The End of Anonymous Sperm Donation in Colorado
A Step Forward to a New Fertility Future in the US?

From its very beginning, artificial insemination by donor in the US has traditionally been a practice shrouded in secrecy. Over the last few decades, 2 major factors have led to increasing calls to end that secrecy: (1) organized efforts by donor-conceived individuals claiming a right to know the identities of their genetic parents (as opposed to simply their medical information) and (2) the widespread availability of direct-to-consumer genetic testing facilitating the tracing and sharing of information among donor-conceived children who are related to the same gamete donor. These factors have resulted in significant legal changes outside the US, and the US has, until recently, been an outlier providing no legal right for a donor-conceived child to access information about the gamete donor. A recent law in Colorado, one which effectively prohibits anonymous gamete donation, has changed that. In this Viewpoint, we discuss the Colorado law and situate it in the debates over reproductive technologies and secrecy.

On May 31, 2022, Colorado became the first state to effectively ban anonymous gamete donation.1 Starting in 2025, fertility clinics in Colorado must collect identity and medical information from sperm and egg donors and may not match donors that do not agree to such disclosure (the statute uses the word “donor” though in many instances compensation is provided). The new law also requires that the clinics make a request that donors update their contact information and medical history at least once every 3 years. The law provides that a donor-conceived person aged 18 years or older shall be provided donor information upon request. The statute purports to also prohibit fertility clinics outside Colorado from providing gametes to Colorado residents (or individuals located in Colorado) if they do not abide by these rules. The statute also instructs clinics not to match a donor once it is known or reasonably should be known that “25 families have been established using a single donor in or outside of Colorado.”

The Colorado statute is a bold new direction in US law. At the federal level, the US Food and Drug Administration (FDA) does have some regulation of gamete donation requiring, among other things, the conduct of a physical examination of the donor, the taking of a donor’s medical history, and the testing of sperm and egg specimens for certain communicable diseases.2 However, the FDA has never required the revealing of identifying information about the donor. Similarly, most US states have no law regulating gamete donor anonymity. Two states, Utah and Washington, have enacted statutes requiring the collecting and sharing of identifying information about a donor with donor-conceived children who request it after reaching the age of 18 years.3 However, both states also permit a donor to opt out, thereby limiting the utility of the laws. By contrast, the UK, Germany, Sweden, France, and many other countries have created mandatory registries that donor-conceived individuals can access when they turn 18 years of age, having an effect similar to the new Colorado law.4,6

The new Colorado law highlights the gap between the law and reality of gamete donor anonymity in the US outside Colorado. Banks have promised donors anonymity in other US states and prior leaks of donor information from banks’ files have been exceedingly rare, if they ever happened at all; the banks have litigated to protect the identifying information provided by the donor.3 But in a practical sense, the promise of anonymity is now much less thoroughgoing.4 Direct-to-consumer genetic testing has become very common, and it has been estimated that 100 million people worldwide have taken a direct-to-consumer genetic test by 2021.4 Studies estimate that a genetic database covering only 2% of the population could match nearly anyone in that population.4 The combination of direct-to-consumer genetic testing, publicly available information, and social media suggest that many donor-conceived individuals will in fact be able to reidentify their gamete donor.

Like many of the registries in other countries, the Colorado law assumes that children have been told or have otherwise determined that they were conceived via a gamete donor and thus will make a request for identifying information should they wish. For the children of same-sex or single parents, being conceived via a gamete donor is more likely to be apparent to the child. By contrast, many heterosexual couples may not reveal to their child that the child was the product of a gamete donation. One controversial solution would be to require banks or registries to reach out directly to donor-conceived children on the child’s 18th birthday to offer...
to share the information—this would likely prompt parents to discuss the matter with their donor-conceived child knowing that if they fail to do so, the child is likely to find out anyway.

Some aspects of the Colorado law may be subject to legal challenge. Its provisions to prohibit fertility clinics outside Colorado from providing gametes to Colorado residents (or those located in Colorado) without following these rules may be challenged on the basis of the “Dormant Commerce Clause” associated with Article I, §8 of the US Constitution. The US Supreme Court has for almost 2 centuries read the authority given, “To regulate commerce with foreign nations, and among the several states, and with the Indian tribes,” to include a negative restriction on states acting in a way that unduly restricts interstate commerce through protectionist measures. Colorado gamete donors might also claim that the statute violates their right to medical privacy or that the limit on the number of families they can produce impedes their procreative rights—but we think that such claims are less likely to succeed.

The Colorado law imposes new legal obligations on fertility clinics and gamete banks, and they will need a clear process for verifying medical information disclosed by gamete donors and to monitor donors’ future health and update their records every 3 years. The law will also pose new ethical challenges for pediatricians and other physicians tending to donor-conceived children and their families. Parents may seek advice on when and how to disclose to a child that the child was conceived using a gamete donor. Donor-conceived children are likely to have many questions about how they should think about the donor and what it means for their family structure. For example, how should the donor-conceived child understand the relationship to other children created from the same donor’s sperm or to children the donor is rear-

With Colorado’s new law, this state has joined a growing movement to end sperm donor anonymity, but it is uncertain whether other US states will follow.

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REFERENCES