



TESTIMONY BY
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TO THE
NYS SENATE FINANCE COMMITTEE AND
NYS ASSEMBLY WAYS AND MEANS COMMITTEE
JOINT HEARING ON THE EXECUTIVE BUDGET 2020-2021
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Opposition to Governor’s proposal to legalize commercial reproductive surrogacy contracts, contained in Part L of bill numbers S.7506/A.9506 (Education, Labor and Family Assistance Article VII legislation)

Good evening. My name is Lynn Savarese. I am a graduate of Harvard Law School and practiced corporate law in New York for a number of years. While I’ve retired from the practice of law, I am here today on behalf of the Coalition Against Trafficking in Women and I am one of more than 100 women’s rights leaders who signed a letter to Governor Cuomo last year

urging him to oppose the legalization of commercial surrogacy in New York. Sadly, our letter fell on deaf ears. Since your last legislative session, I have traveled the country interviewing young women who have suffered serious physical harm as a result of serving as commercial surrogates. You will hear from some of them soon.

The Governor's proposal to legalize commercial surrogacy has numerous failings, only a few of which I have time today to discuss.

Lack of Protections for Surrogates

The greatest failing of the bill is its lack of protections for women who would serve as commercial surrogates. Nothing in the proposed bill prevents the targeting of vulnerable women in dire need of money who simply do not have the means or the information to properly evaluate the risks to their health that are inherent in the type of surrogacy contract sanctioned by the Governor's proposal. These contracts are negotiated without a semblance of equal bargaining power. On the one hand, you have a young woman--usually a mother of small children with no more than a high school education--in a precarious financial situation. She has little if any knowledge of the extreme physical demands and health risks involved in a surrogacy pregnancy, which are far more onerous and risky than those

associated with the traditional pregnancies she may already have experienced. The temptation commercial surrogacy dangles before such a woman is overwhelming -- she is likely to earn about \$30,000 -- often amounting to more than twice her annual income. On the other side of the contract, you have one or more wealthy individuals with vastly more financial resources. Spending \$150,000 or more to procure a surrogate child is not uncommon.

I understand that Governor Cuomo's proposal provides a Surrogates' "Bill of Rights," allegedly guaranteeing the strongest protections in the nation for commercial surrogates. But nothing could be further from the truth. The right to "independent counsel" promised by the bill is illusory. More often than not, surrogates end up with legal counsel referred to them by surrogacy agencies and commissioning parents. When a lawyer's livelihood depends on such referrals, serving the best interests of his surrogate client is not a first priority. In the coming days and weeks, my surrogate survivor colleagues will share with you their experiences of betrayal by their supposed "independent legal counsel."

Lack of Protection for Children

Another failing of the bill is its disregard for the wellbeing of surrogate children. Under New York law, parents seeking to adopt children must undergo rigorous screening and background checks to ensure their fitness as adoptive parents. By contrast, the Governor's proposal establishes no standards whatsoever for those who would procure children through commercial surrogacy. The bill requires no background check or screening of any kind. In fact, nothing in this bill prevents even a convicted pedophile or a child sex trafficker from entering into a contract to obtain surrogate children. And nothing in this bill prevents a wealthy individual coming to New York from abroad -- who could readily qualify with frequent visits as a "habitual legal resident" under the proposed bill -- from procuring a surrogate child, or, for that matter, two dozen surrogate children, and then taking them back to his home country. These are not hypotheticals, but actual cases, detailed in my written testimony.

Commodification of Women

New York State forbids the buying and selling of organs, and has rejected the argument that a person has the right, for example, to sell his kidney. You rejected that argument, even when it was shown that the would-be kidney seller, in addition to receiving financial remuneration,

might also derive personal satisfaction from saving the life of another, and even when the surgery involved is a low-risk procedure. Identical arguments are being advanced by the multi-billion dollar surrogacy industry. But, unlike a kidney selling agreement, a commercial surrogacy contract saves no lives and instead puts the lives of the surrogate mother and the children she bears at risk.

Health Dangers to Women

Women who agree to be commercial surrogates take on far greater risks than those faced in traditional pregnancies or other types of in vitro fertilization pregnancies. To ready her body for transfer of embryos, the surrogate must be injected daily for a month or more with massive amounts of hormones and other drugs, the most common of which—Lupron—is a known carcinogen. The use of donor eggs in surrogacy pregnancies dramatically increases health risks to surrogates. To increase the likelihood of a successful outcome and to fulfill the wishes of commissioning parents, multiple embryos are routinely implanted in a surrogate’s womb. This significantly increases--still further--the dangers of the pregnancy, both to her and any surrogate children she bears. The surrogate mother is more than three times more likely to develop hypertension and preeclampsia; more

than two times more likely to develop high blood pressure and gestational diabetes, and has at least a 50% chance of having to deliver by C-section—increasing both the risk of hemorrhage and recovery time. The resulting multiple-birth children are more than four times as likely to be born prematurely with low birth weights, and to suffer other adverse and potentially lifelong health deficits. Multiple birth babies are about twice as likely as singlet babies to have birth defects, including spina bifida, cerebral palsy, and congenital heart defects, as well as vision and hearing deficits.

Exploitative Fertility Industry

Reproductive medicine is one of the fastest growing and most lucrative fields of medicine. But just like the tobacco industry, which failed for decades to research harms to smokers, fertility experts have refused to conduct research into the health risks to surrogate women and their offspring. Even if a would-be surrogate were advised of all “known risks,” her “informed consent” remains an impossibility, because the full extent of the risks she faces—although known to be heightened—is not fully understood. The commercial surrogacy industry, like the tobacco industry, has both the means and motive to deny or minimize the health risks involved in commercial surrogacy, and to misrepresent what the practice entails.

Our country has one of the highest maternal mortality rates in the developed world, having doubled from 1991 to 2014, and is the only developed country whose maternal mortality rate is rising. Legalizing commercial surrogacy will only increase that rate, especially for African American women, who are already three to four times more likely to die in childbirth than white American women.

I know of four surrogate mothers in the United States who have died as a result of dangerous surrogacy pregnancies, leaving their own young children motherless. One died just two weeks ago.. We will never know the total number of such deaths, because the commercial surrogacy industry works hard to ensure that such information never sees the light of day. The legalization of this secretive industry would exponentially increase that risk.

New York State is the progressive leader on so many vital public policy issues, thanks to this Governor and you in the Legislature. One of many examples of this progressive leadership occurred in the early 1990s when this state took a strong stance to protect women and children by outlawing commercial surrogacy contracts. Undoing that legacy would be a giant step backwards.

I respectfully urge you to reject Governor Cuomo's misguided proposal.

Attachments

1. The Story of Brooke Brown: *A young woman dies from complications related to her third surrogacy pregnancy, leaving behind three young sons.*

2. The Story of David Farnell: *A convicted pedophile allowed to remain the father of his surrogate daughter.*

3. The Story of Mitsutoki Shigeta: *A single 28 year old Japanese man procures 20 surrogate babies, and wants 10 to 15 more per year.*

4. The Story of Dr. Jennifer Schneider: *The physician mother of a young egg donor shares the story of her daughter's death from a cancer that is rare in young people.*