



THE NATIONAL CATHOLIC BIOETHICS CENTER

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June 27, 2013

The Honorable Tommy Wells (Chairman)
The Committee on the Judiciary and Public Safety
1350 Pennsylvania Avenue, N.W. Suite
Washington, D.C. 20004

Re: Surrogacy Parenting Agreement Act of 2013 (SPAA)

Dear Council Member,

Thank you for the opportunity to provide input on the important matter concerning the wellbeing of families, especially women and children.

I am a Registered Nurse (RN), licensed in the District of Columbia, with a graduate degree in Maternal Child Health Nursing, specializing in pediatrics (I am a graduate of the Children's Hospital School of Nursing, Boston - RN preparation). I write as a doctorally prepared registered nurse and bioethicist.

The issue of surrogate parenting is a true bioethical issue that affects justice for women and children, and therefore families who are at the heart of the issue. Specifically, SPAA codifies the commodification of children and the abuse of the vulnerable: surrogate carriers are often low income women who will receive substantial monetary compensation. Such women are provided high doses of ovulation-stimulating drugs, which can have serious side-effects such as ovarian cancer. They are also given high doses of estrogen which are linked to breast and uterine cancers, heart attack, stroke, and blood clots. In the United States, even living organ donors cannot receive compensation under the Uniform Anatomical Gift Act.¹

Data show that surrogacy brokers target military wives, who are often isolated from their husbands and vulnerable. Approximately 15% of surrogates (some estimate this to be much higher) in the United States are military wives.²

The price charged by surrogacy brokers in the United States ranges from \$40,000 to \$120,000; yet the American Society for Reproductive Medicine recommends \$10,000 in compensation for

¹http://www.uniformlaws.org/shared/docs/anatomical_gift/uaga_final_aug09.pdf.

² "Military Wives Supplement Income as Surrogates," *ABC News* (10/15/2010):

<http://abcnews.go.com/GMA/Parenting/video/military-wives-supplement-income-surrogacy-11889300>.

the gestational surrogate.³ The principle of true informed consent is violated by the potential for being compensated for “expenses,” which could include a “fee or valuable consideration services rendered and medical costs.”⁴ There is very little likelihood that a woman would provide such a “service” without a significant incentive, which is monetary (except, perhaps, for a family member). Contracts are even allowed to include conditions that give the payer the right to require an abortion, even when the child is genetically related to the surrogate.

Surrogacy contracts also jeopardize children because they provide a way to “bypass” the formal adoption process, which exists to provide protections for children. There is absolutely no provision in surrogacy contracts for the best interest of the child – truly treating the child as a commodity, available to the highest bidder or at any negotiated price agreeable to the adult parties. Such attitudes toward children were tragic historical realities, whereby vulnerable children were adopted for the service they could provide to a family. In today’s culture, one does not have to look far to see the dangers of not providing a true adoption procedure for children, with all its protections. Parenting has never been about the parents, but about the wellbeing of children. Surrogacy laws dangerously change this focus, treating the child as a right and as a commodity, instead of as a gift to be protected and nurtured. In vitro fertilization, which is the most common technology used to engender human beings for implantation, presents its own risks to children, such as higher rates of major birth defects.⁵ Furthermore, siblings of the child being “sold” or “purchased” easily become vulnerable to their own crisis of identity and belonging.

State legislatures have struggled with this issue, particularly in the State of New Jersey, which established a year-long Bioethics Commission to investigate the impact of surrogacy on the wellbeing of all parties involved. The intent of all forms of surrogacy contracts is to terminate the parental rights of the mother who is pregnant with the child, and to legally designate a parent/s, often genetically unrelated to the child, before the child is born and without any of the social and legal child-protections that exist under standard adoption proceedings. It is the traditional public policy in all U.S. states that the birth mother cannot consent to relinquish her child for adoption prior to the birth of the child. At that time, the legal right of the birth mother to maintain her relationship with her child following birth traditionally has been respected. A decision to allow the child to be adopted by another person cannot be a truly informed decision before birth. High-profile cases, such as the New Jersey *Baby M* case, have demonstrated the validity of this point.⁶

Despite the true human life struggles of persons with infertility, it became clear to the State of New Jersey that surrogacy parenting creates more problems than it resolves, especially for women, and ultimately for their children. The *Baby M* case clearly demonstrated how the best interest of the child becomes secondary to the will of the adults and to the monetary interests that motivate them. Specifically, laws that require counseling of the mother before she surrenders her

³ Ann Carey, “Made to Order: The Cost of Surrogacy,” *Our Sunday Visitor* (May 26, 2013), 13.

⁴ DC Council, *Surrogacy Parenting Agreement Act of 2013*, Sec. 2(4): <http://dcclims1.dccouncil.us/images/00001/20130110154659.pdf>.

⁵ M. Hansen, J.J. Kurinczuk, E. Milne, N. De Klerk, C. Bower, “Assisted reproductive technology and birth defects: A systematic review and meta-analysis,” *Human Reproduction Update* (19 (4), 2013): 330.

⁶ *In re Baby M*, 537 A.2d 1227, 109 N.J. 396 (N.J. 1988).

rights are circumvented; and the compulsion of the contract makes surrender of the child after birth not truly voluntary or informed. Additionally, the arrangement exploits women as a “surrogate uterus” or an “incubator” and expects a mother to act as an inanimate object, which denigrates the woman’s dignity in her role as a woman and a mother.⁷

The New Jersey Bioethics Commission included a non-partisan group of psychologists, scientists, physicians, lawyers, healthcare providers, and other professionals. The Commission held public hearings and debates on the policy issues, and engaged a task force for further research. After a four-year process, the Commission issued a 177-page comprehensive report. Important points of the Report are as follows:

- Strongly condemned all forms of surrogacy, including so-called “gestational carrier” arrangements, including when the birth mother is genetically related to the child;
- Found that no legitimate policy could justify enforcing such arrangements which are potentially harmful to the mothers and their children;
- Recommended that legislation be passed to deter the conduct, including unambiguous sanctions clearly directed at surrogacy arrangements;
- Recommended a legal presumption favoring custody by the birth mother, assuring the welfare of the child.⁸

All the evidence points to the fact that gestational surrogacy is not only detrimental to women, their children, and families, but to society and to the governments entrusted with protecting society. It is easy to see how the District of Columbia would become a haven for those wishing to bypass their own state laws protecting vulnerable women and their children. Brokers would readily set up shop in our nation’s capital where poor women easily would be exploited, while the very government established to protect them would enable such exploitation.

As a woman and a nurse, as well as an ethicist, I implore you to think beyond any particular case of infertility which you think this proposal will resolve, and consider the larger impact of such a harmful law. Protect women, children, and their families by rejecting this proposal.

Sincerely yours,



Marie T. Hilliard, JCL, PhD, RN
Director of Bioethics and Public Policy.

⁷ Harold Cassidy, “The Surrogate Uterus: Baby M and the Bioethics Commission Report,” *The Witherspoon Institute* (September 6, 2012): <http://www.thepublicdiscourse.com/2012/09/6211/>.

⁸ New Jersey Commission on the Legal and Ethical Problems in the Delivery of Health Care, *After Baby M: The Legal, Ethical and Social Dimensions of Surrogacy* (September 1992): <http://www.thecassidylawfirm.com/Practice-Areas/After-Baby-M-The-Legal-Ethical-and-Social-Dimensions-of-Surrogacy.pdf>.