



# ARCHDIOCESE OF WASHINGTON

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June 25, 2013

The Honorable Tommy Wells  
Committee on the Judiciary and Public Safety  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

Re: Opposition to Bill 20-32, the Surrogacy Parenting Agreement Act of 2013

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify in opposition to Bill 20-32, the Surrogacy Parenting Agreement Act of 2013.

Recognizing the good intent of persons who for whatever reason are unable to have children and the significant emotional pain they may experience, the desire to have a child and care for another unconditionally is a good and natural human desire. However, the good desire to love and parent a child is not without limits. One can think of an extreme case of an individual kidnapping the child of another and know immediately that the means by which one acquires a child can override whatever good intent was present.

The same is true of surrogacy agreements. Again, the desire may be good and the individuals involved may be very generous and loving people, but the means used undermine the goodness of the intent. In addition, the codification of these agreements through Bill 20-32 will lead to a broader degradation of women and children and an institutionalized discrimination against the children involved as their interests are subordinated to the desires of the “intended parents.”

“The city’s commitment to equality,” as expressed by Chairman Wells in his introduction of the bill at the public hearing on Thursday, June 20, 2013, must above all take into consideration the rights of the children conceived through these agreements as they are the most vulnerable parties and most susceptible to mistreatment and exploitation. The very nature of the child as a human person demands that his/her dignity be respected from the very beginning – a dignity that is equal to his/her parents not subservient.

One might appropriately question why the DC City Council is involving itself at all in its citizens' parenting arrangements and methods used for begetting children. The only reason for state interventions in parenting and reproductive relationships is for the protection and preservation of the rights and well-being of the children – the state has a vested interest in providing a safe and stable environment for its most vulnerable citizens to grow and mature, so that they can become healthy, productive citizens who in turn contribute to the common good of society. This function of the state is recognized in state and federal policy as well as globally, in various United Nations treaties and charters. As expressed in the United Nations' Fact Sheet on the Rights of the Child (1997), the State must make the best interests of the child their primary consideration when children are affected by policy and legislation. Children have an inherent "right to life, survival and development" and these must be "ensured to the 'maximum extent possible'" (UN Office of the High Commissioner for Human Rights, 1997). This global position is significant in that the District of Columbia could very well set themselves up as an international destination for reproductive tourism, as has already occurred in India. The prioritization of the interests of the child is further reflected in the Committee Opinion on Surrogate Motherhood by the Committee on Ethics of the American College of Obstetricians and Gynecologists ([ACOG], 2008): "Children are much more vulnerable than adults. Harms to children who have no choice in a matter are more serious, from an ethical standpoint, than harms to adults who make a choice that they later regret" (p. 2).

Thus, we must pause and ask the question: are surrogacy agreements in the best interests of the children and is the state ensuring the healthy development of its children to the "maximum extent possible"? In contrast, Council Member Catania posed the question to one of the public witnesses, Jessica Kern, "Isn't it better to be alive?" This question seems to dismiss her experience and that of all the other children emotionally and psychologically affected by surrogacy agreements. Shouldn't we take seriously our responsibility to protect the needs, interests and well-being of our most vulnerable citizens and ask ourselves, "are surrogacy arrangements and 'collaborative reproduction' the best we can do for the health and well-being of our children?" Do they really treat *all* members – including the children – as equal in dignity?

### **Systematic Domination and Discrimination**

Flowing from his inviolable dignity – a dignity that cannot be given or taken away by any government entity or individual – every child has a right to be conceived from an act of love – an act which, by its very nature, expresses mutual self-giving, reciprocal relationships and equality. Bringing forth life through the use of reproductive technologies, surrogate mothers and contractual arrangements, establishes a relationship of domination – the domination of technology and scientific manipulation over human life, the domination of the interests of the parents over those of the child, and the domination of the state and the market over the immutable dignity of the person.

From the initial stages of the process, surrogacy agreements undermine the equal dignity of the child with his/her intended parents. The parents choose the surrogate. They choose gamete donors based on the characteristics they prefer and would like to see

in their children – they review files that give details such as height, weight, intelligence, athleticism, religion, race, etc. (Daniels & Heidt-Forsythe, 2012; Fox, 2008). This choice of the gamete donor(s) alone is a Pandora’s Box of discrimination. They choose which embryos are transferred and how many are allowed to continue to grow and survive versus those that may be “selectively reduced” or terminated. They choose whether a child with a potential disability is allowed to survive or in more rare case, use genetic manipulation to find an embryo with the same disability as the intended parent, etc. (Fordham, 2010). And finally, they choose whether they will tell the child about his/her origins and allow the child to potentially discover his/her genetic parents (Readings, Blake, Casey, Jadva & Golombok; 2011). Truly, the child begins as one whose dignity is unequal, whose life is bought, traded, objectified and commodified as yet another good to be acquired. At what point does the essential nature of this practice resemble slavery and eugenics more closely than reproduction?

The long-term effects of such systematic domination and discrimination upon the children themselves and the socio-cultural environment as a whole have not been adequately studied or considered within the scientific community nor government agencies (ACOG, 2008). In one recent study just published this month, the psychological adjustment of children born through various reproductive technologies was examined with results showing a marked difference in behavior of children born through surrogacy agreements by the age of 7 versus any other reproductive method (Golombok, Blake, Casey, Roman & Jadva; 2013). This one study is evidence enough that further studies into the impact of these arrangements on the children conceived through them must be done *before* advancing legislation that may put an undo burden on children and lead to further psychological and behavior problems.

Additional studies also need to be commissioned to take a closer look at the long-term impact upon the gestational carrier, the biological children of the gestational carrier, and the potential abuses by organizational structures, such as the reproductive clinics, the lawyers and government agencies. Several recent headlines point to the common occurrence of moderately to severely problematic situations with surrogacy agreements and similar treatments:

*Surrogate mother had the right to choose* [surrogate mother refuses to abort child at the request of intended parents], CNN.com

*Indian surrogate for US woman dies in Gurjarat*, BioEdge.org

*Woman sentenced to 5 years jail for cruel surrogacy fraud*, BioEdge.org

*Modesto woman hustles \$2M in surrogacy scam*, ABClocal.go.com/kfsn

*Children of sperm donors may have dozens of siblings*, Eggdonor.com

*Dead son’s sperm to be extracted so mother can become a grandmother*, Eggdonor.com

[Intended] *Father of triplets kept by surrogate dies* [he was 69 years old, 61 when he entered into surrogacy agreement], Post-gazette.com

*American mother abandons newborn baby at Indian passport office to protest delays*, Eggdonor.com

*Do donor babies have a right to know their biological parents?*, Huffingtonpost.ca

*Donor-conceived children seek missing identities*, NPR.org

*My wife is my sister*, Slate.com

And the list could go on ...

In one troubling article, Cook (2012) points to an article in the American Journal of Bioethics in which two bioethicists argue that some parents may be morally obligated to use pre-implantation genetic diagnosis, or genetic intervention, to avoid passing on genetic diseases or disabilities and to save the government money in health care expenses. Again, it does not take long before these procedures turn from reproduction to production to designer babies to genetic cleansing, which is simply a sanitized term for eugenics. It should be clear from these many headlines that government policies intervening on the beginnings of life should not be taken lightly, nor pursued simply for immediate political and ideological considerations since these decisions have significant consequences and will have a ripple effect into future generations.

### **The Degradation of the Dignity of Women**

Not only is the respect due to the child threatened by the practice of surrogacy, but the value given to women is also reduced to sheer biological utility. She becomes no longer a person deserving of respect for *who* she is, but for *what function* she can perform. Throughout history and across continents, there has been universal recognition that this sort of de-personalization and reductionism leads to the degradation of the individual and the moral decay of the society as a whole. By separating the person as unity from their biological functions/goods as tradable commodities, the individual is subjected to systematic objectification and commodification – thus, the universal condemnation of the sale of human organs, prostitution and human trafficking.

No matter how much those who support surrogate agreements would like to paint a picture of gestational carriers as altruistic, empowered and autonomous women, the fact remains that women are *needed* for a biological function – gestation (Berkhout, 2008). The woman is a means to an end and it is *only* the woman who can fulfill this role – it is gender specific (Almeling, 2004). Is this not the definition of discrimination? In many clinics, she must already have children to demonstrate that she can successfully carry a pregnancy to term – yes, she must demonstrate that the biological function for which she is being hired will not malfunction, i.e. that the “product” works! Further evidence that the women who serve as gestational carriers are objectified and reduced to a commodity

can be found in those cases when a pregnancy is not successfully achieved – she is simply “traded in” for another model that works (Berkhout, 2008). The uniqueness of *who* she is, her personal integrity and dignity, is irrelevant for the services required.

With these reproductive “goods” and “services” in mind, the reproductive marketplace and the domain of scientific research disproportionately impact women and put them at further risk of being coerced and exploited (George, 2008). *Only* women can serve as gestational carriers for surrogacy agreements (George, 2008). *Their* eggs are needed as gamete donors for many assisted reproductive technologies including surrogacy, and *their* eggs are solicited for various scientific experiments (George, 2008). Women are unable to donate their gametes as easily and as plentifully as men can and they face serious health risks in the process – again, women are disproportionately affected by these practices (Daniels & Heidt-Forsythe, 2012; Fox, 2008). The industry’s norms of manipulative advertising and significantly higher payments reflect the extreme disparity (Daniels & Heidt-Forsythe, 2012; Fox, 2008). In light of these conditions, the “demand” in the marketplace heightens the risk of coercion and threatens the individual autonomy necessary for it to be a true “donation” (Berkhout, 2008; Tieu, 2009).

The physical and psychological risks intrinsic to the surrogacy and egg donation procedures pose an additional threat to women (ACOG, 2008; American Society for Reproductive Medicine [ASRM], *Fact sheet: IVF*, 2012; ASRM, *Fact Sheet: Surrogate*, 2012; Ethics Committee of the ASRM, 2013; Duffy, Nulsen, Maier, Engmann, Schmidt & Benadiva, 2005). Once again, there have not been sufficient studies into the long-term health complications due to the hormonal treatments inherent to the surrogacy process (ACOG, 2008). Despite the lack of longitudinal research, there are significant risks both for the gestational carrier and the egg donor if one is needed (Duffy et al., 2005; Tieu, 2009). These risks are often inadequately understood or downplayed as commensurate with the risks of a normal pregnancy; however this is not a “normal” pregnancy.

In addition, there is potential for further exploitation through the procedural norms and practices within the industry that compromise the woman’s capacity to freely give informed consent. The relational proximity (relative, friend, etc.) of the gestational carrier to the intended parents, the significant financial incentives involved in the contract, and the incapacity to fully comprehend the impact of relinquishing a child after 9 months in utero, are all conditions which compromise the surrogate’s capacity to give adequate informed consent and as such expose them to further exploitation and coercion (ACOG, 2008; Fox, 2008; Kenney & McGowan, 2010; Tieu, 2009). Kenney and McGowan (2010) interviewed 80 women who had previously donated their eggs to assess their motivations, understanding of the risks involved and expectations of the overall experience. The findings of this study showed that “altruism alone” was “not enough to attract most donors” and that there was a significant number of women (20%) who were not aware of any physical risks at all (Kenney & McGowan, 2010). In addition, those who were aware of physical risks reported experiencing greater physical complications than the risks they were aware of (Kenney & McGowan, 2010). Clearly, the “incentives” to participate have impacted women’s capacity to understand the full extent of the risks involved and to freely choose with a fully informed decision.

In conclusion, I urge you Chairman Wells and Committee members to reconsider the implications of Bill 20-32 for all of the reasons listed above. The consequences of passing this legislation would result in the widespread disregard of the health and dignity of women, the second-class status of children, and the further commodification of reproduction. The state has a vested interest in protecting children from such systematic domination and disregard.

Thank you for the opportunity to testify in opposition of Bill 20-32, the Surrogacy Parenting Agreement of 2013, and thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christa Lopiccolo".

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