latter because they lacked her DNA, then declared that its “decision does not interfere with a party's reproductive rights.” 11 AA 2461–62. The court's order extinguished the very choice the state and federal constitutions protect.

California protects reproductive privacy, liberty, and equality, and expressly protects every individual's authority to make and effectuate decisions concerning infertility care. Cal. Const. art. I, §§ 1, 1.1, 7. *See* Cal. Health & Safety Code § 123462. Constitutional protection covers the choice to procreate when exercised via reproductive technology. *See Johnson v. Calvert*, 5 Cal. 4th 84, 99–100 (1993). The challenged judicial action is itself subject to constitutional limits. *See Shelley v. Kraemer*, 334 U.S. 1, 14–20 (1948).

The contract ruling independently fails. The court assigned the genetic embryo to a 2021 cycle that it found produced no viable embryos, disregarded conflicting directives, and relegated earlier embryos to another

proceeding despite the trial on all embryos. 11 AA 2457–60, 2488. It refused fiduciary analysis and compensation despite Sofiya’s pretrial requests and the judgment’s reservation of all embryo claims. 3 AA 630, 659–60. *See* 11 AA 2400, 2416, 2494–97.

This Court should reverse and direct judgment securing Sofiya’s reproductive use of all embryos, as set forth in Section VI, because the state and federal constitutions guarantee that no American should ever have to do what Sofiya did on February 24, 2026: ask a state official for permission to have a child.

ISSUES PRESENTED

1. Did the court violate Sofiya's state constitutional rights to privacy and reproductive freedom, and the Reproductive Privacy Act, by ordering legal control of her embryos to her ex-husband, Max Borenstein, without applying constitutional scrutiny?
2. Did the court deny state and federal equal protection by extinguishing Sofiya's reproductive authority, discounting her interest according to genetic contribution, and granting Max Borenstein a spousal veto?
3. Did the order violate California's express liberty guarantee and the Fourteenth Amendment's protection of the historically rooted liberties to procreate, choose childbirth, continue reproduction already begun, preserve unborn offspring, establish a family, and resist involuntary reproductive interference?
4. Did the court enforce ambiguous directives without resolving their terms and embryo-specific applicability, adjudicating assent and enforceability, or applying Family Code section 721's presumption and burden of proof?
5. Did Sofiya's trial brief, requested findings, trial presentation, reply, and specific objections require adjudication of the submitted claims and preclude implied findings on the omissions identified therein?
6. Did the court err in refusing equalization despite Sofiya's pretrial request, economic testimony, and express reservation of embryo claims from the financial settlement?

APPEALABILITY AND TIMELINESS

The May 12, 2026 ruling is appealable as the final adjudication of the embryo controversy reserved from the dissolution judgment. Cal. Civ. Proc. Code § 904.1(a)(1). Finality turns on the adjudication's substance and effect, including whether further judicial action is necessary to determine the parties' rights. *See Griset v. Fair Political Practices Comm'n*, 25 Cal. 4th 688, 698–700 (2001). The April 17 stipulated judgment resolved the other marital matters and reserved all embryo claims for trial. 11 AA 2392–93, 2400, 2416. The May ruling adopted the April decision as final, authorized the dispositions, rejected compensation, and required no further adjudication before implementation. 11 AA 2460–64, 2486, 2498.

The ruling also qualifies as a postjudgment order affecting the reserved rights and presenting issues the dissolution judgment did not decide. Cal. Civ. Proc. Code § 904.1(a)(2). *See Lakin v. Watkins Associated Indus.*, 6 Cal. 4th 644, 651–55 (1993). Unlike the intermediate property ruling in *In re Marriage of Lafkas*, 153 Cal. App. 4th 1429, 1432–34 (2007), this order left no valuation or further trial as a prerequisite to the dispositions commanded. 11 AA 2486–98. Its conditional reference to additional earlier embryos and a future request for order neither scheduled further proceedings nor conditioned the operative dispositions on them. 11 AA 2488, 2498. Sofiya challenges that refusal to complete the requested adjudication as part of the present appeal. 3 AA 655, 659. *See* 11 AA 2470–72.

Alternatively, if the conditional reservation defeats finality, this Court should exercise its discretion to treat the appeal as a petition for writ of mandate. *See Olson v. Cory*, 35 Cal. 3d 390, 400–01 (1983). *See also In re Marriage of Olson*, 238 Cal. App. 4th 1458, 1462–63 (2015). The appendix and transcript supply the trial record, and postponing review risks leaving no effective reproductive remedy after implementation. 11 AA

2460–61, 2498. Immediate review is therefore warranted. *See Olson*, 35 Cal. 3d at 400–01.

The appeal is timely. The clerk served notice of entry of the May 12 ruling that day, and Sofiya filed her notice of appeal on May 14, identifying that ruling. 11 AA 2484–85, 2499. The filing was within the 60-day period. Cal. R. Ct. 8.104(a)(1)(A).

STATEMENT OF THE CASE

This appeal challenges the May 12, 2026 trial ruling disposing of embryos expressly reserved for trial in the parties' dissolution proceeding. 11 AA 2400, 2460–64, 2486. Max commenced dissolution in August 2022 after nearly eight years of marriage. 1 AA 65, 69.

Sofiya first invoked constitutional reproductive freedom and the Reproductive Privacy Act in her February 28, 2025 trial-setting conference brief. 1 AA 73, 77–78, 82, 92.

The court's September 19, 2025, pretrial order set a trial brief schedule, with trial briefs due ten days before trial, which was held on February 24, 2026. 3 AA 586.

The parties settled every other issue via mediation, reserving the embryo controversy to a bench trial. 3 AA 595–96. On January 9, 2026, the court related Sofiya's separate civil action, (No. 25STCV33465), which raised, *inter alia*, declaratory claims to the embryos, to the dissolution proceeding and assigned it to family law Department 35 "for all purposes." 3 AA 598–600.

Sofiya timely filed her trial brief February 13, 2026, and her request for a statement of decision on February 24, the morning of trial. 3 AA 620, 654. She sought constitutional protection, embryo-specific adjudication, review of the directives under section 721, and alternative equalization. 3 AA 621–30, 655–60. Both parties testified at trial, and the court admitted the disputed embryo-disposition directives as Exhibits 1 and 4. 11 AA 2360.

At the close of trial, the court acknowledged the opening briefs and allotted fifteen pages for the parties' April submissions. RT 96:3–6, 97:21–28. The minute order set April 10 for closing briefs and April 17 for responses. 11 AA 2361. Max filed April 10, and Sofiya renewed her claims and relief in her April 16 reply. 11 AA 2365–73, 2381–90. The parties'

April 17 stipulated judgment carried forward the reservation of “all claims and issues relating to any and all embryos,” including embryos created with either spouse’s or donor material, without admission or waiver of any claim “regardless of genetic origin.” 11 AA 2400.

The court’s April 23 tentative decision ordered the joint-DNA embryo donated to research and awarded the donor-egg embryos to Max “to do so as he sees fit.” 11 AA 2453–55, 2460–61, 2464. Sofiya’s May 4 objections identified omitted findings, contradictory embryo identification, her earlier compensation request, and unresolved constitutional and fiduciary questions. 11 AA 2465–81. The court adopted the decision with modifications on May 12, which Sofiya appealed May 14. 11 AA 2486, 2499.

STATEMENT OF FACTS

A. Sofiya's Choice to Give Her Embryos a Chance at Life Is Deeply Rooted in an Ancestral and Personal Story of Survival.

Sofiya was born in Odessa, Ukraine, while it was part of the Soviet Union, and came to Los Angeles with her mother as a child refugee. RT 52:26–53:1. Her Jewish family had lost many relatives to the Nazis. RT 53:6–10, 68:9–11. Cancer took her grandmother, and her grandfather died during the pandemic, leaving a small surviving family she hoped to continue. RT 53:1–5, 53:6–10.

At thirty-three, Sofiya confronted breast cancer and the prospect of losing her chance to have children. RT 53:11–28. She began fertility injections the day of her diagnosis, underwent a lumpectomy, a year of chemotherapy, and thirty days of radiation. RT 53:13–54:5. Although she survived, treatment continued through hormone suppressants that placed her in forced menopause, while pregnancy's hormonal changes made carrying a child unsafe. RT 53:16–22, 57:3–16. Each egg retrieval required interrupting her cancer medication, putting her life at risk. RT 59:20–26. By trial, she could produce no more eggs. 11 AA 2461.

Sofiya and Max turned to surrogacy, but three pregnancies ended in miscarriage. RT 55:1–8, 56:22–28, 58:16–22. Sofiya's 2016 egg retrieval produced two viable male embryos, the 2020 retrieval one male and one female embryo, and the 2021 retrieval none. RT 57:24–58:15. Three of the four viable embryos had been used, leaving one. RT 58:16–22. That embryo was, as the court found, "the last chance for her progeny to have her DNA and her biological lineage to continue." 11 AA 2461–62.

Sofiya's commitment extended to the donor-egg embryos, for which she selected a woman for resemblance, personality, family background, and Jewish and Eastern European ancestry. RT 68:3–14. She wanted "the chance to have the children from the embryos that already exist." RT

68:17–19. After the work and praying that went into creating them, discarding them seemed to her “a sacrilege.” RT 68:23–26. This was the family she had spent seventeen years trying to build. RT 88:19–25.

Max acknowledged voluntarily agreeing to fertilize Sofiya’s eggs and create the embryos. RT 48:16–20. He nevertheless opposed bringing either category to term, asserting that he should be able to have a child “with someone who wants to have a child with me, and we make a decision together.” RT 39:15–28, 41:26–42:6. Removing support obligations was “not my only objection.” RT 47:4–7.

B. The Ruling Made No Findings on the Number of Embryos, Their Origin, and Location, Despite Conflicting Testimony and a Request for Identification to Resolve Ambiguity.

Max did not know how many embryos were created, used, or still existed, and he could not supply exact counts, retrieval dates, or the number created with the parties’ genetic material. RT 37:1–7, 42:13–22, 43:21–44:16, 46:1–11. Asked about storage facilities, he answered, “It’s possible two, I don’t recall, exactly.” RT 45:6–8. The testimony thus left the embryos’ locations unresolved.

Sofiya recalled twelve donor-egg embryos, six male and six female, plus the genetic embryo. RT 82:9–17. But the facility records she checked reflected eight: “It’s eight, and we don’t know what makes up the eight.” RT 82:18–83:11. She believed the genetic embryo remained at “ART” and the others at “Newport.” RT 83:13–84:11. Six recorded dates appeared consistent with the donor process, while two did not correspond to the retrievals or fertilizations she remembered. RT 84:13–26.

The admitted directives prescribed conflicting dispositions without identifying particular embryos: Exhibit 1, dated July 10, 2021, selected research donation upon divorce, while Exhibit 4, dated February 8, 2022, selected transfer to the male partner. 11 AA 2343, 2346, 2354, 2357. Both

refer to “all cryopreserved embryos in storage,” but also to “the IVF cycle” and a freezing decision before aspiration “in each cycle that they attempt.” 11 AA 2343–44, 2346, 2354–55, 2357.

Other directives were missing from the court’s record. Max acknowledged directives predating 2021, and Sofiya described three contract discussions, believing the first agreement dated from 2016. RT 46:12–23, 75:6–18. Although the court found contracts were signed “before each cycle,” only the 2021 and 2022 forms were admitted. 11 AA 2457. Sofiya’s requested findings and objections addressed the earlier directives, missing 2020 form, integration, and supersession. 3 AA 659–60. *See* 11 AA 2470–75.

Sofiya disputed some initials but acknowledged her signatures, review, and understanding, including the research selection when Exhibit 1 was signed. RT 67:2–11, 74:24–75:5, 76:23–77:2. Although she initially associated Exhibit 1 with the remaining genetic embryo, she then identified that embryo as a product of 2020. RT 79:13–21, 81:8–14. Asked whether the July 2021 form definitely governed it, she answered, “I think so. I guess I’m not sure, sure,” noting the absence of identifying specifics. RT 81:15–23. She likewise associated Exhibit 4 with donor-egg embryos but disputed nineteen as their number. RT 78:8–79:12.

Asked why the forms should not be enforced, Sofiya acknowledged, “sure, these are contracts, I’m not saying they’re not,” but explained that enforcement would destroy her chance for a biological child and her opportunity to use the other embryos she helped create. RT 88:19–25, 89:4–8. She asked why assisted reproduction should receive less protection: “So I don’t get the protection of my own body because my body is broken, I don’t think that that is constitutionally fair.” RT 89:22–90:3.

Max’s March 3, 2025 trial-setting brief sought enforcement of a February 2022 “Storage Consent” requiring discard, but the admitted

February 2022 assisted-reproductive-technology consent selected transfer to the male partner. 1 AA 90–91; 11 AA 2349, 2357, 2458–59.

Sofiya had demanded the contracts in discovery on March 7, 2025, then served Requests for Admission 12 and 13 concerning written and oral embryo agreements, with Form Interrogatory 17.1 seeking supporting facts, witnesses, and documents. 2 AA 390–91, item 9; 1 AA 132, 138, 149. Max supplied objections, prompting Sofiya’s June 2 motion to compel further responses. 1 AA 105, 109–10, 149, 169. He opposed on grounds that the requests could concern twenty embryos collectively, the genetic embryo, or some or all nineteen donor-egg embryos. 3 AA 472. Sofiya’s February 23 exclusion motion reported production on February 18, shortly before trial, and counsel’s declaration identified impediments to investigating scope and revocation. 3 AA 633, 638–39. At trial, counsel reported that copied boxes lacked the documents and identified possible locations, including a filing cabinet Max had taken in April 2023. RT 19:17–24. The court admitted the documents after offering a continuance, which counsel declined. RT 27:18–28:6, 28:23–29:3, 33:6–18.

C. The Financial Claim Preceded the Decision and Was Expressly Reserved from Settlement.

Sofiya’s trial brief requested an “equalizing payment or offset,” and her requested findings addressed character, value, and compensation for embryos placed beyond her use. 3 AA 630, 657–58. At trial, she described IVF, retrieval, donor, storage, and surrogacy expenses, agreeing with the court’s approximately \$100,000 estimate for the process “from start to finish.” RT 71:9–73:6. Her reply later proposed \$100,000 per embryo. 11 AA 2385, 2390. Max’s closing brief described the donor eggs as “purchased with community property,” while the stipulated judgment excluded embryo claims from the financial equalization. 11 AA 2369, 2400, 2416.

D. The Court Ordered Dispositions Without Resolving the Contradictions Sofiya Identified.

Max’s closing brief assigned the remaining genetic embryo to the 2021 cycle. 11 AA 2366. Although the decision found viable embryos from 2016 and 2020 and none from 2021, it assigned “[t]he embryo remaining from the 2021 cycle” to Exhibit 1. 11 AA 2457–58. The court dismissed the conflicting forms because “under either contract, the Respondent does not end up with the embryos.” 11 AA 2460. It ordered the joint-DNA embryo donated to research and the donor-egg embryos awarded to Max “to do so as he sees fit,” while its conclusion broadly awarded him the embryos at Ovation. 11 AA 2460–61, 2464. Although the court hoped Max would donate the donor-egg embryos to research, it specified that “the ultimate decision is the Petitioner’s.” 11 AA 2461 n.3.

The court stated that Sofiya had “no real claim” to the donor-egg embryos because they would not continue her lineage and she could obtain different donor eggs and sperm. 11 AA 2461. It declined constitutional analysis because it viewed enforcement as “the party’s desires being enforced, not the desires of the State being forced on the party.” 11 AA 2462.

The May modification adhered to Exhibits 1 and 4 but left additional earlier embryos, “if they exist,” unadjudicated and subject to another request for order. 11 AA 2488. It neither identified the known 2020 embryo as excluded nor reconciled the contrary findings about 2021, and it deemed location irrelevant because contracts determined the outcome. 11 AA 2457–60, 2488, 2490. The court also refused to consider the trial brief unless admitted into evidence and rejected preserved constitutional, fiduciary, and financial requests based on Sofiya’s use of the authorized reply. 11 AA 2487–88, 2492–97.

STANDARDS OF REVIEW

This court reviews scope of constitutional protection and governing standards *de novo*. See *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal. 4th 1, 40, 46–47 (1994). Findings made under an erroneous constitutional standard cannot sustain the judgment. See *id.* at 46–47. Constitutional interpretation is likewise reviewed *de novo*. See *Schmeer v. County of Los Angeles*, 213 Cal. App. 4th 1310, 1316 (2013).

Contract interpretation is independent unless it turns on the credibility of conflicting extrinsic evidence. See *Parsons v. Bristol Dev. Co.*, 62 Cal. 2d 861, 865–66 (1965). Factual findings require reasonable, credible evidence of solid value in the whole record. See *Conservatorship of O.B.*, 9 Cal. 5th 989, 1006 (2020). A finding rebutting section 721's presumption receives substantial-evidence review under the applicable preponderance burden. See *In re Marriage of Mathews*, 133 Cal. App. 4th 624, 629–32 (2005).

Predominantly legal characterization questions receive independent review, and valuation discretion must operate within the equal-division requirement. See *In re Marriage of Lehman*, 18 Cal. 4th 169, 184 (1998). See also *In re Marriage of Cream*, 13 Cal. App. 4th 81, 87–89 (1993). Timely specific objections bar adverse implied findings on the identified omissions and ambiguities. Cal. Civ. Proc. Code § 634. See *In re Marriage of Arceneaux*, 51 Cal. 3d 1130, 1133–34 (1990). The resulting prejudice is addressed with the errors affecting disposition, constitutional scrutiny, and compensation. See *F.P. v. Monier*, 3 Cal. 5th 1099, 1107–08 (2017).

LAW AND ARGUMENT

I. The Trial Court Violated Sofiya’s Rights to Privacy and Reproductive Freedom Under the California Constitution and the Reproductive Privacy Act.

A. California Protects Sofiya’s Decision to Have Children Through Assisted Reproduction.

California’s Constitution and Reproductive Privacy Act protect Sofiya’s decision to have children through assisted reproduction. *See* Cal. Const. art. I, §§ 1, 1.1; Cal. Health & Safety Code § 123462; *Johnson v. Calvert*, 5 Cal. 4th 84, 99–100 (1993). Sofiya sought “the chance to have the children from the embryos that already exist.” RT 68:17–19. The court prevented that use while declaring that its “decision does not interfere with a party’s reproductive rights.” 11 AA 2460–62. Not so.

Article I, section 1.1 provides:

The state shall not deny or interfere with an individual’s reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. This section is intended to further the constitutional right to privacy guaranteed by Section 1, and the constitutional right to not be denied equal protection guaranteed by Section 7. Nothing herein narrows or limits the right to privacy or equal protection.

Cal. Const. art. I, § 1.1.

“Which includes” is exemplary and does not limit reproductive freedom to the listed illustrations. *See Flanagan v. Flanagan*, 27 Cal. 4th 766, 774 (2002); *People v. Aguirre*, 64 Cal. App. 5th 652, 661–62 (2021). Accordingly, California protects a woman “from interference with her reproductive freedom, including her right to have a home birth and make other decisions about her childbirth.” *Carpenter v. Superior Court*, 93 Cal. App. 5th 1279, 1313 (2023). Section 1.1 likewise “reaches a person’s decisions concerning where and how to give birth.” *Jackson v. Lee*, No.

5:25-cv-01177-SSS-ACCVx, 2026 U.S. Dist. LEXIS 164005, at *15–19 (C.D. Cal. July 22, 2026) (sustaining a hospital-childbirth claim).²

Section 1 independently guarantees:

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

Cal. Const. art. I, § 1.

The constitution’s autonomy protection includes “making intimate personal decisions or conducting personal activities without observation, intrusion, or interference.” *Hill v. Nat’l Collegiate Athletic Ass’n*, 7 Cal. 4th 1, 35 (1994). Whether to bear children is fundamental, including when medical assistance enables that choice. *See People v. Belous*, 71 Cal. 2d 954, 963–64 (1969); *Conservatorship of Valerie N.*, 40 Cal. 3d 143, 163–64 (1985); *Calvert*, 5 Cal. 4th at 99–100 (protecting procreative choice exercised “albeit through novel medical procedures”).³

The Reproductive Privacy Act expressly reaches infertility care:

The Legislature finds and declares that *every individual* possesses a fundamental right of privacy with respect to personal reproductive decisions, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.

Cal. Health & Safety Code § 123462 (emphasis added).

² Section 1.1 preserves section 1’s existing privacy protection. *See* Cal. Const. art. I, § 1.1; *Tulare Med. Ctr. Prop. Owners Ass’n v. Valdivia*, 119 Cal. App. 5th 967, 985–86 (2026).

³ Sections II and III develop equal protection, state liberty, and federal ordered liberty, while Section I focuses on California’s constitutional and statutory privacy protections.

The Act’s additional protections for choosing childbirth do not erase its opening protection of “every individual.” *See id.* § 123462(b)–(c). “Make and effectuate” protects implementation of reproductive decisions, including through the Legislature’s deliberate inclusion of infertility care. *See* S. Judiciary Comm., Analysis of A.B. 2223, 2021–2022 Reg. Sess., at 4, 10 (June 14, 2022), 10 AA 2206, 2212; *Carpenter*, 93 Cal. App. 5th at 1297–98. Denying Sofiya use of the existing embryos violated that protection. RT 68:3–21; 11 AA 2460–61.⁴

The trial court interfered with Sofiya’s choice to reproduce with her existing embryos. It found that Sofiya “cannot produce additional eggs” and that the remaining genetic embryo represents “the last chance for her progeny to have her DNA and her biological lineage to continue.” 11 AA 2461–62. It nevertheless ordered that embryo “to be donated to medical research” and awarded the donor-egg embryos to Max “to do so as he sees fit.” 11 AA 2460–61. Suggesting that Sofiya purchase different donor eggs and sperm and begin surrogacy again substitutes the court’s reproductive choice for hers, including her deliberate selection of this donor. 11 AA 2461; RT 68:3–21. This the court cannot do.

The May modification compounds the error. The court found that the 2021 cycle produced no viable embryo, yet attributed the remaining genetic

⁴ The enacted language, committee analyses, and legislative compilation corroborate that purpose. *See* 2022 Cal. Stat. ch. 629, §§ 4–5, 9 AA 1787 (enacting effectuation and infertility-care protections and reaffirming reproductive privacy in section 103005(b)); S. Comm. on Health, Analysis of A.B. 2223, 2021–2022 Reg. Sess., at 3 (June 29, 2022), 10 AA 2221 (summary item 9); S. Judiciary Comm., Analysis of A.B. 2223, at 4, 10, 10 AA 2206, 2212; Assemb. Comm. on Judiciary, Analysis of A.B. 2223, 2021–2022 Reg. Sess., at 3 (Apr. 5, 2022), 9 AA 1794 (summary items 4–5, describing expansion and protection “[t]hrough its courts and statutes and under its Constitution”); Decl. of Anna Maria Bereczky-Anderson at 1–3 (Aug. 16, 2024), 9 AA 1734–36 (identifying assembled sources).

embryo to that cycle and ordered research donation. 11 AA 2457–58, 2460. It then conditionally relegated earlier embryos to a future request for order despite Sofiya’s request to adjudicate each embryo and identify its governing directive. 11 AA 2486, 2488; 3 AA 655, 659. Whether the order disposes of her earlier embryo or leaves it unadjudicated, it denies the constitutional adjudication she requested. 3 AA 655–57; 11 AA 2461–62, 2488, 2493–94. The trial court expressly refused to apply the constitutional standard to the reproductive decision with which it interfered. 11 AA 2461–62. That error must be rectified.

B. No Compelling Justification Supports the Court’s Interference.

An obvious invasion of fundamental personal autonomy requires a compelling justification. *See Hill*, 7 Cal. 4th at 34–35; *Lewis v. Superior Court*, 3 Cal. 5th 561, 572–73 (2017). Applying that standard to reproductive choice, the *Lungren* plurality concluded:

We conclude that, under the California constitutional privacy clause, a statute that impinges upon the fundamental autonomy privacy right of either a minor or an adult must be evaluated under the demanding “compelling interest” test.

Am. Acad. of Pediatrics v. Lungren, 16 Cal. 4th 307, 342 (1997) (plurality opinion).

General balancing governs less central privacy interests. *See Lewis*, 3 Cal. 5th at 572–73; *Hernandez v. Hillsides, Inc.*, 47 Cal. 4th 272, 288 (2009).⁵

⁵ California’s independent standard also forbids governmental coercion channeling reproductive choice. *See Lungren*, 16 Cal. 4th at 327–28, 340–42 (plurality opinion); *White v. Davis*, 13 Cal. 3d 757, 775–76 (1975) (requiring justification of alleged privacy invasion); *Comm. to Defend Reprod. Rts. v. Myers*, 29 Cal. 3d 252, 284 (1981) (plurality opinion). Strict scrutiny concerns fundamental autonomy, not every privacy claim. *See Hill*, 7 Cal. 4th at 34–35; David A. Carrillo, Stephen M. Duvernay, Rodolfo E.

The trial court’s decision is state action subject to constitutional scrutiny. *See Abstract Inv. Co. v. Hutchinson*, 204 Cal. App. 2d 242, 245–47, 255 (1962) (requiring consideration of a discrimination defense to judicial enforcement); *Park Redlands Covenant Control Comm. v. Simon*, 181 Cal. App. 3d 87, 98–99 (1986). Judicial coercion supplies state action even when the obligation originates privately. *See Barrows v. Jackson*, 346 U.S. 249, 253–54 (1953); *Cohen v. Cowles Media Co.*, 501 U.S. 663, 668–71 (1991). It is the court’s commands, not merely the parties’ preferences, that interfere with Sofiya’s rights. 11 AA 2460–62. Even still, section 1 reaches private conduct. *See Hill*, 7 Cal. 4th at 20, 39–40.⁶

Enforcing a contract did not justify the court’s interference with Sofiya’s reproductive choice. *See Tulare Med. Ctr. Prop. Owners Ass’n v. Valdivia*, 119 Cal. App. 5th 967, 990–91 (2026). In *Tulare*, a public hospital district created an abortion-clinic restriction that a private association sought to enforce. *See id.* at 989–90. The association failed because it “incorrectly treated the land use restriction as solely a private contractual matter” without establishing a compelling justification. *Id.* at 991. Here, the court likewise treated contractual validity as sufficient to dispense with constitutional scrutiny. 11 AA 2462.

Rivera Aquino, & Brandon V. Stracener, California Constitutional Law: Privacy, 59 San Diego L. Rev. 119 (2022).

⁶ A plurality’s free-speech analysis of a neutral lease expressly distinguished privacy’s reach to private conduct. *See Golden Gateway Ctr. v. Golden Gateway Tenants Ass’n*, 26 Cal. 4th 1013, 1029, 1034–36 (2001). *Ohno* observed that *Shelley*’s state-action rule has “generally been confined” to equal-protection discrimination claims. *Ohno v. Yasuma*, 723 F.3d 984, 998–99 (9th Cir. 2013). But it distinguished domestic substantive adjudication from recognition of a foreign money judgment and reserved whether coercive enforcement itself supplies state action. *See id.* at 995, 1000. Nevertheless, here, the trial court itself interfered with Sofiya’s privacy. 11 AA 2460–62.

Sofiya established Hill's three elements: a protected privacy interest, a reasonable expectation of privacy, and a serious invasion. *See Hill*, 7 Cal. 4th at 39–40. California expressly protects her reproductive decision. *See* Cal. Const. art. I, §§ 1, 1.1; Cal. Health & Safety Code § 123462. Her expectation concerns bodily autonomy, not secrecy. *See Hill*, 7 Cal. 4th at 35–37. The parties created the embryos for reproduction and reserved all embryo claims without admission or waiver. 11 AA 2400. RT 68:3–21. Sofiya submitted governing rights and directives for adjudication. 3 AA 655–59. Those circumstances established Sofiya's reasonable expectation of reproductive authority. *See Hill*, 7 Cal. 4th at 36–37. Consent affects that expectation, but disputed directives cannot resolve it without adjudication of their scope and enforceability. *See id.* at 37; *Tulare*, 119 Cal. App. 5th at 990–91; 3 AA 655–59. Eliminating her last genetic opportunity and removing the remaining embryos from her control seriously invade that autonomy. 11 AA 2460–62. *See Hill*, 7 Cal. 4th at 34–35, 37.

Max's invocation of reproductive freedom did not establish an entitlement to extinguish Sofiya's reproductive choice. *See Hill*, 7 Cal. 4th at 34, 40. He voluntarily agreed to fertilize her eggs, then asserted an interest in bringing children into the world and raising them with a partner of his choice. RT 47:27–48:20. That preference did not establish a compelling necessity to prohibit Sofiya's reproductive use. *See Hill*, 7 Cal. 4th at 40.⁷

⁷ The Constitution does not guarantee freedom from every unwanted consequence of parenthood. *See Rivera v. Minnich*, 483 U.S. 574, 580 (1987) (rejecting a liberty interest in avoiding lawfully imposed support obligations); *N.E. ex rel. E.D.L. v. Hedges*, 391 F.3d 832, 835–36 (6th Cir. 2004) (rejecting a procreative-privacy challenge to paternity and support after birth).

Neither research donation nor unrestricted control was necessary to protect Max against legal parenthood. Section 7613(e) permits an agreement signed by all persons with an interest in or control of the embryos to make the renouncing person a donor rather than a legal parent. Cal. Fam. Code § 7613(e). Sofiya proposed that arrangement, offered to relinquish support claims, and requested continued storage. 3 AA 621, 629–30; RT 89:9–21, 94:22–27; 11 AA 2479–80. The court’s dispositions exceeded that asserted interest without justification. 11 AA 2461–62, 2496. *See Hill*, 7 Cal. 4th at 40.

Penal Code section 367g likewise supplies no necessity for the ruling. It regulates use contrary to written consent and implantation without required signatures. Cal. Penal Code § 367g(a)–(b). It neither commands research donation nor identifies which consent governs which embryo. Those determinations remained unresolved. 11 AA 2457–62, 2488–89. Section IV addresses them.

Max bore the burden to justify the invasion, and Sofiya requested findings on compelling interest, necessity, evidence, and less restrictive alternatives. *See Hill*, 7 Cal. 4th at 40; 3 AA 626–29, 657. Max’s briefs invoked contracts, reproductive choice, and public policy without establishing that necessity. 1 AA 92; 3 AA 614–15; 11 AA 2371–73. The court supplied none, instead declaring reproductive rights unaffected and rejecting the requested findings. 11 AA 2461–62, 2493–94, 2496. The unsupported invasion must be reversed. *See Hill*, 7 Cal. 4th at 34, 40; *Lungren*, 16 Cal. 4th at 340–42 (plurality opinion).

C. Sofiya’s Privacy and Reproductive-Freedom Claims Are Properly Before This Court.

The court had to adjudicate Sofiya’s timely presented privacy and reproductive-freedom claims and her objections to the distinct constitutional injury its final order inflicted. Her February 28, 2025 trial-

setting brief invoked article I, section 1.1 and the RPA. 1 AA 73, 77–78, 82, 92. The April 17 stipulated judgment reserved “all claims and issues relating to any and all embryos,” regardless of genetic origin. 11 AA 2392, 2400.

The September 19 written order required trial briefs, and Sofiya’s February 13, 2026 opening trial brief again presented the claims. 3 AA 586, 620–30. Her February 24 request for statement of decision sought constitutional, state-action, scrutiny, and equal-protection findings. 3 AA 654–57. Both parties addressed those questions at trial. RT 62:5–64:2, 95:1–96:2. Her February 23 judicial-notice papers supplied the legislative materials, and the court retained the binders Max’s counsel confirmed receiving. 3 AA 646–53; RT 98:25–99:9. At the close of trial, the court asked whether the parties wanted closing briefs: “I have your opening briefs.” RT 96:3–6. Max’s counsel answered, “I actually would love to do a closing brief.” RT 96:7–8. Sofiya’s counsel responded, “If they’re in, I’m in.” RT 96:18. The court allotted fifteen pages across the April submissions: “You only get 15 pages so use however you want.” RT 97:21–28. The minute order set April 10 for closing briefs and April 17 for responses. 11 AA 2361. Sofiya’s April 16 reply renewed her claims and incorporated her trial brief. 11 AA 2381–82, 2387–90. Neither written order conditioned adjudication of existing claims on their repetition in an April 10 brief. 3 AA 586. 11 AA 2361.

The May ruling’s premise that “Respondent requested permission to submit a brief addressing issues not raised in Pham” misdescribes that sequence. 11 AA 2487. Max sought exclusion April 14 and again April 22, but the court denied his application and would consider the filings as appropriate. 11 AA 2374–76, 2425–29, 2442. The rule against new reply issues protects the opportunity to answer, which Max had exercised since March 2025. *See Reichardt v. Hoffman*, 52 Cal. App. 4th 754, 764–65

(1997); 1 AA 92. Nor did nonadmission of the trial brief erase its legal claims. *See In re Marriage of Pasco*, 42 Cal. App. 5th 585, 591–92 (2019) (holding that a trial brief is argument, not evidence, and that unadmitted declarations cannot resolve disputed facts). The court confused presentation of legal claims with evidentiary proof. 3 AA 620–30. 11 AA 2488.

The constitutional injury inflicted by the final order is independently before this Court. Judicial enforcement supplies state action even when the obligation originated privately. *See Shelley v. Kraemer*, 334 U.S. 1, 19–20 (1948). Sofiya’s earlier submissions sought protection against threatened interference. The May 12 order made the dispositions final. 11 AA 2486, 2498. That particular injury did not exist before the court acted. A challenge to a judicial denial may be asserted at the first opportunity following it. *See Preston v. Municipal Court*, 188 Cal. App. 2d 76, 82–83 (1961) (considering a constitutional challenge at the first opportunity after judicial denial of a transcript). The Supreme Court likewise distinguishes an underlying constitutional claim from the additional injury caused by the court’s decision. *See Brinkerhoff-Faris Tr. & Sav. Co. v. Hill*, 281 U.S. 673, 677–80 (1930).

Sofiya objected when the proposed decision disclosed the interference and appealed when the court made it final. 11 AA 2475–81, 2486, 2499. Her May 4 objections challenged judicial enforcement as state action, the omitted constitutional standards and justification, the rejection of less restrictive alternatives, and the unrestricted grant to Max. 11 AA 2475–81. Earlier briefing did not replace her statutory opportunity to object to the court’s own decision. *See Bay World Trading, Ltd. v. Nebraska Beef, Inc.*, 101 Cal. App. 4th 135, 140–41 (2002). Those objections completed the procedure prescribed by sections 632 and 634. *See In re Marriage of Arceneaux*, 51 Cal. 3d 1130, 1133–34 (1990); Cal. R. Ct. 3.1590(g).

D. The Court Should Direct Judgment Securing Sofiya's Reproductive Use of All Embryos.

Sofiya is entitled to reproductive use of all embryos at issue and an order rectifying the interference with the rights set forth herein. *See* Cal. Civ. Proc. Code § 43; *Hill*, 7 Cal. 4th at 47, 57–58; 3 AA 621, 630, 655. Section VI specifies the implementation directions, subordinate alternative adjudication, and financial relief under Section V.

II. The Trial Court Denied Sofiya Equal Protection by Foreclosing Her Reproductive Choice and Giving Max Exclusive Authority Over the Remaining Embryos.

The court's order denies Sofiya equal protection: it directs research donation of her last genetic embryo, rejects her claim to donor-egg embryos for lack of DNA, and gives Max exclusive authority over those embryos. 11 AA 2460–62. That inequality requires constitutional justification. *See Valerie N.*, 40 Cal. 3d at 163–65. Review is *de novo*. *See Cal. Grocers Ass'n v. City of Los Angeles*, 52 Cal. 4th 177, 208 (2011).

A. The Court's Allocation of Reproductive Authority Denied Sofiya Equal Protection.

The trial court could not exempt its ruling from equal protection by attributing its holding to the parties' desires. 11 AA 2460–62. Judicial action in a private family dispute remains subject to the Fourteenth Amendment. *See Palmore v. Sidoti*, 466 U.S. 429, 432 n.1 (1984). Judicial enforcement of private obligations likewise remains subject to equal protection. *See Shelley v. Kraemer*, 334 U.S. 1, 17–20 (1948); *Barrows*, 346 U.S. at 254.⁸

⁸ Ordinary promise enforcement may withstand scrutiny despite an incidental publication burden. *See Cohen*, 501 U.S. at 669–71. Here, disposition of the embryos directly determines the disputed reproductive use. 11 AA 2460–62.

The trial court erred in treating Sofiya’s lack of a genetic connection as grounds for denying her a legally significant reproductive interest. *See In re Marriage of Buzzanca*, 61 Cal. App. 4th 1410, 1424–26 (1998).

California extends legal protection to intended motherhood through deliberate participation in assisted reproduction even when the intending mother contributes neither the egg nor the gestation. *See id.*

In *Johnson v. Calvert*, the California Supreme Court grounded intended parenthood in the affirmative undertaking that brought the child into existence, approvingly invoking the intended parents’ role as the “first cause” of the procreative relationship. *Johnson v. Calvert*, 5 Cal. 4th 84, 93–94 (1993). *Buzzanca* expressly rejected limiting that reasoning to genetically related parents and recognized husbands and wives as equally situated through their consent to the act bringing the child into being. *See* 61 Cal. App. 4th at 1424–26. Sofiya deliberately selected the donor and participated in creating these particular embryos to have children she intended to raise. RT 68:3–26. Her participation was the kind of affirmative reproductive undertaking those decisions recognize. The court’s conclusion that she had “no real claim” because the embryos lacked her DNA disregarded that legally significant undertaking. 11 AA 2461. *See Buzzanca*, 61 Cal. App. 4th at 1424–26.

The court could not cure its unequal disposition by denying both parties the joint-DNA embryo while granting Max control of every remaining embryo. In so doing, it extinguished Sofiya’s genetic opportunity and left her no embryos. 11 AA 2460–62.

B. California Requires Strict Scrutiny of This Unequal Burden on Fundamental Reproductive Choice.

Section 1.1 expressly connects reproductive freedom to California’s independent equal-protection guarantee. Cal. Const. art. I, §§ 7(a), 1.1. Unequal treatment significantly burdening a fundamental right must be

necessary to serve a compelling interest. *See People v. Cannon*, 18 Cal. 5th 497, 517–18 (2025). California applied that standard to a prohibition withholding sterilization from a class of women, requiring compelling justification for denying a reproductive option otherwise available to adult women. *See Valerie N.*, 40 Cal. 3d at 163–65. The choice remained fundamental although exercised via a medical procedure. *See id.* Infertility care does not diminish the protected interest. *See Cal. Health & Safety Code* § 123462; *Calvert*, 5 Cal. 4th at 100–01.

Research donation eliminates Sofiya’s last genetic opportunity, while the companion award denies use of every donor-egg embryo, imposing a significant burden. 11 AA 2460–62. The court’s “under either contract” rationale does not explain why either contract applies to embryos created during cycles for which no contract was entered into evidence. 11 AA 2460. The court’s order, as modified, left unresolved the status of the 2020 embryo, which the court’s findings attributed to a 2021 cycle that Sofiya testified resulted in no embryos. 11 AA 2457–58, 2488; RT 79:13–21, 81:8–23; Sections I.A, IV. That kind of ambiguity or inconsistency needs rectification.

The court denied Sofiya authority for lack of DNA while giving Max control of the same donor-egg embryos. 11 AA 2461 & n.3. Intended parenthood does not require genetic contribution. *See Buzzanca*, 61 Cal. App. 4th at 1421–22, 1426. That distinction required compelling justification and necessity. *See Valerie N.*, 40 Cal. 3d at 164–65; *Cannon*, 18 Cal. 5th at 517–18. Exhibit 4 selects male-partner transfer, while the judgment adds disposition “as he sees fit.” 11 AA 2357, 2461 & n.3. Sofiya requested findings on justification, alternatives, and permissible acts, and objected to their omission. 3 AA 657; 11 AA 2477–78, 2480–81. Calling embryos property cannot justify that unequal authority. *Cf. Kirchberg v. Feenstra*, 450 U.S. 455, 459–61 (1981) (invalidating a husband’s unilateral

authority over community property). That unjustified disposition must be reversed. 11 AA 2461–62.

C. The Trial Court’s Unconstitutional Spousal Veto Denied Sofiya Independent Reproductive Authority.

The court violated Sofiya’s individual reproductive privacy by granting Max controlling authority over her reproductive choice. 11 AA 2461 & n.3. This District rejected allowing “one spouse to exercise a type of veto power over the other’s decisions” about medical treatment. *Gross v. Recabaren*, 206 Cal. App. 3d 771, 782–83 (1988). The same principle protected a wife’s treatment decision against her husband’s competing consortium-litigation interest. *See Mormile v. Sinclair*, 21 Cal. App. 4th 1508, 1514–16 (1994). Although those cases concern medical arbitration, their independent-privacy reasoning rejects transfer of medical autonomy through marriage. *See Gross*, 206 Cal. App. 3d at 782–83; *Mormile*, 21 Cal. App. 4th at 1514–16.⁹

The judgment creates that veto by making Max’s choice controlling over Sofiya’s, even after he had already made the decision to create the embryos for the purpose of having children. 11 AA 2461 & n.3. Even if Exhibits 1 and 4 were otherwise enforceable, the court nonetheless had no constitutional authority to enforce them absent sufficient justification, not present here. *See Shelley*, 334 U.S. at 17–20; *Barrows*, 346 U.S. at 254. By refusing scrutiny before assigning Max ultimate authority, the court impermissibly enforced an unconstitutional spousal veto. 11 AA 2461–62.

⁹ The federal reproductive rights cases condemned spousal vetoes. *See Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 69–71 (1976); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 896–98 (1992), overruled by *Dobbs*, 597 U.S. at 292. Those holdings informed California’s independent protection and continuing individual-right and marital-equality principles. *See Gross*, 206 Cal. App. 3d at 782–83; *Eisenstadt*, 405 U.S. at 453; *Kirchberg*, 450 U.S. at 459–61.

D. California’s Independent Prohibition of Sex Discrimination Also Requires Scrutiny.

California applies strict scrutiny to sex classifications independently of any fundamental-right burden. *See Sail’er Inn, Inc. v. Kirby*, 5 Cal. 3d 1, 17–20 (1971). Federal intermediate scrutiny does not displace that protection. *See Molar v. Gates*, 98 Cal. App. 3d 1, 13–17 (1979). The court enforced a male-partner directive, dismissed the wife’s donor-assisted interest, and gave the husband ultimate authority without deciding Sofiya’s preserved challenge to that preference. 3 AA 629–30, 656–57; 11 AA 2357, 2461–62, 2494. A sex-based allocation requires compelling justification and necessity. *See Sail’er Inn*, 5 Cal. 3d at 17–20; *Molar*, 98 Cal. App. 3d at 16–17. If genetic contribution supplies the classification instead, the significant fundamental-right burden independently triggers strict scrutiny. *See Cannon*, 18 Cal. 5th at 517–18.

E. The Order Independently Violates Federal Equal Protection.

1. Unequal deprivation of procreative liberty requires heightened review.

Federal equal protection subjects classifications depriving procreative liberty to strict scrutiny because they irreparably impact fundamental interests. *See Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541–42 (1942). Significant interference with fundamental family rights likewise demands sufficiently important interests and a close fit. *See Zablocki v. Redhail*, 434 U.S. 374, 386–88 (1978). These grounds do not depend on establishing a sex classification. *See Skinner*, 316 U.S. at 541–42; *Zablocki*, 434 U.S. at 388. Here, the court eliminated Sofiya’s reproductive authority while preserving Max’s control of the donor-egg embryos without applying that scrutiny. 11 AA 2460–62.

2. The sex-based classification lacks justification.

The male-partner designation cannot itself justify excluding Sofiya from authority over the same embryos. 11 AA 2357, 2461–62. If that allocation rests on sex, federal law requires an “exceedingly persuasive justification,” an important governmental objective, and a substantial relationship to that objective. *United States v. Virginia*, 518 U.S. 515, 531–33 (1996). Justification must be genuine, not stereotyped or invented. *See id.* at 533–34; *Kirchberg*, 450 U.S. at 459–61 & n.7. Control over Sofiya’s reproductive choice exceeds protection of Max’s own. The court identified no objective substantially advanced by that exclusive authority. 11 AA 2462, 2494. The award fails without that showing. *See Virginia*, 518 U.S. at 533–34.

F. Sofiya Presented These Claims for Decision and the Errors Require Reversal.

Sofiya expressly asserted equal protection and the spousal veto in her February 13 trial brief, February 24 requested findings, trial argument, and May 4 objections. 3 AA 620, 629–30, 654–57; RT 63:27–64:2; 11 AA 2465, 2477–78.

Timely objections to omitted or ambiguous findings prevent supplying implied findings against Sofiya on those issues. *See* Cal. Civ. Proc. Code § 634; *In re Marriage of Arceneaux*, 51 Cal. 3d 1130, 1133–34 (1990). Sofiya identified the missing constitutional predicates, which the court expressly declined to decide. 3 AA 657; 11 AA 2462, 2477–78, 2480–81, 2494. The court imposed the unequal dispositions without establishing the constitutional predicates necessary to sustain them. 11 AA 2460–62.

This Court should hold that intended motherhood through donor eggs is a constitutionally cognizable reproductive interest and that judicial enforcement remains subject to equal protection. It should reverse both

dispositions and direct judgment securing Sofiya’s reproductive use of all embryos, with the implementation, preservation, and expressly alternative directions in Section VI.

III. The Trial Court Violated Sofiya’s Reproductive Liberty Under the Fourteenth Amendment’s Due Process Clause and Article I, Section 1 of the California Constitution.

Sofiya’s fundamental rights are liberty interests deeply rooted in this Nation’s history and tradition and implicit in ordered liberty under the Fourteenth Amendment. *See Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997); *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 237–40, 255–57 (2022). The order denied these rights by directing research donation of Sofiya’s genetic embryo and awarding Max exclusive disposition of the remaining embryos. 11 AA 2460–62. California’s express liberty guarantee independently protects her reproductive choice. *See Conservatorship of Valerie N.*, 40 Cal. 3d 143, 163–64 (1985). Both guarantees require reversal.

A. Sofiya’s Rights to Procreate, Choose Childbirth, and Establish a Family Are Fundamental Liberties Protected by the Fourteenth Amendment.

The federally protected liberty is the decision to have children and carry that decision into effect through childbirth and family formation. *See Glucksberg*, 521 U.S. at 720; *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639–40 (1974); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). The order’s denial of reproductive use of embryos created for that purpose infringed Sofiya’s protected liberty. 3 AA 621, 630; 11 AA 2457–58, 2460–62. That formulation identifies the decision and interference with the specificity constitutional analysis requires. *See Dep’t of State v. Muñoz*, 602 U.S. 899, 910–12 (2024). Established liberties apply to new circumstances without requiring a separately named right for each. *See Obergefell v.*

Hodges, 576 U.S. 644, 671 (2015) (examining the right to marry as applied to interracial couples, prisoners, and parents owing support).¹⁰

1. Sofiya’s right to procreate rests on a longstanding tradition protecting generation and family formation.

The right to procreate is deeply rooted in English and American law. Medieval English law identified “procreation and rearing of children” as part of the *jus gentium*, the law common to peoples. 2 Henry de Bracton, *On the Laws and Customs of England* 27 (George E. Woodbine ed., Samuel E. Thorne trans., 1968). English law protected the capacity to procreate by punishing castration as mayhem. See 4 William Blackstone, *Commentaries on the Laws of England* 205–06 (7th ed. 1775). Blackstone placed generation in nature and identified the parent-child relation as marriage’s principal end. See 1 Blackstone, *Commentaries*, supra, at 422. The American reception likewise grounded parental obligations in the voluntary act of generation and treated those obligations as antecedent to society’s institutions. See 2 William Blackstone, *Blackstone’s Commentaries*, bk. 1,

¹⁰ The most-specific-tradition formulation did not command a majority of the Supreme Court. See *Michael H. v. Gerald D.*, 491 U.S. 110, 127 n.6 (1989) (plurality opinion). Justices O’Connor and Kennedy expressly declined to join that part of the opinion. See *id.* at 132 (O’Connor, J., concurring in part). Recent decisions likewise begin with the established liberty before examining the challenged measure. See *Hellman ex rel. E.H. v. Mass. Dep’t of Elementary & Secondary Educ.*, 171 F.4th 69, 79–80 (1st Cir. 2026) (rejecting an excessively specific formulation while separately examining whether the funding arrangement infringed the established liberty), *petition for cert. filed sub nom. Hellman v. Craven*, No. 26-97 (U.S. July 20, 2026); *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam) (finding likely success under established parental-rights precedent on interim review); *id.* at 499–500 (Barrett, J., concurring) (explaining that *Dobbs*’s application of *Glucksberg* did not displace established parental-rights precedents). For digitized editions of historical legal authorities, see The American Counsel, *Legal History Library*, <https://library.theamericancounsel.com>.

at 450 n.(5) (St. George Tucker ed., 1803). Procreation thus occupied a place in the legal order before government attached the duties of parenthood. *See id.*

Constitutional protection carries that tradition forward: procreation is a basic civil right, and sterilization inflicts an irreparable deprivation. *See Skinner*, 316 U.S. at 541. The freedom to procreate therefore belongs to ordered liberty. *See Glucksberg*, 521 U.S. at 720–21.

2. Sofiya’s right to choose childbirth predates the Fourteenth Amendment.

The right to choose childbirth predates the Fourteenth Amendment: the common law protected a woman’s continuation of pregnancy against another person’s attempt to terminate it without her consent. *See State v. Cooper*, 22 N.J.L. 52, 53–54 (1849). Even before quickening, administering potions or using violence to induce an abortion constituted an aggravated assault against the woman herself. *See id.* The woman’s assent defeated that assault charge because the injury was to her person, independently of whether the attempted abortion constituted an offense against the child. *See id.* at 53–54, 58. Her interest in continuing pregnancy thus received legal protection in its own right. *See id.* That personal liberty survives in the constitutional protection of affirmative childbearing: government cannot needlessly burden a woman for deciding to bear a child. *See Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639–40, 647–48 (1974).

3. Sofiya’s right to continue reproduction already begun follows the historical protection of an ongoing reproductive undertaking.

The right to continue reproduction already begun has roots in an enforceable limit on judicial power: English law required courts to preserve an ongoing pregnancy even when a valid judgment authorized the woman’s execution. *See* 2 Matthew Hale, *The History of the Pleas of the Crown* 412–14 (Sollom Emlyn ed., 1736). Hale classified the qualifying pregnancy

reprieve as legally necessary, distinct from stays committed to judicial discretion, and required an inquiry by twelve women when pregnancy was pleaded against execution. *See id.* at 412–13. Blackstone explained the legal consequence: execution must await delivery because the law protected the offspring. *See* 4 Blackstone, *Commentaries*, *supra*, at 394–95.¹¹

Founding-era American legal literature carried forward the woman’s plea, the jury’s inquiry, and postponement until delivery. *See* James Parker, *Conductor Generalis* 454–55 (1788). The judgment remained valid, but its enforcement had to yield to completion of the protected pregnancy. *See* 2 Hale, *supra*, at 413–14. The valid judgment thus conferred no authority to prevent the protected childbirth. *See id.* Ordered liberty likewise protects effectuating the childbearing decision, for a protected choice would be empty if government could freely prevent its completion. *Cf. Carey v. Population Servs. Int’l*, 431 U.S. 678, 688–89 (1977).

4. Sofiya’s right to preserve unborn offspring gives effect to her protected choice to bring children into the world.

The right to preserve offspring joins two established legal protections: parental authority to defend children and protection of their interests before birth. *See* 1 Blackstone, *Commentaries on the Laws of England*, *supra*, at 130, 450. English law authorized parents to support their children’s lawsuits and to use force in defense of their persons. *See id.* at 450. That authority supplied legal means of protecting the life parents had brought into existence. *See id.* Protection also preceded birth: an unborn child could receive a legacy, have a guardian appointed, and take an estate for future enjoyment. *See id.* at 130. Tucker identified Virginia’s 1748 and

¹¹ The reprieve required quickening and was limited to one occasion. *See* 2 Hale, *supra*, at 413–14; 4 Blackstone, *Commentaries on the Laws of England*, *supra*, at 394–95.

1785 enactments as recognizing prenatal inheritance within specified limits. *See* 2 Blackstone, *Blackstone's Commentaries*, bk. 1, at 130 n.(7) (Tucker ed., 1803). In 1830, New York's Chancellor explained that this doctrine preserved rights in anticipation of live birth. *See Marsellis v. Thalhimer*, 2 Paige Ch. 35, 39–41 (N.Y. Ch. 1830). Preservation is therefore an incident of protected childbearing: liberty must secure the means of effectuating the decision it protects. *Cf. Carey*, 431 U.S. at 688–89.¹²

5. Sofiya's right to establish a family belongs to the historical liberty to form and sustain family relationships.

The law protected the decision to form a family through enforceable rights. English law required the parties' consent to marriage. *See* 1 Blackstone, *Commentaries*, *supra*, at 433. Colonial Virginia gave the aggrieved party a judicial remedy when a minister refused to publish and certify banns for the lawful fee. *See* George Webb, *The Office and Authority of a Justice of Peace* 219–20 (1736). England's statute voiding specified marriages for want of parental consent never operated in Virginia. *See* 2 Blackstone, *Blackstone's Commentaries*, bk. 1, at 437 n.9 (Tucker ed., 1803). In 1868, Cooley placed domestic authority within constitutional personal liberty and described movement away from husbands' arbitrary control. *See* Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union* 339–40 (1868). He later warned that domestic regulation

¹² These rules operated for specified beneficial purposes. *See* 1 Blackstone, *Commentaries on the Laws of England*, *supra*, at 130. They support protection of anticipated family life without making fetal personhood an element of Sofiya's claim. She asserts her own liberty. *See Glucksberg*, 521 U.S. at 720; *Meyer*, 262 U.S. at 399. *Dobbs* expressly preserved precedents concerning rights other than abortion. *See* 597 U.S. at 290.

could deny just liberty. *See* Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 227–28 (1880).¹³

Ordered liberty therefore protects forming a family, including establishing a home and bringing up children. *See Meyer*, 262 U.S. at 399. Government cannot preserve family liberty while foreclosing the choice that creates it. *See Loving*, 388 U.S. at 12.

6. Sofiya’s right to resist involuntary reproductive interference rests on historical protection of personal security.

Protection against involuntary destruction of reproductive capacity rests on the common law’s enforceable guarantees of personal security. *See* 4 Blackstone, *Commentaries on the Laws of England*, *supra*, at 205–06. English law punished castration as mayhem and allowed the injured person to recover damages for mayhem, independently of criminal prosecution. *See id.*; 3 William Blackstone, *Commentaries on the Laws of England* 120–21 (1768). American law retained that protection before ratification, including Pennsylvania pleading practice for removal of a testicle. *See* 1 Francis Wharton, *A Treatise on the Criminal Law of the United States* § 1171, at 638 (5th & rev. ed. 1861). The same personal security constrained judicial power: in 1891, the Supreme Court rejected a compelled physical examination because the common law protected possession and control of one’s person against unauthorized interference. *See Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251–52 (1891). Constitutional protection carries those safeguards forward through the fundamental right against sterilization and the liberty to refuse unwanted medical intervention. *See Skinner*, 316 U.S. at 541; *Cruzan*, 497 U.S. at 269–70, 278. Protection against

¹³ Webb and Cooley recorded historical marriage exclusions. *See Webb*, *supra*, at 220; Cooley, *General Principles*, *supra*, at 228–29. Those exclusions do not define the constitutional liberty. *See Loving*, 388 U.S. at 11–12.

involuntary reproductive interference thus belongs to ordered liberty. *See Glucksberg*, 521 U.S. at 720–21.

Together, these protections secure individual authority over creating and directing family life against governmental substitution of its preferred result. *See Meyer*, 262 U.S. at 401–02; *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925). Reproductive choice makes those relationships possible and consequently belongs to ordered liberty. *See Glucksberg*, 521 U.S. at 720–21; *Carey*, 431 U.S. at 684–85.

B. The Fourteenth Amendment Protects Sofiya’s Reproductive Liberties Even When She Exercises Those Liberties Through Assisted Reproduction.

Sofiya’s decision to have children remained constitutionally protected even exercised via IVF. The federal guarantee protects individual choice to procreate. *See Glucksberg*, 521 U.S. at 720; *LaFleur*, 414 U.S. at 639–40; *Carey*, 431 U.S. at 684–85, 688–89. Courts have applied that reproductive liberty to assisted reproduction. *See Calvert*, 5 Cal. 4th at 99–100; *J.R. v. Utah*, 261 F. Supp. 2d 1268, 1277–79 (D. Utah 2003) (applying established childbearing and childrearing liberty to genetic parents’ recognition after gestational surrogacy).

As Justice Alito explained:

While the meaning of the Constitution remains constant, the application of enduring principles to new technology requires an understanding of that technology and its effects.

Moody v. NetChoice, LLC, 603 U.S. 707, 796 (2024) (Alito, J., concurring in the judgment).

Sofiya sought reproductive use of the existing embryos to pursue childbirth and family formation through IVF. 3 AA 621, 630, 655–57; RT 68:17–19; 11 AA 2457–58. The order denied that use and thereby interfered with her protected decision. 11 AA 2460–62. IVF did not exempt the interference from constitutional review. *See Calvert*, 5 Cal. 4th at 99–

101. The court's order must satisfy the standard governing impairment of fundamental liberty, which it cannot do. *See Glucksberg*, 521 U.S. at 721.

C. The Trial Court's Disposition Orders Violated the Fourteenth Amendment Because They Burdened Sofiya's Reproductive Liberty Without Satisfying Strict Scrutiny.

1. The trial court's disposition commands constitute state action subject to constitutional scrutiny.

The court's own reproductive-disposition commands amount to state action under Section I.B. 11 AA 2460–62. *See Cohen v. Cowles Media Co.*, 501 U.S. 663, 668 (1991); *Barrows v. Jackson*, 346 U.S. 249, 254 (1953).

Contract enforcement did not remove those commands from constitutional scrutiny. *See Shelley v. Kraemer*, 334 U.S. 1, 19–20 (1948). Enforcing an agreement governing reproduction requires examination not just of contractual validity but also the constitutional rights affected. *See C.M. v. M.C.*, 7 Cal. App. 5th 1188, 1199 (2017) (addressing the constitutional challenge to enforcement of a surrogacy agreement).

2. Research donation denied Sofiya her last genetic reproductive opportunity.

Research donation foreclosed Sofiya's last genetic opportunity, interrupted reproduction already begun, denied preservation, and prevented the childbirth and family formation she sought. 3 AA 621, 630, 655–60. 11 AA 2457–58, 2460–62. Those consequences contradict the court's denial of reproductive interference. 11 AA 2460–62.

3. The donor-egg award denied Sofiya's independent choice to have and raise those children.

The donor-egg award subordinated Sofiya's choice to have and raise those children to Max's unrestricted authority and told her to pursue different gametes and another surrogacy. RT 68:3–19. 11 AA 2461 & n.3. Genetics cannot erase that intended familial interest. *See In re Marriage of Buzzanca*, 61 Cal. App. 4th 1410, 1417–18, 1421–24 (1998) (recognizing intended parenthood without either intended parent's genetic contribution).

4. The court's stated grounds supply no compelling justification for denying reproductive choice.

The ruling lacks the compelling justification and narrow tailoring required by federal due process. *See Glucksberg*, 521 U.S. at 721. The court relied on contracts, genetic lineage, and private desires while refusing the requested constitutional analysis. 11 AA 2459–62, 2492–96. None of the rulings explains why research donation or unrestricted control by Max was necessary or narrowly tailored.

The May modification left the deprivation intact while deferring embryo-specific adjudication to a later hearing. 11 AA 2488. It preserved the dispositions but relegated earlier embryos, “if they exist,” to another proceeding despite Sofiya’s requested findings and objections. 3 AA 655–60. 11 AA 2469–72, 2488. But, as Sofiya requested a trial on all the parties’ embryos, the modified ruling illustrates the importance of specific findings that the court did not make.

5. Protecting Max against legal parenthood did not require denying Sofiya reproductive use of the embryos.

The orders burdened Sofiya’s reproductive liberty beyond anything required to protect Max against legal parenthood. An infringement of fundamental liberty must be narrowly tailored to a compelling state interest. *See Glucksberg*, 521 U.S. at 721. Sofiya proposed separating legal parenthood from reproductive use through Family Code § 7613(e). 3 AA 621, 629–30, 657; 11 AA 2479–80. That statute permits an agreement signed by all persons with an interest in or control of the embryos to make the renouncing person a donor rather than a legal parent while preserving the other person’s reproductive use. Cal. Fam. Code § 7613(e). The court instead gave Max authority over the donor-egg embryos “to do so as he sees fit,” a power far broader than protection against legal parenthood. 11 AA 2461 & n.3. It ordered research donation of Sofiya’s genetic embryo

without identifying any compelling need to foreclose her reproductive use. 11 AA 2461–62. Neither unrestricted control nor research donation was narrowly tailored to Max’s asserted concern about legal parenthood.

D. The Same Orders Independently Violated Sofiya’s Liberty to Procreate Under Article I, Section 1 of the California Constitution.

1. California’s express guarantee of liberty protects Sofiya’s choice to bear children through assisted reproduction.

California independently protects the choice to bear children through assisted reproduction. *See* Cal. Const. art. I, §§ 1, 24; *Valerie N.*, 40 Cal. 3d at 163–64; *Calvert*, 5 Cal. 4th at 99–101. The California Supreme Court has long held that courts may not inhibit reproductive technology merely because the Legislature had not addressed it, warning that such interference raises “serious questions in light of the fundamental nature of the rights of procreation and privacy.” *Calvert*, 5 Cal. 4th at 101. The trial court ordered research donation and exclusive disposition by Max while declaring reproductive rights unaffected. 11 AA 2460–62. Those commands prevented the reproductive use Sofiya sought. RT 68:17–19. 11 AA 2460–62. The court could not impose that interference while refusing to apply the constitutional standard governing reproductive choice. *See Valerie N.*, 40 Cal. 3d at 163–65; *Calvert*, 5 Cal. 4th at 101.

2. The court’s dispositions fail California’s independent compelling-interest standard.

California permits impairment only through necessary, narrowly drawn means advancing a compelling interest. *See Valerie N.*, 40 Cal. 3d at 164. The dispositions fail that independent standard for the reasons established in Section III.C: the court supplied no compelling justification for research donation or unrestricted control and imposed dispositions extending beyond protection against legal parenthood. 11 AA 2461–62, 2496. Applying contract law did not adjudicate the interference those

dispositions imposed on the choice California protects. *See Calvert*, 5 Cal. 4th at 100–01; 11 AA 2461–62.

Denial of Sofiya’s procreative liberty independently requires reversal, beyond Section I’s privacy and statutory grounds. *See* Cal. Const. art. I, § 24; *Valerie N.*, 40 Cal. 3d at 163–64; *Calvert*, 5 Cal. 4th at 99–101.

E. This Court Should Reverse and Direct Judgment Protecting Sofiya’s Possession, Control, and Reproductive Use of All Embryos.

This Court should direct judgment granting Sofiya possession, control, and reproductive use of all embryos, with the implementation directions and expressly subordinate alternative adjudication in Section VI. *See* Cal. Civ. Proc. Code § 43; 3 AA 621, 630, 655–60. Section V addresses the financial remedy.

IV. The Trial Court Erred in Enforcing the Disposition Directives Because They Were Ambiguous in Both Their Terms and Applicability.

The disposition directives are unenforceable because their patent and latent ambiguities leave uncertain which embryos they govern and what disposition the parties agreed to require. They prescribe conflicting outcomes for “all cryopreserved embryos in storage” without identifying the embryos to which either applies. 11 AA 2343–46, 2354–57. The parties created embryos in several cycles, signed earlier directives absent from the record, and gave conflicting accounts of the embryos still in storage. RT 37:1–7, 46:12–23, 58:4–22, 75:6–18, 82:9–84:26. Sofiya requested findings identifying each embryo and its governing directive, but the court refused and entered contradictory findings instead. 3 AA 655, 659–60; 11 AA 2457–60, 2488–90. Those unresolved material obligations cannot support the ordered dispositions. Cal. Civ. Code § 3390(e).

A. The Directives' Patent and Latent Ambiguities Left Their Material Obligations Uncertain and Unenforceable.

A contract cannot be specifically enforced when its material obligations remain too uncertain to ascertain. Cal. Civ. Code § 3390(e). *See Weddington Prods., Inc. v. Flick*, 60 Cal. App. 4th 793, 811–15, 816–18 (1998). Courts may resolve incidental details through reasonable construction but cannot supply an undetermined bargain. *See Patel v. Liebermensch*, 45 Cal. 4th 344, 349 (2008). Contract terms must be construed together in light of their subject and surrounding circumstances. *See* Cal. Civ. Code §§ 1636, 1641–1642, 1647–1648; *Pac. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 69 Cal. 2d 33, 37–41 (1968). Interpretation is independently reviewed unless credibility of conflicting extrinsic evidence controls. *See Wolf v. Superior Court*, 114 Cal. App. 4th 1343, 1350–51 (2004); *Parsons v. Bristol Dev. Co.*, 62 Cal. 2d 861, 865–66 (1965).

Here, Exhibit 1 selects research donation and Exhibit 4 selects transfer to the male partner, yet both purport to govern “all cryopreserved embryos in storage.” 11 AA 2346, 2357. Both also refer to embryos not replaced “during the IVF cycle” and a freezing decision before aspiration “in each cycle that they attempt.” 11 AA 2343–44, 2354–55. Those cycle-specific provisions determine the reach of “all,” which must be read in context. *See Pac. Gas & Elec.*, 69 Cal. 2d at 41 n.9. The court could not select a disposition without establishing whether the forms governed separate cycles or imposed conflicting instructions on the same embryos. *See Wolf*, 114 Cal. App. 4th at 1350–51.

The admitted forms did not establish the parties' complete agreement about these embryos. Max acknowledged earlier directives, Sofiya described three discussions and believed the first agreement dated from 2016, and the court found agreements preceded “each cycle.” RT

46:12–23, 75:6–18. 11 AA 2457. Only the July 2021 and February 2022 forms were admitted. RT 5, 36:5–16, 40:5–18. Sofiya requested findings on the missing forms. 3 AA 659–60. 11 AA 2470–71, 2474–75. The court had to determine separate coverage, modification, or supersession. *See* Cal. Civ. Code §§ 1641–1642, 1647–1648; *Pac. Gas & Elec.*, 69 Cal. 2d at 37–41. If confined to separate cycles, the forms leave other embryos untouched. If broader, their effect on earlier instructions required decision. The court decided neither. 11 AA 2457–60, 2488–89.

The findings instead contradict each other. The court found that the 2021 retrieval produced “no viable embryos,” then assigned the embryo “remaining from the 2021 cycle” to the July 10, 2021 form. 11 AA 2457–58. Max’s closing brief likewise assigned the embryo to 2021, but that assertion cannot reconcile the court’s findings. 11 AA 2366, 2457–58. Irreconcilable material findings cannot sustain judgment. *See Brewer v. Simpson*, 53 Cal. 2d 567, 583 (1960). The judge’s examination established four viable embryos from 2016 and 2020, three used, and one remaining, with none from 2021. RT 58:4–22. Sofiya identified the embryo’s 2020 origin, while Max could not recall retrieval dates. RT 43:21–44:16, 80:25–81:23. The 2021-origin finding lacks substantial evidence.

The parties’ testimony did not resolve contractual coverage. Max testified that research was agreed, and Sofiya initially associated Exhibit 1 with her genetic embryo, but on redirect identified the earlier retrieval and the form’s lack of embryo identification. RT 39:3–14, 76:23–77:2, 79:4–21, 80:25–81:23. The court’s assumed connection between the embryo and Exhibit 1 did not resolve that conflict. *See Wolf*, 114 Cal. App. 4th at 1350–51.

The court likewise failed to reconcile the inventories, storage locations, and creation dates or identify which directive governed each embryo. RT 37:1–7, 45:6–8, 82:9–84:26. 11 AA 2464. Sofiya requested an

inventory, governing directives, and authorized dispositions, then objected to their omission. 3 AA 655, 659–60. 11 AA 2472–73. Calling location “irrelevant” did not establish coverage. 11 AA 2490. Nor did Exhibit 4’s transfer provision establish ownership “to do so as he sees fit” or justify rejecting Sofiya’s “real claim” for lack of DNA. 11 AA 2357, 2461. The court ordered disposition without determining even how many embryos those commands reached.

The May ruling compounded that failure. It reaffirmed Exhibits 1 and 4 while declaring additional earlier embryos lacking documents or testimony beyond one sentence, “if they exist, remain unadjudicated assets subject to a future Request for Order.” 11 AA 2488. The judge had examined the known 2020 embryo at trial. RT 58:4–22, 80:25–81:23. If research reaches that embryo, its contractual basis remains unestablished. If not, its reproductive use remains undecided under Sections I–III. 11 AA 2488.

The court’s finding that enforceability was uncontested also contradicts the record. 11 AA 2459. Sofiya challenged it in her trial brief, pretrial motion, and requested findings, and the judge recognized the dispute at trial. 3 AA 623–24 & n.1, 634, 638, 659–60; RT 24:22–26, 29:26–28. Her acknowledgment of signing and understanding “contracts” did not identify the obligations undertaken. RT 74:24–75:11, 89:4–5. *See Romo v. Y-3 Holdings, Inc.*, 87 Cal. App. 4th 1153, 1158–60 (2001) (distinguishing acknowledgment of a handbook from assent to a separate, unsigned arbitration provision). She requested findings on the documents’ legal nature, the parties bound, and the promises undertaken. 3 AA 659–60. The finding that she had not specifically denied the initials likewise contradicts her testimony that “not all of the initials are mine at all.” 11 AA 2457–58; RT 67:7–11.

Max failed to establish the contractual basis for the ordered dispositions. He bore the burden of proving each directive’s applicability and relationship to the earlier directives he acknowledged. Cal. Evid. Code § 500; RT 46:12–23; 3 AA 659–60. Neither the forms, the conflicting testimony, nor the contradictory findings established those material obligations. The resulting uncertainty defeats enforcement. *See Weddington*, 60 Cal. App. 4th at 811–15, 816–18.^{14,15}

Neither result satisfies the duty to decide principal controverted issues. Cal. Civ. Proc. Code § 632. The judgment reserved “all claims and issues” concerning “any and all embryos,” and Sofiya submitted identity, ambiguity, supersession, and disposition for decision. 11 AA 2400. 3 AA 621, 624, 655, 659–60. Section 2556 preserves jurisdiction over omitted community assets. *See In re Marriage of Huntley*, 10 Cal. App. 5th 1053, 1059–62 (2017). It does not permit deferring tried issues to another

¹⁴ Section 125315’s requirement of advance disposition choices does not establish universal coverage or displace validity, scope, and interspousal fairness. *See Pham*, 117 Cal. App. 5th at 123–25; Cal. Health & Safety Code § 125315; Cal. Fam. Code § 721(b). Enforcement also remains subject to the Reproductive Privacy Act and constitutional protections established in Sections I–III. Cal. Health & Safety Code § 123462.

¹⁵ Affirmative disclosure duties continue through division. *See* Cal. Fam. Code §§ 721(b), 1100(e), 2102(a)(1); *In re Marriage of Prentis-Margulis & Margulis*, 198 Cal. App. 4th 1252, 1270–72 & n.10 (2011); *In re Marriage of Feldman*, 153 Cal. App. 4th 1470, 1487–88 (2007). Sofiya demanded embryo contracts on March 7, 2025. 2 AA 391, item 9. Counsel represented that copied boxes omitted them and identified possible locations, including a cabinet Max had taken in April 2023. RT 19:17–24. That was counsel’s account, while Max’s testimony independently established earlier directives. RT 46:12–23. Proceeding after the offered continuance supplied neither the missing contractual connection nor performance of continuing fiduciary duties. RT 27:18–28:6, 28:23–29:3. These grounds do not depend on the requested evidentiary exclusion.

proceeding. Cal. Civ. Proc. Code § 632. The disposition orders must be reversed.

B. Section 721 Required Max to Prove That the Exclusive Transfer Was Free, Informed, and Voluntary, Which He Failed to Do.

The trial court also erred in enforcing the exclusive transfer without requiring Max to prove that Sofiya's consent was free, informed, and voluntary. Spouses owe the highest good faith and fair dealing and may not take unfair advantage of each other. Cal. Fam. Code § 721(b). An unfairly advantageous interspousal transaction raises a presumption of undue influence, placing on the advantaged spouse the burden of proving free, voluntary execution with full knowledge of the facts and complete understanding of the transaction's effect. *See In re Marriage of Haines*, 33 Cal. App. 4th 277, 293–97, 301–02 (1995); *In re Marriage of Delaney*, 111 Cal. App. 4th 991, 996–1000 (2003); *In re Marriage of Fossum*, 192 Cal. App. 4th 336, 344–46 (2011). Rebuttal requires a preponderance, and Sofiya need not first prove actual coercion. *See In re Marriage of Mathews*, 133 Cal. App. 4th 624, 629–31 (2005).

Exhibit 4 imposed IVF costs on both spouses but assigned all embryos to Max without providing Sofiya a corresponding share or compensation. 11 AA 2351, 2357. Her investment and donor selection underscored that unfair interspousal advantage. RT 68:3–26. Section 721's presumption therefore applied. *See Haines*, 33 Cal. App. 4th at 295–97.

Sofiya repeatedly invoked § 721, but the court refused to apply it. 3 AA 634, 638, 660; RT 40:5–10; 11 AA 2389, 2479, 2495–96. Acknowledging a transfer option did not establish informed surrender of every reproductive and financial interest. RT 78:8–23, 79:4–21, 80:25–84:26; 11 AA 2461–64. *Mathews* upheld a transfer on proof of complete understanding. *See* 133 Cal. App. 4th at 631–32. Max described discussion

and assent, not informed relinquishment of financial rights or resolution of disputed coverage. RT 38:1–6, 39:3–14. Ordinary assent cannot substitute for fiduciary proof. *See In re Marriage of Balcof*, 141 Cal. App. 4th 1509, 1519–22 (2006); *In re Marriage of Starr*, 189 Cal. App. 4th 277, 281–87 (2010) (voluntary execution does not exhaust fiduciary scrutiny).

Research donation required deciding whether that directive conferred an unfair advantage on Max. *See* Cal. Fam. Code § 721(b); *Haines*, 33 Cal. App. 4th at 293–97; *Burkle*, 139 Cal. App. 4th at 730–32. Sofiya requested that determination and objected to its omission. 3 AA 660; 11 AA 2479. The refusal cannot be cured by implied findings. 11 AA 2495–96. *See* Cal. Civ. Proc. Code § 634; *Arceneaux*, 51 Cal. 3d at 1133–34.

C. The Identified Errors Require Reversal.

Sofiya’s specific objections preclude implied findings supplying the omitted embryo identifications, governing agreements, supersession, fiduciary findings, and disposition limits. 3 AA 655, 659–60. 11 AA 2469–75, 2479–81. Cal. Civ. Proc. Code § 634. *See In re Marriage of Arceneaux*, 51 Cal. 3d 1130, 1133–34 (1990).

The court ordered research donation of an embryo it attributed to a cycle it found produced none, then left earlier embryos unadjudicated. 11 AA 2457–61, 2488. Correctly identifying the embryo and determining the governing directive could defeat the premise for research donation. The exclusive transfer likewise depended on Max rebutting § 721’s presumption, which the court refused to apply. 11 AA 2495–96. These errors establish a reasonable probability of a more favorable result. *See F.P. v. Monier*, 3 Cal. 5th 1099, 1108–16 (2017). The Court should reverse and grant the relief specified in Section VI.

V. The Trial Court Erred in Awarding Max the Parties' Community Interest Without Compensating Sofiya.

The court could not allocate the parties' community interest exclusively to Max while refusing Sofiya's timely equalization claim. Cal. Fam. Code §§ 760, 2550, 2601; see *In re Marriage of Cream*, 13 Cal. App. 4th 81, 88–89 (1993). Awarding that interest to Max beyond Sofiya's use required payment sufficient to equalize the allocation. See *Cream*, 13 Cal. App. 4th at 88–89. The court's assertion that she first requested equalization in reply contradicts her opening trial brief and request for statement of decision. 3 AA 620, 630, 654, 657–58; 11 AA 2462–63.

A. The Embryos Were Community Property.

Property acquired during marriage is presumptively community property, subject to equal division absent an applicable agreement or statutory exception. Cal. Fam. Code §§ 760, 2550; see *In re Marriage of Valli*, 58 Cal. 4th 1396, 1400 (2014). An award to one spouse requires conditions effecting substantially equal division. Cal. Fam. Code § 2601. Allocation therefore requires valuation and equalization. See *Cream*, 13 Cal. App. 4th at 88–89.

The parties acquired the economic and contractual interests at issue during marriage. Sofiya's identified retrievals and both admitted forms preceded either claimed separation date. RT 57:24–58:15; 11 AA 2340, 2351, 2394. Sofiya described their investment and donor selection, and Max's closing brief acknowledged that the donor eggs were purchased with community property. RT 66:7–24, 68:3–26, 69:10–70:12; 11 AA 2369. Sofiya's lack of donor-egg DNA did not establish Max's separate ownership of those interests. 11 AA 2461; cf. *Valli*, 58 Cal. 4th at 1405–06 (rejecting separate characterization based on title to an asset purchased with community funds).

The award deprived Sofiya of her share of the jointly acquired community interests without equalization. 3 AA 630, 657–58; 11 AA 2461–64.

B. The Settlement Preserved the Financial Claim Sofiya Presented Before Trial.

The \$2.2 million settlement expressly excluded the embryo claim and reserved all related issues for trial. The judgment reserved “all claims and issues” concerning “any and all embryos,” regardless of genetic origin, and retained jurisdiction over undistributed community property. 11 AA 2400, 2416, 2420–21. Sofiya’s ability to finance another reproductive process did not satisfy that reserved claim. RT 73:8–15. *See* Cal. Civ. Code §§ 1636, 1641. Other payments cannot cure omission of a community asset. *See In re Marriage of G.C. & R.W.*, 23 Cal. App. 5th 1, 25–27 (2018).

The court’s finding that compensation was first requested in reply is contradicted by Sofiya’s February 13 trial brief seeking section 2550 equalization, including for donation or destruction, and her February 24 requested findings on character, value, and compensation. 3 AA 620, 630, 654, 657–58. 11 AA 2462–63. Her April 16 reply and May 4 objections renewed that existing claim. 11 AA 2381, 2385, 2390, 2468–69, 2478–79. Elaboration did not make it new. *See Reichardt v. Hoffman*, 52 Cal. App. 4th 754, 764–66 (1997).

C. The Mandate Must Require Valuation and Payment of Sofiya’s Share.

Equal division required valuing Sofiya’s community interest before awarding it to Max. *See Cream*, 13 Cal. App. 4th at 88–89. Without a comparable market, valuation may proceed by a just and equitable method, including competent owner testimony. Cal. Evid. Code §§ 813(a)(2), 814, 823; *see In re Marriage of Stoll*, 63 Cal. App. 4th 837, 843–44 (1998).

Sofiya’s expenditures and donor, surrogacy, insurance, agreement, and testing costs required assessment in valuing her community interest.

RT 66:7–24, 69:10–73:6. She accepted the court’s \$100,000 estimate “from start to finish” for the process, then requested that amount per embryo. RT 71:9–73:6; 11 AA 2385, 2390. The court rejected her claim without determining value. 11 AA 2462–64, 2494–95.

The mandate must require identification, characterization, valuation, and payment of Sofiya’s share of community interests awarded to Max. Cal. Fam. Code §§ 2550, 2552, 2601; *see Cream*, 13 Cal. App. 4th at 92–93; *G.C. & R.W.*, 23 Cal. App. 5th at 26–27. It must adjudicate conditionally excluded embryos. Cal. Fam. Code § 2556; *see Huntley*, 10 Cal. App. 5th at 1059–62. Research donation or destruction requires adjudication of her preserved monetary claim’s liability basis and measure. 3 AA 630, 657–58; 11 AA 2478–79. Section VI specifies those directions.

VI. The Court Should Reverse and Direct Entry of Judgment in Sofiya’s Favor.

The Court should reverse the research-donation order, unrestricted award to Max, and denial of compensation, including the May 12 ruling sustaining those dispositions or leaving reserved embryo claims undecided. 11 AA 2460–64, 2488, 2494–97. The constitutional holdings requested in Sections I–III require judgment protecting reproductive use, while Sections IV–V independently establish errors requiring reversal. This Court can and should direct the judgment requested herein. Cal. Civ. Proc. Code § 43.

Sofiya requests judgment granting her exclusive possession, control, and decisionmaking authority to use all embryos within the reserved controversy for reproduction and transfer to bring the resulting children to term. The judgment should encompass her genetic embryo, the donor-egg embryos, and any earlier embryos within that controversy conditionally left for another proceeding. 3 AA 621, 630, 655; 11 AA 2400, 2488.

Any remand implementing that judgment should require a reconciled inventory identifying each embryo’s origin, creation cycle, location, and

custodian, together with storage, transfer, and legally available protective orders effectuating Sofiya's authority. It must prohibit research donation, destruction, or transfer inconsistent with that authority and preserve the embryos pending implementation. Any findings necessary to implement that judgment concerning governing directives, earlier agreements, interspousal effect, or financial consequences must conform to this Court's holdings and section 721's burdens. The trial court must complete the submitted embryo-specific adjudication without reopening Sofiya's entitlement or requiring a new request for order.

Only if this Court cannot direct judgment securing Sofiya's reproductive use should it order a further adjudication of the submitted claims before any disposition. That alternative mandate should require application of the constitutional standards established on appeal, embryo-specific identification, construction of the governing directives and earlier agreements, resolution of assent and enforceability, and application of section 721's governing burdens. The court must expressly decide Sofiya's rights in every embryo for which no enforceable contrary directive is established. Preservation must continue pending that adjudication, without a new request for order or reliance on the reversed dispositions.

For community interests awarded to Max beyond Sofiya's use, the mandate should require characterization, valuation, calculation of her share, and an order directing him to pay the equalization necessary for equal division. Cal. Fam. Code §§ 2550, 2552, 2601. Any preserved monetary claim arising from research donation or destruction must be adjudicated under its applicable liability basis and measure, with the compensation established awarded against the legally responsible party. The financial settlement cannot satisfy embryo claims it expressly reserved. 11 AA 2400, 2416. These financial directions accompany the primary request for reproductive use of all embryos.

Sofiya requests her costs on appeal. Cal. R. Ct. 8.278(a).

Dated: October 18, 2026

Respectfully submitted,

LAW OFFICE OF J.R. HOWELL



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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this brief contains 13,915 words, including footnotes and excluding the material exempted by rule 8.204(c)(3). I relied on the word count generated by Microsoft Word in preparing this certificate.

Dated: October 18, 2026

A handwritten signature in black ink, appearing to read 'J.R. Howell', is written over a horizontal line.

J.R. Howell
Attorney for Appellant
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PROOF OF SERVICE

Court of Appeal Case No. B355195
Superior Court Case No. 22STFL08826

I, J.R. Howell, am over the age of eighteen and am counsel for Appellant Sofiya Alexandra Goldshteyn. My office address is 2219 Main Street, Suite 436, Santa Monica, California 90405. My electronic service address is jr@lojrh.com.

On October 18, 2026, I served a true and correct copy of **APPELLANT'S OPENING BRIEF** as follows:

By electronic service through TrueFiling on counsel for Respondent Max David Borenstein at these electronic service addresses:

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By email from jr@lojrh.com to the Clerk of the Superior Court of California, County of Los Angeles, for delivery to the Honorable Scott J. Nord, pursuant to California Rules of Court, rule 8.212(c)(1):

To: appellatebriefs@lacourt.ca.gov
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I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct.

Dated: October 18, 2026



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