

**Council of the District of Columbia  
COMMITTEE ON THE JUDICIARY  
COMMITTEE REPORT**

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SECRETARY

To: Members of the Council of the District of Columbia

From: Councilmember Kenyan R. McDuffie *KM*  
Chairperson, Committee on the Judiciary

Date: November 30, 2016

Subject: Report on Bill 21-0016, the "Collaborative Reproduction Amendment Act of 2016"

The Committee on the Judiciary, to which Bill 21-0016, the "Collaborative Reproduction Amendment Act of 2016"<sup>1</sup> was referred, reports favorably thereon and recommends approval by the Council of the District of Columbia.

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<sup>1</sup> The title of the bill has been updated to reflect the current year.

## **STATEMENT OF PURPOSE AND EFFECT**

### **I. Purpose and Effect**

Bill 21-0016, the “Collaborative Reproduction Amendment Act of 2016”, was introduced by Councilmembers Charles Allen, Kenyan R. McDuffie, Yvette Alexander, Anita Bonds, Mary M. Cheh, Jack Evans, David Grosso, Brianne Nadeau, Vincent B. Orange, Sr., Elissa Silverman, and Chairman Mendelson on January 6, 2015. The bill was referred to the Committee on the Judiciary on the same day. Similar legislation – Bill 20-0032, the “Surrogacy Parenting Agreement Act of 2013” – was introduced by Councilmember David Catania on January 8, 2013. The Committee on the Judiciary and Public Safety held a hearing on B20-0032 on June 20, 2013. B20-0032 is substantially similar to B21-0016, and therefore this Committee was not required to hold a hearing on B21-0016 prior to markup pursuant to Council Rule 501(a)(2).

### **II. Background**

Bill 21-0016 would amend Chapter 4 of Title 16 of the District of Columbia Official Code to permit collaborative reproduction and surrogacy agreements; establish requirements for surrogates, intended parents, and the contents of surrogacy agreements; establish parentage of a child; provide for court orders of parentage; and establish the effect of a subsequent marriage or domestic partnership, dissolution of a marriage or domestic partnership, death of an intended parent, and withdrawal of consent.

### **III. Committee Reasoning**

#### ***A. Collaborative Reproduction Agreements***

First, it is helpful to begin with some baseline definitions: “surrogate” refers to an individual who agrees to become pregnant on behalf of an intended parent through collaborative reproduction with the intention of gestating and delivering the intended parent’s child. There are two types of surrogates: gestational and traditional. Gestational surrogates do not have a genetic relationship to the child through the use of their egg; either one or both of the intended parents uses their sperm or eggs to conceive the child, to then be carried to term by the surrogate, or a third-party sperm or egg donor provides their genetic material to conceive the child. Traditional surrogates do have a genetic relationship to the child; they use their own egg, which is fertilized by either the sperm of one of the intended parents or the sperm of a third-party donor. “Collaborative reproduction” refers to the assisted reproductive processes used to conceive a child to be carried to term by either type of surrogate. Generally, it does not include conception through sexual intercourse or through assisted reproduction by an individual or couple who uses their own sperm or eggs and intends to carry the child to term themselves.<sup>2</sup>

D.C. Official Code § 16-402 prohibits surrogacy parenting contracts in the District of Columbia and provides that “any person or entity who or which is involved in, or induces, arranges,

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<sup>2</sup> These definitions are simplified for purposes of understanding; the actual definitions in the Committee Print differ.

or otherwise assists in the formation of a surrogate parenting contract<sup>3</sup> for a fee, compensation, or other remuneration [...] shall be subject to a civil penalty not to exceed \$10,000 or imprisonment for not more than 1 year, or both.”<sup>4</sup> The statute places the District at the very fringe of jurisdictions that regulate surrogacy agreements and is out of pace with modern methods of forming families. The statute is also meaningless, as prospective parents have and will continue to engage in surrogacy in the District without the protections that regulations of the practice could provide. The Committee Print is therefore long overdue.

## **B. Other Jurisdictions**

The vast majority of states are moving toward the regulation of surrogacy agreements, and very few states prohibit them altogether.<sup>5</sup> Jurisdictions mainly differ over whether to permit compensation for surrogacy and whether to allow traditional surrogacy.<sup>6</sup>

Nearly half of all states have statutes governing surrogacy.<sup>7</sup> Four states have explicit bans – New York, Indiana, Michigan, and New Jersey – rendering such contracts void and unenforceable in the first three states.<sup>8</sup> Surrogacy is regulated and permitted in some form in fourteen states: Alabama, California, Colorado, Delaware, Florida, Illinois, Maine, Nevada, New Hampshire, North Dakota, Texas, Utah, Virginia, and Washington.<sup>9</sup> Those states vary in terms of who can be an intended parent or a surrogate and in permitting gestational and traditional surrogacy. California, for example, only permits gestational surrogacy but does not have restrictions on the qualifications for serving as an intended parent or surrogate.<sup>10</sup> Florida allows both gestational and traditional surrogacy.<sup>11</sup> In gestational surrogacy agreements in Florida, the intended parents must file a petition for a judgment of parentage within three days after the child’s birth.<sup>12</sup> In traditional surrogacy agreements, the surrogate has the right to rescind the contract up to 48 hours after the child’s birth, and therefore, the intended parents must wait at least 48 hours before seeking a judgment of parentage.<sup>13</sup> Other states require age limits of 18 or 21 for the intended parents or surrogate, require a medical and mental health consultation, and require the parties to obtain independent counsel.<sup>14</sup>

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<sup>3</sup> Under D.C. Official Code § 16-401(4), “surrogate parenting contract” means any agreement, oral or written, in which (1) a woman agrees either to be artificially inseminated with the sperm of a man who is not her husband, or to be impregnated with an embryo that is the product of an ovum fertilization with the sperm of a man who is not her husband; and (2) a woman agrees to, or intends to, relinquish all parental rights and responsibilities and to consent to the adoption of a child born as a result of insemination or in vitro fertilization as provided in this chapter.

<sup>4</sup> D.C. OFFICIAL CODE § 16-402.

<sup>5</sup> Alex Finkelstein, Sarah Mac Dougall, Angela Kintominas, & Anya Olsen, Report, *Surrogacy Law and Policy in the U.S.: A National Conversation Informed by Global Lawmaking*, COLUM. L. SCH. SEXUALITY & GENDER L. CLINIC (2016), available at [https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/columbia\\_sexuality\\_and\\_gender\\_law\\_clinic\\_-\\_surrogacy\\_law\\_and\\_policy\\_report\\_-\\_june\\_2016.pdf](https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/columbia_sexuality_and_gender_law_clinic_-_surrogacy_law_and_policy_report_-_june_2016.pdf).

<sup>6</sup> *Id.* at Appendix A.

<sup>7</sup> *Id.* at 8.

<sup>8</sup> *Id.* at 9.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Many states do not have statutes or case law that explicitly address surrogacy, including Arkansas, Arizona, Connecticut, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin, and Wyoming.<sup>15</sup>

In Maryland, compensation for surrogacy is prohibited, and pre-birth orders are granted by most courts.<sup>16</sup> Maryland courts have implicitly approved surrogacy. Virginia expressly permits both gestational and traditional surrogacy agreements, but compensation is prohibited.<sup>17</sup>

### ***C. The Committee on the Judiciary Print of Bill 21-0016***

B21-0016, as introduced, differs dramatically from B20-0032, as introduced. B20-0032 was skeletal, establishing definitions and minimum requirements for a “surrogacy parenting contract” and an “action to establish the parent-child relationship”. Post-introduction, staff of this Committee under its prior Chair established a working group comprised of experts in the field to more comprehensively regulate surrogacy agreements and the parentage of children resulting from surrogacy. The Committee Print reflects many of those discussions.

As introduced, B21-0016 maintained many of the same definitions as its predecessor, and the Committee Print has updated several to better reflect appropriate medical terminology and current practice. Both the bill as introduced and the Committee Print establish baseline validity provisions for surrogacy agreements and collaborative reproduction. Both versions similarly provide that the intended parent or parents shall be the legal parents of any child resulting from the surrogacy, both in the case of gestational surrogacy and traditional surrogacy.

Both versions additionally set forth eligibility requirements for surrogates and intended parents. Surrogates must be at least 21 years of age, have given birth to at least one live child, have undergone a medical and mental health evaluation, and completed a joint consultation with the intended parent or parents and a mental health professional. The intended parent or parents must also be at least 21 years of age and have completed the joint consultation with the surrogate. If any party is married or in a domestic partnership, the spouse or domestic partner must also satisfy these requirements. The Committee believes that the age restrictions and the live birth requirement for the surrogate will assist the parties in making more informed decisions – particularly in a context where the surrogate will be required to surrender custody and all parental rights after the child’s birth. The Committee acknowledges there will be situations in which a surrogate who is under the age of 21 or who has not previously given birth to a live child will be entirely competent and able to make an informed decision to serve as a surrogate – noting that the intended parent or parents are not required to currently be parents – but the gravity of the contractual requirements and the unanticipated potential emotional and physical changes involved in pregnancy weigh on the side of increased protections for both the surrogate and the intended parent or parents.

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<sup>15</sup> *Id.* at 57.

<sup>16</sup> MD. CRIMINAL LAW CODE ANN. § 3-603; MD. FAMILY LAW CODE ANN. § 5-3B-32.

<sup>17</sup> VA. CODE ANN. §§ 20-156 to 20-165.



The Committee Print, with some modifications, maintains the required contents of a surrogacy agreement: the agreement must (1) be in writing; (2) be executed prior to the embryo transfer or insemination; (3) include an affirmation by all parties that they have independent counsel and have read the agreement and this chapter of the Code; (4) include an affirmation by the surrogate and the surrogate's spouse or domestic partner, if any, that they acknowledge that they are not the legal parents, agree to surrender physical custody, agree that the surrogate maintains autonomy over her body, and agree to cooperate in any necessary legal proceedings and other terms in the agreement; (5) include an affirmation by the intended parent or parents that they shall accept physical custody of the child regardless of the child's gender, mental or physical health condition, or the number of children, and assume sole responsibility for support of the child; (6) provide that the intended parent or parents shall assume all reasonable medical and ancillary expenses; (7) allocate responsibility for the assumption of costs in the event of termination of the pregnancy or contract or breach; (8) provide procedures for dispute resolution; and (9) be notarized or signed by a minimum of two witnesses. All parties must be represented by independent counsel. Importantly, the agreement cannot limit the right of a surrogate to make decisions to safeguard the surrogate's health or that of the embryo or fetus. Disputes are to be resolved according to the terms of the agreement. These protections are all in alignment with best practices.

Notably, the Committee Print differs from the bill as introduced with regard to orders of parentage. Such orders are to be issued by the Superior Court of the District of Columbia and can be filed at any time after confirmation of the pregnancy. The Print establishes criteria for jurisdiction and which documents must be included in the petition, including affidavits and the executed surrogacy agreement. The purpose of an order is to declare the intended parent or parents to be the legal parents of the child. The introduced version of the bill did not differentiate between orders of parentage for children born by a gestational or a traditional surrogate, providing that the court was required to issue all orders within thirty days of submission of the petition for both types of surrogacy, with enforcement stayed until the birth. A distinction here is critical due to the genetic relationship between a traditional surrogate and a resulting child. The Committee Print therefore instead provides that in the case of a child born by a gestational surrogate, the court may issue an order of parentage for the child at any time after a petition for parentage has been filed. The order of parentage shall be effective upon the birth of the child. If the order of parentage is not issued before the birth of the child, the court shall issue the order as soon as possible after the birth, but no later than 45 days after the birth. In the case of a child born by a traditional surrogate, the court shall issue an order of parentage for the child no less than 48 hours and no more than 45 days after the birth of the child. Orders of parentage are to be sealed.

Lastly, both the introduced version and the Committee Print establish that a subsequent marriage or domestic partnership or dissolution of either for the surrogate or the intended parent or parents has no bearing on the agreement's validity or the child's parentage. Similarly, if an intended parent dies after the embryo transfer or insemination, the surviving spouse or domestic partner must assume all obligations under the agreement, and both the decedent and the surviving spouse or domestic partner will be considered the legal parents of the child. Both versions also provide requirements for the withdrawal of consent to collaborative reproduction by any party, although the Committee Print does not specify that withdrawal must be prior to the embryo transfer. Withdrawal must be in writing and properly communicated, and if the child is born by a traditional surrogate, the surrogate shall have 48 hours post-birth to withdraw consent. This time

period is in keeping with other jurisdictions' withdrawal periods and common practice in District adoptions.

#### **D. Conclusion**

The Committee Print represents a recognition that the District's law was out of step with the diverse and wonderful ways that District residents have and will continue to form families. The Print's adoption of best practices and model provisions anticipate many of the issues that could arise during surrogacy, although surely the practice will continue to evolve. Most importantly, the Print provides baseline protections for all parties.

#### **LEGISLATIVE HISTORY**

January 8, 2013	B20-0032 is introduced by Councilmember David Catania.
January 8, 2013	B20-0032 is referred to the Committee on the Judiciary and Public Safety.
January 18, 2013	Notice of Intent to Act on B20-0032 is published in the <i>District of Columbia Register</i> .
May 24, 2013	Notice of Public Hearing on B20-0032 is published in the <i>District of Columbia Register</i> .
June 20, 2013	Public Hearing on B20-0032 is held by the Committee on the Judiciary and Public Safety.
January 6, 2015	B21-0016 is introduced by Councilmembers Charles Allen, Kenyan McDuffie, David Grosso, Brianne Nadeau, Elissa Silverman, Jack Evans, Yvette Alexander, Anita Bonds, Mary M. Cheh, Vincent B. Orange, Sr., and Chairman Mendelson.
January 6, 2015	B21-0016 is referred to the Committee on the Judiciary.
January 9, 2015	Notice of Intent to Act on B21-0016 is published in the <i>District of Columbia Register</i> .
November 30, 2016	Consideration and vote on B21-0016 by the Committee on the Judiciary.

#### **POSITION OF THE EXECUTIVE**

*Phillip Husband – General Counsel, Department of Health*

Mr. Husband testified on behalf of the Department of Health in support of the working draft of B20-0032. He offered a number of substantive recommendations to the draft's language, including:

- Consistent use of and elimination of unnecessary definitions;
- Further elaboration of what is meant by “substantial satisfaction”;
- Additional language relating to parental rights;
- Clarifying whether the intended parents must be domiciled in the District;
- Changes to the process for determining parentage;
- Additional language regarding authentication of the agreement;
- Clarifications relating to the refusal to accept custody of a child;
- Changes to the section relating to the effects of divorce;
- Clarifying the rights of the intended parents in the event of death;
- Language regarding withdrawals of consent;
- How the parentage of a child is governed when there is no parentage order; and
- Conforming amendments.

### **ADVISORY NEIGHBORHOOD COMMISSION COMMENTS**

The Committee did not receive comments from Advisory Neighborhood Commissions.

### **WITNESS LIST AND HEARING RECORD**

The Committee on the Judiciary and Public Safety held a hearing on B20-0032, the “Surrogacy Parenting Agreement Act of 2013”, on June 20, 2013. A video recording of the hearing can be viewed at [www.oct.dc.gov](http://www.oct.dc.gov) or [http://dc.granicus.com/MediaPlayer.php?view\\_id=28&clip\\_id=1824](http://dc.granicus.com/MediaPlayer.php?view_id=28&clip_id=1824). The following witnesses testified before that Committee:

#### **Public Witnesses**

*Diane Hinson – Founder/Owner, Creative Family Connections, LLC*

Ms. Hinson testified in support of the bill as the Founder and Owner of the largest surrogacy matching and legal services firm in the Washington metropolitan area. She testified that the District is the only jurisdiction in the United States to criminalize surrogacy agreements, adding that while the District is a model jurisdiction in terms of equal rights, it is not in this case. Ms. Hinson noted that for gay men and women who are unable to conceive, the law poses particular hardships. She offered model definitions for “intended parent”, “gestational carrier”, and “traditional surrogate” in her written testimony.

*Peter J. Wiernicki, Esq. – Principal, Joseph, Reiner & Wiernicki, P.C.*

Mr. Wiernicki testified in support of the bill on behalf of his law firm. He practices in the District of Columbia, Maryland, and Virginia, and has represented gestational carriers and intended parents. He has served as a charter member, Vice-President, and member of the Board of Trustees of the American Academy of Assisted Reproductive Technology Attorneys. Mr. Wiernicki testified that the District’s law criminalizing surrogacy agreements is arcane and out of step with advances in assisted reproductive technology. He has been unable to counsel a number of clients wishing to enter into gestational carrier agreements, and for those District residents he

represents in other states, there is a lingering concern about the legality of any agreements into which the intended parents enter. Mr. Wiernicki testified that the agreements protect children by clearly establishing parentage, which results in stability and permanency.

*Carey Brown – Public Witness*

Ms. Brown testified in support of the bill as a biological mother, adoptive mother, and two-time gestational surrogate. She rejected the characterization that she served as a gestational surrogate because she was “lured to sell her body” or that her body should be considered an “oven”. Rather, Ms. Brown characterized her decision to serve as a surrogate for one of her friends, and then for a gay couple, as one of bodily autonomy. She testified that she educated herself about the process and its risks prior to proceeding, and she was counseled by physicians.

*Abraham Newman – Public Witness*

Mr. Newman testified in support of the bill as an intended parent who utilized an egg donor and a gestational carrier. He found a surrogate in Maryland to carry his first daughter, and another in Pennsylvania to carry his second child. Mr. Newman testified to the team of lawyers that was necessary to guide him and his husband through the process. He also described the time, effort, and money required to travel to doctors’ appointments and to bond with his surrogate.

*Rebecca Flick – RESOLVE: The National Infertility Association*

Ms. Flick testified in support of the bill, noting that infertility impacts 1 in 8 couples of reproductive age. She encouraged intended parents to seek legal counsel, undergo psychological counseling for themselves and the carrier, and follow the guidelines of the American Society for Reproductive Medicine.

*Jennifer Ahern – Senior Case Manager/Associate Attorney, Creative Family Connections*

Ms. Ahern testified in support of the bill. As a case manager, she supports intended parents and gestational carriers. She spoke to the emotional importance of her work.

*Peggy Swain – Chair, Legislative Response Team, American Academy of Assisted Reproductive Technology Attorneys*

Ms. Swain testified in support of the bill on behalf of the American Academy of Assisted Reproductive Technology Attorneys. She stated that the working draft of the bill would secure parental rights for families formed through assisted reproduction and establish safeguards for the gestational carriers and their partners, as well as any genetic donors. She testified that the bill would mirror national best practices.

*M. C. Elvis Oxley – Public Witness*

Mr. Oxley testified in support of the bill, as a parent of a son born with a surrogate with the assistance of Shady Grove Fertility. He stated that his family's surrogate invested in her education with the money she received, eventually becoming a nurse.

*Jennifer Lahl – President and Founder, Center for Bioethics and Culture*

Ms. Lahl testified in opposition to the bill. She argued that the bill presents risks to women's well-being and promotes exploitative practices in the "fertility industry". Ms. Lahl stated that current District law actually serves as a model, preventing the commodification of women and children and the commercialization of reproduction. She testified that the most natural environment for a child is the birth mother's womb. She alleged that women who decide to become surrogates are often motivated by financial need and are at physical and emotional risk.

*Kathleen Sloan – Public Witness*

Ms. Sloan testified in opposition to the bill. She argued that the bill would legalize the commodification of women and pose serious risks to women's health. She stated that the drugs needed to gestate a child have short- and long-term health consequences, and that women considering surrogacy must be informed of these risks. Ms. Sloan argued that the legislation would turn women into "breeders".

*Jessica Kern – Public Witness*

Ms. Kern testified in opposition to the bill as an adult who had been conceived through surrogacy. She described the lack of information to which she was privy about her conception and the identity of her surrogate, as well as her emotional experience of learning that she was conceived in this manner.

*Elaine Petty – Public Witness*

Ms. Petty testified in support of the bill. She stated that the time that a fetus spends in the womb is critical to their future development, and therefore, surrogacy ruptures this bond. She argued that surrogacy is exploitative and treats the child as a commodity. Ms. Petty stated that gestational carriers and traditional surrogates are often uninformed and motivated by financial need. She argued that the long-term effects of surrogacy are unknown.

*Sarah Warbelow – State Legislative Director, Human Rights Campaign*

Ms. Warbelow testified in support of the bill on behalf of the Human Rights Campaign and the LGBT individuals represented by the organization.

*Emily Hecht-McGowan, Esq. – Director of Public Policy, Family Equality Council*

Ms. Hecht-McGowan testified in support of the bill. She spoke to the importance of surrogacy agreements for the LGBT community, arguing that the District's law is outmoded. She stated that the bill provides the emotional, medical, and financial protection necessary for both women who decide to serve as surrogates and intended parents. Because the District bans surrogacy agreements, LGBT individuals who seek to use them may have to travel outside of the District, exposing them to a patchwork of laws – some of which protect them, and some of which do not.

*Nancy Polikoff – Professor of Law, American University Washington College of Law*

Ms. Polikoff testified in support of the bill. She focused on two points: (1) that gestational and traditional surrogacy should be regulated equally in the bill, and (2) that a woman who bears a child should have a brief period of time after the child is born to assert a claim of parentage. She offered three counterarguments to distinguishing between traditional and gestational surrogacy: (1) conceptual inconsistency with all other LGBT parenting work that does not require a genetic connection, (2) accessibility to the greatest number of intended parents due to affordability concerns, and (3) the health of the woman who will become pregnant, as traditional surrogacy poses fewer risks than gestational surrogacy. Regarding her suggestion that a surrogate should have a brief period of time after the child is born to assert a claim of parentage, she argued that gestation requires acts of caring that entitle the caregiver to claim parentage within a limited time after birth, although properly screened surrogates would be highly unlikely to change their minds. She testified that if the surrogate does assert parentage, and if there is no agreement with the intended parents, custody should be determined by the Superior Court according to the best interests of the child.

*Richard J. Rosendall – President, Gay and Lesbian Activists Alliance (GLAA)*

Mr. Rosendall testified in support of the bill on behalf of his members and District residents. He agreed with Ms. Polikoff that the bill should cover traditional surrogacy agreements in addition to gestational surrogacy agreements. He did not take a position on the suggestion to provide surrogates with limited time post-birth to assert a claim of parentage.

*Patricia Sachs, LCSW-C – Clinical Social Worker, Shady Grove Fertility RSC*

Ms. Sachs testified in support of the bill. She stated that Shady Grove Fertility conducts evaluations of potential gestational surrogates which require a counseling session with the intended parents, a full evaluation with psychological testing, and a group meeting with all parties. Ms. Sachs testified to the positive relationships that come out of surrogacy arrangements, with intended parents expressing great concern for the surrogates, and the surrogates becoming invested in caring for a healthy fetus. She suggested that the bill should include a requirement for a full psychological evaluation of surrogates.

*Dr. Eric Widra – Shady Grove Fertility Center and American Society for Reproductive Medicine/Society for Assisted Reproductive Technology*

Dr. Widra testified in support of the bill on behalf of medical professionals in the field and Shady Grove Fertility, the largest infertility medical practice in the country. He stated that the bill follows national professional guidelines developed for infertility practices using gestational carriers, including the screening of genetic parents and gestational carriers, and the criteria for rejecting intended parents and gestational surrogates. He expressed his belief that the bill supports liberty and autonomy. He disagreed with the witnesses who opposed the bill on medical grounds, arguing that assisted reproductive technologies are extremely common and safe.

*Joyce Migdal, Ph.D. – Clinical Psychologist*

Dr. Migdal testified in support of the bill. Her experience in this area relates to the evaluation of intended parents and prospective gestational surrogates. She supported the inclusion of a required mental health evaluation in the bill.

*Meryl B. Rosenberg, Esq. – Founder, ART Parenting*

Ms. Rosenberg testified in support of the bill as an attorney practicing in the field. She described the surrogacy process in Maryland, including medical and psychological screening, entrance into an agreement with independent counsel, and filing of an order of parentage by the intended parents. She noted that as of the time of the hearing, there had not been any reported cases of disputes between intended parents and surrogates in Maryland due to the statute's extensive protections for all parties.

*Whitney Watts – Public Witness*

Ms. Watts testified in support of the bill based upon her experience as a gestational surrogate for a couple in Maryland. She had previously given birth to a child and voluntarily decided to become a surrogate in order to share that experience with another couple. She disagreed with witnesses who testified that surrogates are exploited or pursue surrogacy only for financial reasons.

*Roy Daiany and Fabrice Houdart – Public Witnesses*

Mr. Daiany and Mr. Houdart testified in support of the bill. They described their experience as a couple who had utilized a gestational surrogate to give birth to twins.

*Charley Hammel – Public Witness*

Ms. Hammel testified in support of the bill. She described her positive experience as a gestational surrogate. She testified to the importance of independent counsel for the surrogate.

*Michele Clark – Public Witness*

Ms. Clark testified in opposition to the bill. She argued that the bill commercializes the human body and exploits women. She provided information about international laws regarding surrogacy for money. Ms. Clark argued that the amount of money received by a surrogate is not commensurate with the money received by a clinic.

*Jennifer Fairfax – Public Witness*

Ms. Fairfax testified in support of the working draft of the bill as an attorney, licensed in Maryland and the District, with a practice focused on adoption and assisted reproductive technology. She argued that the bill represents best practices.

*Sharon Covington, MSW, LISCW, BCD – Director of Psychological Support Services, Shady Grove Fertility Reproductive Science Center*

Ms. Covington testified in support of the bill, with particular support for requiring mental health evaluations by trained mental health professionals who specialize in infertility counseling. She disagreed with the argument that gestational surrogates are exploited.

*Peter D. Rosenstein – Public Witness*

Mr. Rosenstein testified in support of the bill. He agreed that both gestational and traditional surrogacy should be included in the bill, while supporting the rights of the intended parents.

*Bob Summersgill – Public Witness*

Mr. Summersgill testified in support of the bill. He expressed support for including traditional surrogacy. He did not take a position on the recommendation to allow a surrogate to file a claim for parentage within a certain time period after birth. If this provision were adopted, he argued that the intended parents should be compensated for their expenses related to the surrogacy, plus interest, if the claim of parentage was awarded in the surrogate's favor.

*Marie T. Hilliard, JCL, Ph.D., RN – Director of Bioethics and Public Policy, The National Catholic Bioethics Center*

Dr. Hillard testified in opposition to the bill. She argued that it would codify the commercialization of women and the commodification of children. She stated that gestational surrogates are subject to increased health risks. She also testified that there is a significant discrepancy between the monies provided to surrogates and surrogacy brokers.

**IMPACT ON EXISTING LAW**

Bill 21-0016 amends Chapter 4 of Title 16 of the District of Columbia Official Code to permit collaborative reproduction and surrogacy agreements; establish requirements for surrogates, intended parents, and the contents of surrogacy agreements; establish parentage of a child; provide for court orders of parentage; and establish the effect of a subsequent marriage or



domestic partnership, dissolution of a marriage or domestic partnership, death of an intended parent, and withdrawal of consent.

### **FISCAL IMPACT**

The Committee adopts the fiscal impact statement of the District's Chief Financial Officer.

### **SECTION-BY-SECTION ANALYSIS**

#### **Section 1**

Provides the long and short titles of the legislation.

#### **Section 101**

(a) Amends the chapter title of Chapter 4 of Title 16 of the District of Columbia Official Code.

(b) Amends the chapter's table of contents.

(c) Adds definitions for "ancillary expenses", "assisted reproduction", "assisted reproductive technology", "assisted reproduction center", "child", "collaborative reproduction", "domestic partner", "domestic partnership", "donor", "embryo", "embryo transfer", "fertilization", "fetus", "gamete", "gestational surrogate", "insemination", "intended parent", "medical evaluation", "medical expenses", "order of parentage", "parent", "surrogate", "surrogacy agreement", "traditional surrogate", and "zygote".

(d) Repeals D.C. Official Code § 16-402, which prohibits surrogate parenting contracts.

(e) Adds new sections § 16-403 through § 16-411.

§ 16-403 authorizes collaborative reproduction by providing that an intended parent shall be recognized as the parent of a child; provided, that the surrogate and the intended parent comply with the chapter.

§ 16-404 authorizes surrogacy agreements.

§ 16-405 sets forth requirements for surrogates and intended parents relating to age, prior pregnancies, medical and mental health evaluations, and entrance into a surrogacy agreement.

§ 16-406 establishes the required contents of an enforceable surrogacy agreement. The agreement must be in writing and executed by all parties; be executed prior to the embryo transfer or insemination; include affirmations by the surrogate and surrogate's spouse or domestic partner, if any, that they will not be the parents of the child, will surrender physical custody immediately after the child's birth,

cooperate in legal proceedings, and maintain control and decision making authority over the surrogate's body; include an affirmation by the intended parent or parents to accept physical custody of the child immediately after birth, assume sole responsibility for the child's support, and assume the costs of reasonable medical and ancillary expenses; provide procedures for assumption of costs, breach, termination, and dispute resolution; and be notarized or signed before at least two witnesses. All parties must be represented by independent counsel. An agreement may not limit the right of the surrogate to make decisions to safeguard the surrogate's health or that of the embryo or fetus. Provides that payment shall be made by insurance, cash, escrow, and/or other arrangements. Provides that disputes are to be governed by the agreement.

§ 16-407 provides that the intended parent or parents are the parent or parents of the child born by a surrogate, and the child has all applicable rights under District law. States that the surrogate and the surrogate's spouse or domestic partner, if any, are not the parent or parents of the child. Provides that third party gamete donors are similarly not the parents of the child.

§ 16-408 provides procedures for the filing of an order of parentage with the Superior Court by an intended parent or parents or surrogate. Establishes the jurisdiction of the Court. Requires affidavits and a copy of the surrogacy agreement in the petition. Provides that the order shall declare the intended parent or parents as the parents of the child, directs the Registrar of Vital Records to issue a birth certificate accordingly, and declares that the surrogate and the surrogate's spouse or domestic partner, if any, are not the legal parent or parents. Provides that in the case of a child born by a gestational surrogate, the Court may issue the order at any time after the petition has been filed, but it will not be effective until the birth. If the order is not issued pre-birth, it shall be issued as soon as possible after the birth, but no later than 45 days post-birth. In the case of a child born by a traditional surrogate, the Court shall issue the order no less than 48 hours post-birth and no more than 45 days post-birth. Orders shall be sealed.

§ 16-409 provides that a subsequent marriage or domestic partnership or either's dissolution has no bearing on the agreement's validity or the child's parentage.

§ 16-410 provides that if an intended parent dies after the embryo transfer or insemination, a surviving spouse or domestic partner shall assume all obligations under the agreement, and both the decedent and their surviving spouse or domestic partner shall be legally considered the parents of the child.

§ 16-411 provides that the intended parent or parents or the surrogate may withdraw consent to the agreement in accordance with the agreement's terms in writing, and the withdrawal must be delivered to all parties, to the assisted reproduction center, and to the Superior Court (if an order of parentage has been issued).

<u>Section 201</u>	Authorizes the Mayor to issue rules.
<u>Section 202</u>	Contains the fiscal impact statement.
<u>Section 203</u>	Contains the effective date.

### **COMMITTEE ACTION**

On November 30, 2016, the Committee on the Judiciary held an Additional Meeting to consider and markup B21-0016, the "Collaborative Reproduction Amendment Act of 2016". The meeting was called to order at 12:42 p.m. Chairperson Kenyan R. McDuffie recognized a quorum consisting of himself and Councilmembers Anita Bonds, Mary M. Cheh, Jack Evans, and Chairman Phil Mendelson. Chairperson McDuffie, without objection, moved the Committee Report and Print for B21-0016 en bloc with leave for staff to make technical and clarifying changes. After an opportunity for discussion, the Committee voted 5-0 to approve the Committee Report and Print with the members voting as follows:

<b>YES:</b>	Chairperson McDuffie and Councilmembers Anita Bonds, Mary M. Cheh, Jack Evans, and Chairman Phil Mendelson
<b>NO:</b>	None
<b>PRESENT:</b>	None
<b>ABSENT:</b>	Councilmember LaRuby May

### **LIST OF ATTACHMENTS**

- (A) B21-0016, as introduced
- (B) B20-0032, as introduced
- (C) Notice of Public Hearing on B20-0032, as published in the *District of Columbia Register*
- (D) Agenda and Witness List
- (E) Witness Testimony
- (F) Fiscal Impact Statement
- (G) Legal Sufficiency Determination
- (H) Comparative Print of B21-0016
- (I) Committee Print of B21-0016

## ATTACHMENT A

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**1350 Pennsylvania Avenue, N.W.**  
**Washington D.C. 20004**

**Memorandum**

---

**To :** Members of the Council

**From :**   
Nyasha Smith, Secretary to the Council

**Date :** January 14, 2015

**Subject :** Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, January 6, 2015. Copies are available in Room 10, the Legislative Services Division.

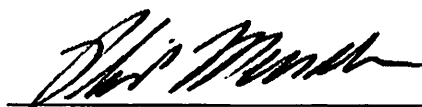
**TITLE:** "Collaborative Reproduction Amendment Act of 2015", B21-0016

**INTRODUCED BY:** Councilmembers Allen, Grosso, Nadeau, Silverman, McDuffie, Evans, Alexander, Bonds, Cheh, Orange, and Chairman Mendelson

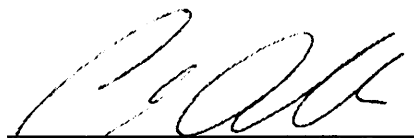
The Chairman is referring this legislation to the Committee on Judiciary.

Attachment

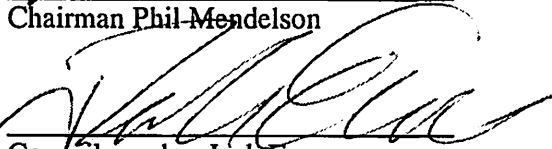
cc: General Counsel  
Budget Director  
Legislative Services



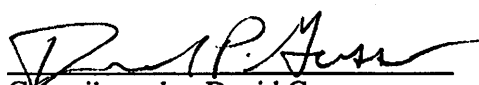
Chairman Phil Mendelson



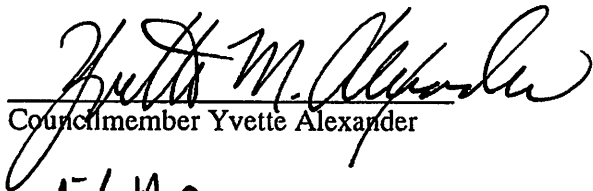
Councilmember Charles Allen



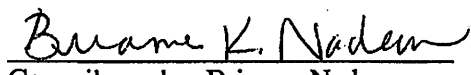
Councilmember Jack Evans



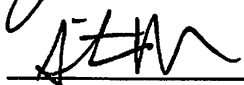
Councilmember David Grosso



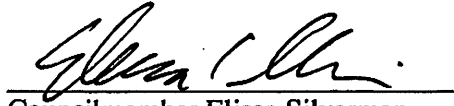
Councilmember Yvette Alexander



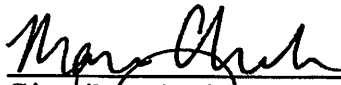
Councilmember Brianne Nadeau



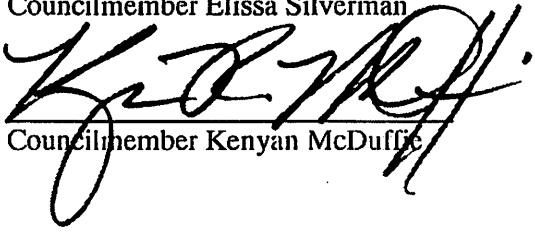
Councilmember Anita Bonds



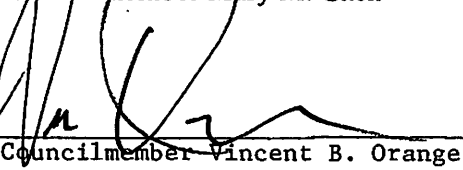
Councilmember Elissa Silverman



Councilmember Mary M. Cheh



Councilmember Kenyan McDuffie



Councilmember Vincent B. Orange, Sr.

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 16 of the District of Columbia Official Code to permit surrogacy arrangements; to establish requirements for surrogacy agreements and other specified collaborative reproduction arrangements; to establish a legal relationship between a child and his or her intended parent and govern proceedings to establish that relationship; to permit the establishment of consistent standards and procedural safeguards to promote the best interests of the children who are born as a result of collaborative reproduction agreements; to protect an intended parent, surrogate, and donor in the formation of a family through collaborative reproduction.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Collaborative Reproduction Amendment Act of 2015".

43  
44 TITLE I – COLLABORATIVE REPRODUCTION.

45 Sec. 101. Chapter 4 of Title 16 of the District of Columbia Official Code is amended as  
46 follows:

47 (a) The Chapter name is amended to read as follows:

48 “Chapter 4. Collaborative Reproduction.”.

49 (b) The table of contents for the chapter is amended to read as follows:

50 “Section

51 “16-401. Definitions.

52 “16-402. Prohibitions and penalties (repealed).

53 “16-403. Validity of collaborative reproduction.

54 “16-404. Parentage of the child resulting from collaborative reproduction.

55 “16-405. Court order of parentage: requirements, process, and effect.

56 “16-406. Surrogacy agreement authorized.

57 “16-407. Eligibility requirements of the parties.

58 “16-408. Surrogacy agreement.

59 “16-409. Effect of subsequent marriage or relationship or dissolution of marriage or  
60 relationship on surrogacy agreement.

61 “16-410. Effect of death of intended parent.

62 “16-411. Effect of withdrawal of consent.

63 “16-412. Character.”.

64 (c) Section 16-401 is amended to read as follows:

65 “§ 16-401. Definitions.

66 “For the purposes of this chapter, the term:

67 “(1) “Assisted reproduction” or “assisted reproductive technology” means the  
68 laboratory and medical procedures performed by a medical professional in which human gametes  
69 are used to create embryos outside the female body for reproductive purposes. This definition  
70 does not include intrauterine insemination.

71 “(2) “Child” means a child who is born as a result of collaborative reproduction.

72 “(3) “Collaborative reproduction” means assisted reproduction or intrauterine  
73 insemination that involves a surrogate, a gamete donor, or an embryo donor, or all. It does not

include the birth of a child conceived by means of sexual intercourse, or the birth of a child conceived with assisted reproductive technology or intrauterine insemination by an individual or couple who use their own gametes and who intend(s) to gestate and parent the resulting child.

“(4) “Domestic partner” shall have the same meaning as provided in section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3)).

“(5) “Domestic partnership” shall have the same meaning as provided in section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3)).

“(6) “Donor” means a person other than an intended parent who contributes gametes or embryos for use in collaborative reproduction; also referred to as a gamete or embryo donor; donor does not include a parent who contributes gametes to be used in assisted reproduction for themselves. A donor is not a parent and does not have a parent-child relationship as defined under this chapter.

“(7) “Donor arrangements” mean all situations in which someone other than an intended parent provides the gamete or the embryo.

“(8) “Embryo” means a fertilized egg until week eight of a pregnancy; the term is used to include a single embryo or two or more embryos.

“(9) “Embryo transfer” means the medical procedure of transferring the embryo to a uterus.

“(10) “Fertilization” means the initial union of the sperm and the egg.

“(11) “Fetus” means an embryo that has developed during the period of gestation between eight weeks and the birth of the child.

“(12) “Gamete” means a human reproductive cell: the sperm or the egg.

“(13) “Intended parent” means an individual or individuals, married or unmarried, who manifest the intent to be legally bound as the parent of a child resulting from collaborative reproduction.

“(14) “Intrauterine insemination” means the fertility treatment that involves the placing of sperm inside a woman’s uterus to facilitate fertilization.



“(15) “*In vitro* fertilization” or “IVF” means the assisted reproductive technology procedure by which a female gamete is fertilized by a male gamete outside of the body, in a laboratory, to create an embryo.

“(16) “IVF center” means the medical practice that performs the medical procedures related to the collaborative reproduction.

“(17) “Medical evaluation” means an evaluation and consultation by a reproductive endocrinologist.

“(18) “Order of parentage” means a judgment by a court of competent jurisdiction in which the parent of the child is declared and determined pursuant to this act.

“(19) “Parent” means the individual or individuals who are legally recognized to have corollary rights or obligations with respect to the child.

“(20) “Reasonable medical and ancillary expenses” means all expenses incurred by a surrogate that she would not have incurred but for a surrogacy agreement, including, among other reasonable expenses, various intangible expenses associated with risk, inconvenience, forbearance or restriction from usual activities, and recovery.

“(A) Medical expenses are those expenses, which are not otherwise covered by medical insurance, that the surrogate incurs because of the surrogacy, including expenses related to the pregnancy and expenses related for complications or other medical issues arising from the pregnancy.

“(B) Ancillary expenses are those expenses that the surrogate incurs because of the surrogacy and may include such expenses as maternity clothes; legal and counseling expenses; actual lost wages; childcare expenses; housekeeping expenses; insurance premiums; various intangible expenses associated with risk, inconvenience, forbearance, restriction from usual activities, and recovery; and travel expenses incurred during and directly related to the surrogacy agreement or pregnancy.

“(21) “Surrogate” means a woman who is not an intended parent, who agrees to become pregnant for an intended parent by collaborative reproduction with the intention of gestating and delivering the intended parent’s child.

“(22) “Surrogacy agreement” means the written contract between the surrogate, her spouse or partner, if any, and the intended parent, pursuant to which the intended parent shall be the parent of the child who is born as a result of the collaborative reproduction.

(d) Section 16-402 is repealed.

(e) New sections 16-403 – 16-416 are added to read as follows:

“§ 16-403. Validity of collaborative reproduction.

“Provided that the surrogate and the intended parent satisfy all the requirements set forth in § 16-407, and the surrogacy agreement satisfies all the requirements set forth in § 16-408, the intended parent shall be recognized as the parent of the child consistent with this chapter.

“§ 16-404. Parentage of the child resulting from collaborative reproduction.

“(a) Surrogacy agreements.

“(1) An intended parent whose child is born via a surrogate shall be the parent of the child and have all corollary rights and obligations, regardless of whether the intended parent has a genetic relationship to the child.

“(2) The child shall have all the rights of a parent-child relationship with the intended parent, including the rights of inheritance, from the moment of birth.

“(3) A surrogate and her spouse or partner, if any, shall not be the parent of a child conceived through collaborative reproduction, and shall not have any corollary rights or obligations with respect to the child.

“(b) Donor arrangements.

“(1) An intended parent who uses a donor gamete or donor embryo to conceive a child through collaborative reproduction shall be the parent of the child and have all corollary rights and obligations of parentage with respect to the child.

“(2) The child shall have all the rights of a parent-child relationship with the intended parent, including the rights of inheritance, from the moment of birth.

“(3) A gamete donor or embryo donor, or his or her spouse or partner, if any, shall not be the parent of a child conceived through collaborative reproduction, and shall not have any rights or obligations with respect to the child.

“§ 16-405. Court order of parentage: requirements, process and effect.

“(a) A petition for parentage may be filed by any party to a surrogacy agreement at any time after confirmation of pregnancy. Jurisdiction will properly lie in Superior Court, if such court determines that:

“(1) The intended parent or the surrogate is domiciled in and has been a resident in the District for at least 90 days; or

165           “(2) The child is reasonably expected to be born in the District, as demonstrated  
166 by the surrogate’s established relationship with an obstetrician licensed in the District, who has  
167 delivery privileges at a hospital in the District where the surrogate intends to deliver the child; or

168           “(3) The embryo transfer or intrauterine insemination procedure has been  
169 performed in the District.

170           “(b) The petition for parentage shall include:

171                 “(1) An affidavit by the petitioning party’s attorney that the requirements of the  
172 chapter have been met, specifically the requirements of § 16-405 through § 16-408;

173                 “(2) An affidavit by the reproductive endocrinologist who performed the embryo  
174 transfer attesting to the facts pertaining to the creation of the embryo and the embryo transfer,  
175 when applicable;

176                 “(3) A copy of the executed surrogacy agreement; and

177                 “(4) An affidavit of each attorney representing a party, attesting to the identities of  
178 the parties, to the fact that the attorney did not represent, connect, or locate both the intended  
179 parent and the surrogate carrier and her partner, and that the terms of the agreement comply with  
180 the requirements as set forth in this chapter.

181                 “(5) An affidavit of each attorney attesting that no other parties should be joined  
182 and attesting to the fact that no other proceedings exist which could affect the current  
183 proceedings.

184           “(c) Provided that the requirements are met in subparagraphs (a) and (b) above, the court  
185 shall issue an order of parentage within thirty days of submission of a petition satisfying the  
186 requirements of § 16-405(b). The order shall:

187                 “(1) Validate the parentage of the intended parent as the sole legal parent of the  
188 child, as set forth in § 16-405;

189                 “(2) Order the Registrar to issue the original birth certificate naming the intended  
190 parent as sole legal parent with the proper headings; and if entered after child’s discharge from  
191 hospital, order registrar to issue a new birth certificate naming the intended parent as sole legal  
192 parent and seal the prior birth certificate.

193                 “(3) Find that the surrogate and the surrogate’s spouse or partner, if any, are not  
194 parents.

195 “(d) If such petition is filed in advance of the delivery, the order shall be entered within a  
196 reasonable time from filing the petition. The order may be entered prior to the birth of the child,  
197 but enforcement of the order shall be stayed until the birth of the child.

198 “(e) The order shall be sealed to protect the child’s and the parties’ privacy.

199 “(f) If there is no order of parentage issued pursuant to this chapter, the parentage of a  
200 child shall be determined under D.C. law.

201 “§ 16-406. Surrogacy agreement authorized.

202 “A surrogacy agreement shall be enforceable provided that the parties and the agreement  
203 meet the requirements of § 16-407 and § 16-408.

204 “§ 16-407. Eligibility requirements of the parties.

205 “(a) Surrogate.

206 “The surrogate shall be deemed to have satisfied the requirements of this section if the  
207 surrogate has entered into a written surrogacy agreement and, at the time that the surrogacy  
208 agreement is executed, the surrogate:

209 “(1) Is at least 21 years of age;

210 “(2) Has given birth to at least one live child;

211 “(3) Has completed a medical evaluation by which the individual was approved to  
212 serve as a surrogate;

213 “(4) Has completed a mental health evaluation by a mental health professional by  
214 which the individual was approved to serve as a surrogate; provided that the mental health  
215 professional’s practice specializes, at least in significant part, in assisted reproduction, infertility,  
216 or collaborative reproduction issues;

217 “(5) Has completed, with the intended parent, a joint consultation with a mental  
218 health professional regarding the issues that could arise during the surrogacy agreement.

219 “(b) Intended parent.

220 “An intended parent who satisfies the requirements of this section shall be recognized as  
221 a parent. If married or in a domestic partnership, both individuals must satisfy the requirements  
222 of this section. An intended parent shall be deemed to have satisfied the requirements of this  
223 section if the intended parent has entered into a written surrogacy agreement and, at the time the  
224 surrogacy agreement is executed, the intended parent:

225 “(1) Is at least 21 years of age; and

226               “(2) Has guaranteed payment of all reasonable medical and ancillary expenses that  
227 are agreed to in the surrogacy agreement.

228               “§ 16-408. The surrogacy agreement: terms.

229               “(a) The surrogacy agreement shall be deemed to have satisfied the requirements of this  
230 section and be enforceable if it meets the following requirements:

231                     “(1) The agreement shall be in writing and executed by the surrogate and her  
232 spouse or partner, if any, and each intended parent;

233                     “(2) The agreement shall be executed prior to the embryo transfer and the  
234 signatures on the agreement shall be notarized, or executed before a minimum of two witnesses  
235 who shall document their names, addresses and phone numbers;

236                     “(3) The surrogate and her spouse or partner, if any, and the intended parent shall  
237 be represented by separate attorneys in the preparation, counseling, and negotiation of the  
238 surrogacy agreement. Nothing in this provision shall prevent the intended parent from paying the  
239 surrogate’s attorney’s fees; and

240                     “(4) All parties to the agreement must affirm, by their signatures to the agreement,  
241 that she or he has read the agreement and this chapter, and understands the requirements of both.

242               “(b) The surrogacy agreement shall include terms that the surrogate:

243                     “(1) Acknowledges and agrees that she is not and shall not be the parent of the  
244 child;

245                     “(2) Agrees to surrender physical custody of the child to the intended parent  
246 immediately upon the child’s birth;

247                     “(3) At all times during the pregnancy and until delivery, regardless of whether  
248 the court has issued a parentage order, the surrogate shall maintain clinical management over her  
249 own body;

250                     “(4) Agrees to cooperate in any necessary legal proceedings to recognize the  
251 intended parent as the legal parent or any other proceeding related to the surrogacy agreement;  
252 and

253                     “(5) Agrees to all other terms, consistent with this chapter and as mutually  
254 negotiated and agreed upon by the parties.

255               “(c) The surrogacy agreement shall include terms that the intended parent shall:

256                     “(1) Accept physical custody of the child immediately upon the child’s birth,

257 regardless of whether the child has or is perceived to have congenital defects; and

258           “(2) Assume sole responsibility for the support of the child immediately upon the  
259 child’s birth, including paying for any funeral expenses if there is a stillbirth, preterm birth, or  
260 any other birth issue that results in the child’s death.

261           “(d) The surrogacy agreement shall provide that the intended parent will cover all  
262 reasonable medical expenses and those reasonable ancillary expenses that are agreed to in the  
263 agreement.

264           “(1) Ancillary expenses are presumed to be reasonable if they are specified in a  
265 surrogacy agreement that was negotiated by independent attorneys.

266           “(2) Payment of expenses shall be made either in the form of insurance, cash,  
267 escrow, bonds, or other arrangements satisfactory to the parties, pursuant to the terms of the  
268 surrogacy agreement.

269           “(3) The surrogacy agreement shall include an allocation of responsibility for  
270 such costs in the event of termination of the pregnancy, termination of the contract, or breach of  
271 the contract by any party.

272           “(e) Any dispute related to a surrogacy agreement shall be resolved by the procedures set  
273 forth in the surrogacy agreement. The surrogacy agreement shall include an alternative dispute  
274 resolution provision.

275           “§ 16-409. Effect of subsequent marriage or relationship or dissolution of marriage or  
276 domestic partnership on surrogacy agreement.

277           “Subsequent marriage or domestic partnership or dissolution thereof for either the  
278 surrogate or the intended parent shall have no bearing on the validity of the surrogacy agreement  
279 nor affect the intended parentage.

280           “§ 16-410. Effect of death of an intended parent.

281           “If an intended parent dies after an embryo transfer, the surviving spouse or domestic  
282 partner will assume all obligations with respect to the surrogacy agreement, and both will be  
283 considered the parents of the resulting child.

284           “§ 16-411. Effect of withdrawal of consent.

285           “(a) Either party may withdraw his or her consent to collaborative reproduction. Such  
286 withdrawal must be:

287           “(1) Prior to embryo transfer;

288                   “(2) In writing; and  
289                   “(3) Delivered to:  
290                   “(A) All parties to the surrogacy agreement and to the IVF center by  
291 certified mail or by hand delivery and either with receipt acknowledged by the recipient or with  
292 a witness to each hand delivery; and  
293                   “(B) The court that approved the original agreement.  
294                   “(b) When a party withdraws consent in a timely manner as provided under this section,  
295 no embryo transfer shall take place.  
296                   “(c) Upon such withdrawal, costs will be paid according to the terms of the surrogacy  
297 agreement.  
298                   “§ 16-412. Character.  
299                   “(a) No person who has been convicted of a felony or a misdemeanor involving impunity  
300 of character or honesty, including any action pertaining to fraud, shall be involved in or profit  
301 from, directly or indirectly, the business of surrogacy agreements in the District. This section  
302 applies to individuals and entities doing business as or profiting from recruiting and matching,  
303 escrow services, and providing other professional services to individuals interested in  
304 collaborative reproduction. This section does not apply to the participants in collaborative  
305 reproduction, the surrogate, her spouse or partner, gamete or embryo donors, and the intended  
306 parent.  
307                   “(b) A person convicted of a violation of this section shall be fined not more than the  
308 amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012,  
309 effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), or imprisoned for  
310 not more than 2 years.”

311

## 312                   TITLE II – RULES, FISCAL IMPACT STATEMENT, AND EFFECTIVE DATE.

### 313                   Sec. 201. Rules.

314                   The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act,  
315 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules  
316 to implement the provisions of this act.

### 317                   Sec. 202. Fiscal impact statement.

318           The Council adopts the fiscal impact statement in the committee report as the fiscal  
319 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,  
320 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

321           Sec. 203. Effective date.

322           This act shall take effect following approval by the Mayor (or in the event of veto by the  
323 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as  
324 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
325 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
326 Columbia Register.



**ATTACHMENT B**

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

**Memorandum**

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To: Members of the Council  
From: Nyasha Smith, Secretary to the Council  
Date: January 10, 2013  
Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, January 08, 2013. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Surrogacy Parenting Agreement Act of 2013", B20-0032

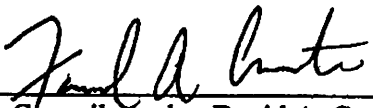
INTRODUCED BY: Councilmember Catania

CO-SPONSORED BY: Chairman Mendelson and Councilmembers  
Graham, McDuffie, Evans, Alexander, Cheh,  
Bowser, Grosso, Orange, Barry, Bonds and Wells

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety.

**Attachment**

cc: General Counsel  
Budget Director  
Legislative Services

  
Councilmember David A. Catania

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember David A. Catania introduced the following bill, which was referred to the Committee on \_\_\_\_\_.

To amend Chapter 4 of Title 16 of the District of Columbia Official Code to permit surrogate parenting contracts within the District to establish a legal relationship between a child and his or her intended parent and govern proceedings to establish that relationship.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this Act may be cited as the "Surrogacy Parenting Agreement Act of 2013".

Sec. 2. Chapter 4 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-401 is amended to read as follows:

"(1) "Gestational carrier" means a woman who is not an intended parent and who agrees to gestate an embryo that is genetically unrelated to her pursuant to a surrogate parenting agreement.

"(2) "Intended parent" means an individual, married or unmarried, who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction.

"(3) "Surrogate" means:

(A) A gestational carrier;

1 (B) A "traditional surrogate" meaning a woman who agrees to gestate an  
2 embryo, in which the woman is the gamete donor and the embryo was created using the sperm of  
3 the intended father or donor arranged by the intended parent or parents.

4 (C) A woman, over the age of 18 who bears and carries a child for another  
5 through medically assisted reproduction and pursuant to a written agreement, as set forth in  
6 section 16-402.

7 "(4) "Surrogate parenting contact" means the agreement between the intended  
8 parents and the intended surrogate relating to the fee or other valuable consideration services  
9 rendered and medical costs.

10 (b) Section 16-402 is amended to read as follows:

11 "(a) A surrogate parenting contract shall include, at a minimum:

12 "(1) The date the surrogate parenting contract was executed;

13 "(2) The person from whom the gametes originated, unless anonymously  
14 donated; and,

15 "(3) The identity of the intended parent or parents.

16 "(b) Prior to executing the written surrogate parenting contract, a surrogate and  
17 the intended parent shall be represented by separate independent licensed attorneys of their  
18 choosing.

19 "(c) The surrogate parenting contract shall be executed by the parties and the  
20 signatures on the surrogate parenting contract shall be notarized, or witnessed by an equivalent  
21 method as required by District law.

22 "(d) The parties to a surrogate parenting contract shall not undergo an embryo  
23 transfer procedure, or commence injectable medication in preparation for an embryo transfer for

1 assisted reproduction purposes until the surrogate parenting contract has been fully executed as  
2 required by subsections (b) and (c) of this section.

3 “(e) An action to establish the parent-child relationship between the intended  
4 parent and the child as to a child conceived pursuant to a surrogate parenting contract may be  
5 filed in the District before the child’s birth and shall include:

6 “(1) A copy of the surrogate parenting contract shall be filed by the court  
7 for the purpose of establishing the parent-child relationship; and,

8 “(2) A written statement signed by the parties to the surrogate parenting  
9 contract that shall attest, under penalty of perjury, and to the best of their knowledge and belief,  
10 that each party has complied with this section in entering into the surrogate parenting contract.

11 “(f) A surrogate parenting contract executed in accordance with this section shall  
12 be presumptively valid and shall not be rescinded or revoked without a court order except as  
13 provided under subsection (g) of this section.

14 “(g) Any failure to comply with the requirements of this section shall rebut the  
15 presumption of the validity of the surrogate parenting contract.”.

16 Sec. 3. Fiscal impact statement.

17 The Council adopts the fiscal impact statement in the committee report as the fiscal  
18 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,  
19 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

20 Sec. 4. Effective date.

21 This act shall take effect following approval by the Mayor (or in the event of veto by the  
22 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as  
23 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

- 1 24, 1973 (87 Stat. 813: D.C. Official Code § 1-206.02(c)(1)) and publication in the District of
- 2 Columbia Register.

## ATTACHMENT C

**Council of the District of Columbia  
Committee on the Judiciary and Public Safety  
Notice of Public Hearing**

**1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**

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**COUNCILMEMBER TOMMY WELLS, CHAIRPERSON  
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY**

**ANNOUNCES A PUBLIC HEARING ON**

**BILL 20-32, THE “SURROGACY PARENTING AGREEMENT ACT OF 2013”**

**Thursday, June 20, 2013**

**11:30 a.m.**

**Room 412, John A. Wilson Building**

**1350 Pennsylvania Avenue, NW**

**Washington, D.C. 20004**

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Bill 20-32, the “Surrogacy Parenting Agreement Act of 2013”. The hearing will be held on Thursday, June 20, 2013, beginning at 11:30 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004.

The purpose of this hearing is to receive public comments on Bill 20-32, which would amend Title 16 of the D.C. Code to permit surrogate parenting contracts that would establish a legal relationship between a child and his or her intended parent and govern the proceedings to establish that relationship. **Please note: Working with stakeholders, the Committee has made significant changes to the introduced version; the updated draft will be the subject of the hearing.** Please contact the Committee for a draft copy of the updated bill, which will also be posted on the Committee website prior to the hearing.

The Committee invites the public to testify. Individuals and representatives of organizations who wish to testify should contact Tawanna Shuford at 724-7808 or [tshuford@dccouncil.us](mailto:tshuford@dccouncil.us), and furnish their name, address, telephone number, and organizational affiliation, if any, by 5:00 p.m. on Tuesday, June 18, 2013. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups.

If you are unable to testify at the public hearing, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5 pm Monday, July 1, 2013 to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Avenue, NW, Washington, D.C., 20004, or via email at [tshuford@dccouncil.us](mailto:tshuford@dccouncil.us).



## **ATTACHMENT D**

**Council of the District of Columbia  
Committee on the Judiciary and Public Safety**

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

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**COUNCILMEMBER TOMMY WELLS, CHAIRPERSON  
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY**

**ANNOUNCES A PUBLIC HEARING ON**

**BILL 20-32, THE "SURROGACY PARENTING AGREEMENT ACT OF 2013"**

**Thursday, June 20, 2013**

**11:30 a.m.**

**Room 412, John A. Wilson Building**

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**Agenda and Witness List**

**A. CALL TO ORDER and OPENING REMARKS**

**B. PUBLIC WITNESSES**

- |                              |  |
|------------------------------|--|
| 1. Diane Hinson              | Creative Family Connections LLC                      |
| 2. Peter J. Wiernicki, Esq.  | Joseph, Reiner & Wiernicki, P.C.                     |
| 3. Carey Brown               | Public Witness                                       |
| 4. Abraham Newman            | Public Witness                                       |
| 5. Rebecca Flick             | RESOLVE: The National Infertility Association        |
| 6. Jennifer Ahern            | Case Manager, Creative Family Connections            |
| 7. Peggy Swain               | American Academy of Assisted Reproductive Technology |
|                              | Attorneys  |
| 8. Elvis Oxley               | Public Witness                                       |
| 9. Jennifer Lahl             | President of the Center for Bioethics and Culture    |
| 10. Kathleen Sloan           | Public Witness                                       |
| 11. Elaine Petty             | Public Witness                                       |
| 12. Jessica Kern             | Public Witness                                       |
| 13. Sarah Warbelow           | State Legislative Director, Human Rights Campaign    |
| (No Written Statement)       |  |
| 14. Emily Hecht-McGowan Esq. | Director of Public Policy, Family Equality Council   |
| 15. Nancy Polikoff           | Professor of Law, American University                |
| 16. Richard J. Rosendall     | President, Gay and Lesbian Activist Alliance         |
| 17. Patricia Sachs, LCSW-C   | Clinical Social Worker. Shady Grove Fertility RSC    |
| 18. Dr. Eric Widra           | Shady Grove Fertility Center and ASRM/SART           |
| 19. Joyce Migdal, PHD        | Clinical Psychologist                                |
| 20. Meryl B. Rosenberg, Esq. | ART Parenting  |
| 21. Whitney Watts            | Public Witness                                       |

22. Fabrice Houdart                      Public Witness  
23. Roy Daiany                      Public Witness  
24. Charley Hammel                      Public Witness  
    **(No Written Statement)**

25. Michele Clark                      Public Witness

**SUBMITTED STATEMENTS**

1. Sharon Covington, MSW, LISCW-C Director of Psychological Support Services  
Shady Grove Fertility Reproductive Science Center
2. Bob Summersgill                      ANC 3F07
3. Maries T. Hillard, JCL, PhD, RN                      Director of Bioethics and Public Policy  
The National Catholic Bioethics Center
4. Peter D. Rosenstein
5. Jennifer Fairfax

**C. GOVERNMENT WITNESS**

1. Phillip Husband                      General Counsel, DOH

## **ATTACHMENT E**

June 20, 2013

The Honorable Tommy Wells  
Council of the District of Columbia  
Committee on the Judiciary and Public Safety  
John A. Wilson Building, Room 412  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004

**Re: Support for Bill 20-32, The "Surrogacy Parenting Agreement Act of 2013"**

Mr. Chairperson and Members of the Committee:

I am Diane Hinson, Founder and Owner of Creative Family Connections, the largest surrogacy matching and legal services firm in the metropolitan DC area. I have been a member of the District of Columbia Bar for more than 33 years.

I would like to begin by thanking Chairman Wells for holding this hearing and also Councilmember David Catania for starting this dialogue by introducing the bill. I would also like to take this opportunity to explain to the committee how the District's current law compares to other jurisdictions, and what this means for intended parents and potential gestational carriers who reside in the District.

Before I start (I hope my timer is not yet running), let me make sure that everyone is using the same definitions on a few key terms: An **Intended Parent** is an individual or couple, married or unmarried, who intends to be the parent of a child resulting from assisted reproduction. A **Gestational Carrier** is a woman, other than the intended parent, who agrees to gestate an embryo pursuant to a surrogate parenting agreement; she has no genetic tie to the embryo. A Gestational Carrier is therefore very different from a **Traditional Surrogate**, who uses her own egg and therefore has a genetic tie. My understanding is that 95% of all surrogacy agreements in this country today involve gestational surrogacy.

Now, let's start by exploring how the District's current surrogacy law compares to other jurisdictions. Perhaps the best way to show you is visually, on this enlarged version of the interactive US map that appears on my firm's website. <http://www.creativefamilyconnections.com/state-map-surrogacy-law-practices> As you can see, the District of Columbia is the *only* jurisdiction in the entire country where all surrogacy contracts are criminal. It stands alone in the "Red Light" category on the map. No surrogacy contracts are written at all. The reason is simple: The consequences of violating the law include fines of \$10,000 and jail time of one year.

At my firm, when we explain to prospective parents who live in the District why we cannot match them to a surrogate in the District, their reaction is pure shock ... and disappointment. After all, the District has a track record of being a leader in this nation in providing equal rights for all its residents, including the right of same-sex couples to marry. After the initial shock, we explain that, because our office is in Maryland – we are above the Friendship Heights metro station but on the Maryland side – we can, at least, help them build their family.

I founded Creative Family Connections on the principle that “everyone can build a family,” having started out as a single mother myself. At the time, I lived in the District and I adopted. If anyone had tried to tell me that as a District resident, I did not have all the same options to adopt a child as a single mother living in a different state, I would *not* have been very happy.

That, however, is precisely the case today with respect to surrogacy. If a woman is born without a uterus or if a gay man wants to have a genetic child, the existing Code outlaws surrogacy contracts in the District. DC residents must therefore incur the additional financial and time-consuming burden of having to travel to other states to build their families. Was that really the intent of the statute? That seems more like an unintended consequence. And, for compassionate women of the District who are inspired to help someone else build their family through surrogacy, they are denied that life-changing opportunity.

I left the corporate law world over a dozen years ago so that I could help build families. Throughout these many years, I have eagerly awaited the day when the District would finally address this inequity and put itself in its rightful place: as a leader and a protector of equal rights for all of its residents ... including those who want to build families through surrogacy. That day has hopefully arrived with this legislation.

**Bill 20-32** repeals the provisions of the existing Code that make surrogacy criminal. It permits surrogacy contracts in the District, while establishing safeguards to ensure that “best practices” are used – the kind that you will hear more about today. And, it allows the District to move into its rightful and progressive leadership place, and into the coveted “Green Light” category on this map. In doing so, the District Council will ensure that *all* its residents can build families.

Thank you for allowing me to address the Committee on this important issue.

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Diane S. Hinson, Esq. received her JD from Harvard Law School. She is a member in good standing of the District of Columbia Bar, the Maryland Bar, and the Virginia Bar, and an elected Fellow of the American Academy of the Assisted Reproductive Attorneys, a member of the American Bar Association's Committee on Assisted Reproductive Technologies, and a member of the American Society of Reproductive Medicine's Legal Professional Group.

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DAVID I. REINER\*

\*ALSO ADMITTED IN DC  
\*ALSO ADMITTED IN VA  
\*ADMITTED IN DC ONLY  
\*ADMITTED IN DC AND TX ONLY

Testimony of Peter J. Wiernicki, Esq. Before the  
Committee on the Judiciary and Public Safety,  
Council of the District of Columbia  
On

The "Surrogacy Parenting Agreement Act of 2013"

June 20, 2013

Chairperson Wells, Members of the Committee:

Thank-you for the opportunity to appear today to offer my brief testimony in support of the proposed legislation known as the "Surrogacy and Parenting Agreement Act of 2013". My name is Peter J. Wiernicki. I am a principle in the law firm of Joseph, Reiner & Wiernicki, P.C. Our offices are located in the District of Columbia, Maryland and Virginia. I have been a practicing attorney for 26 years and am a member of the District of Columbia, Maryland and Virginia Bars.

My practice emphasizes adoption law, the law of assisted reproductive technologies (ART), education law, children's issues, and litigation. I am a charter member of the American Academy of Assisted Reproductive Technology Attorneys which is affiliated with the American Academy of Adoption Attorneys, a national association of attorneys with experience in the field of family building. I have served as the Academy's Vice-President and have served on the Academy's Board of Trustees. I have also served as a member, and panel chair, for the Academy's Board of Grievances and Discipline. I have served on the national Board of RESOLVE, the leading infertility education and support group in the country. I often speak, and write, on the topics of ART, adoption and family building.

This proposed legislation will allow residents of the

District of Columbia to do something that they cannot presently do under existing law – seek the assistance of a gestational carrier in their pursuit of building a family. The present law in the District of Columbia, which is found in D.C. Code §16-401 and §16-402, prohibits surrogate parenting contracts and subjects those involved in such arrangements to both civil and criminal penalties. It is an arcane prohibition that is completely out of step with both medical advances in ART and the now common practice of collaborative reproduction. As a member of the D.C. Bar, I have, on many occasions, been unable to assist residents of the District of Columbia who have sought my counsel in working with a gestational carrier and preparing a gestational carrier agreement. While the representation of such clients is commonplace in Maryland and Virginia, for me to do so, as a member of the D.C. Bar with an office in the District, might subject me to sanctions which are unheard of in every other jurisdiction. I cannot tell you the number of times that my colleagues and I have simply wondered how this prohibitive law came to be. It simply did not seem fair to residents of the District. Their only alternative is to seek ART services in other states, and even then, there remains a lingering concern over the applicability of the surrogacy restrictions that exist in the present D.C. law.

The proposed Act is an opportunity to “get it right”. The working draft of this legislation came about from the input of a number of experienced parties. It reflects the “best practices” that are utilized today in so many other states. This legislation provides a comprehensive approach to collaborative reproduction. It provides a necessary legal framework that intended parents, women serving as egg donors or gestational carriers, family building attorneys and the Court, need. It ensures a vital protection for children by clearly establishing parentage, which in turn results in stability and permanency.

The Surrogacy Parenting Agreement Act of 2013 is an opportunity for the Council to exercise leadership by addressing the critical practical legal issues that surround the now common practice of family building through collaborative reproduction. It is an aspect of family life that cannot be ignored. I encourage you to finalize this critical legislation and ensure its place as the law in the District of Columbia.



June 20, 2013

The Honorable Tommy Wells  
Council of the District of Columbia  
Committee on the Judiciary and Public Safety  
John A. Wilson Building, Room 412  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004

**Re: Support for Bill 20-32, The "Surrogacy Parenting Agreement Act of 2013"**

Mr. Chairperson and Members of the Committee:

My name is Carey Brown. I am from McLean, Virginia and currently live in Falls Church City. I have two graduate degrees, and am working on my PhD. I am a biological mom, adoptive mom and a two-time gestational surrogate.

I am here today to encourage the District of Columbia to legalize gestational surrogacy. Not as a financially vulnerable woman, a woman who was lured to sell my body or as an 'oven'. I am here as a financially stable, proud, stubborn woman who not only has the right to make her own decisions, but is also perfectly capable of doing so. Frankly, I am disturbed that an organization such as NOW that purports to promote the empowerment of women and the right to control their lives, bodies and health choices would oppose my right to choose to be a gestational surrogate...and, even worse, would assume that they are in a better position than I to make such decisions for me.

I first *volunteered* to be a gestational surrogate in 2006. I did so after standing by a friend's side as he rode the emotional roller coaster of infertility, one that thousands of women, desperate for a biological child of their own, do every day. Six embryo transfers and three gestational surrogates later he was down to his last chance. I remember having a conversation with my friend Mike one evening about the irony of my husband and I becoming pregnant while utilizing birth control, yet it simply wasn't happening for Mike. During that conversation, I offered to be his surrogate.

On our first embryo transfer I became pregnant, and at 39 weeks, I delivered two beautiful, full-term healthy baby girls to my dear friend and his partner. I did it because I could, because I love being pregnant as it is ridiculously easy for me, because I had the opportunity to make a friend's dream come true -- which seems a small gift I could give him in thanks for the many years of loyal friendship he had given me. I did it because as a gay man, Mike's options for becoming a parent are far more limited than a heterosexual man's are.

It wasn't long after that when I approached Diane Hinson, of Creative Family Connections and told her I wanted to be a surrogate again and that, once again, I wanted to work with a gay couple. A year later, at 38 weeks of pregnancy, I delivered two full-term healthy babies, a boy and a girl, to a wonderful gay couple.

I know the risks of pregnancy. I also know the risks of the drugs, which are used in assisted reproduction. While the doctors involved in the process were up front with me about the risks, I also did a great deal of research on my own as it is my responsibility to know what the facts are, so that when I do make choices for my body and health, I am doing so with my eyes wide open.

I am very proud of the District of Columbia for legalizing gay marriage and would love to see legalization of surrogacy as the next step in leveling the playing field for all people. Thank you.

June 20, 2013  
The Honorable Tommy Wells  
Council of the District of Columbia  
Committee on the Judiciary and Public Safety  
John A. Wilson Building, Room 412

1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004

**Re: Support for Bill 20-32, The "Surrogacy Parenting Agreement Act of 2013"**

Mr. Chairperson and Members of the Committee:

My name is Abraham Newman. I am a resident of Ward 5 in the District of Columbia, and I thank you for this opportunity to testify in support of Bill 20-32, the "Surrogacy Parenting Agreement Act of 2013."

I am here today to share with you my personal experience as an Intended Parent.

"Papa," said softly or even as a demand. Every time my daughter utters this word it fills me with unbelievable joy.

Becoming a parent has been transformative on so many levels but today I want to focus on how it has changed my understanding of the relationship between family and community. Nearly a decade ago, I remember reading the title of Hillary Clinton's book, *It Takes a Village*. It was not until I became a parent that I truly understood this sentiment. We together as parents, teachers, doctors, neighbors, friends, childcare workers, and so many others raise children in our society. And I am so grateful to all of those people that build this village and contribute to my daughter's life.

For me, this insight resonates even more as my husband and I are not able to conceive of a child on our own. We relied on the extraordinary gift of a friend who donated eggs and the women who carried our daughter—now 2 ½ years old—to term. These people have changed our lives forever and we are eternally grateful.

Today, I am here to ask you to make this gift available to families in the District with as few hurdles as possible. We were lucky to find a talented team of lawyers and doctors in Maryland, Virginia, and Pennsylvania that could navigate the fragmented and idiosyncratic nature of family law and fertility medicine. We were further lucky to have found a wonderful surrogate in Maryland and a surrogate in Pennsylvania who is currently carrying our second child.

The legal rules in the District, unfortunately, create a series of roadblocks for new parents. Take, for example, prenatal visits. My husband and I travel four hours to each visit for our current pregnancy. It is at these appointments that we develop the

initial bond with our child, hearing the first heartbeats and seeing her grow. It is also a chance for us to bond with our surrogate, who has made this amazing gift. Sending time together at such visits or over lunch afterward, we share moments that will be passed down to our children. And we have had it relatively easy. We know families in the District that have relied on surrogates in places as far away as Wisconsin, flying multiple times a month to appointments. Similarly, delivery poses a serious problem. Having to plan for an hour or two-hour drive to make a delivery, let alone a two-hour flight, is something few DC residents need worry about.

Many would-be parents do not have the resources or time to manage a surrogacy in another state. Finding lawyers who understand the patchwork of laws, identifying the right surrogate for one's family, and traveling to medical appointments outside the District is time-consuming and expensive. The Council has the authority to make it just that much easier for families that face fertility issues.

I feel so blessed to live in a city that honors my marriage. The Council can eliminate another barrier to equality by legalizing surrogacy and contribute to the diverse and delightful kaleidoscope of community in the District.

Thank you for your consideration.

Abraham Newman  
2031 Flagler PI NW  
Washington DC 20001

**Council of the District of Columbia  
Committee on the Judiciary and Public Safety  
Testimony in support of Bill 20-32, The "Surrogacy Parenting Agreement Act of 2013"**

**June 20, 2013**

**Submitted by:**

**Rebecca Flick**

**RESOLVE: The National Infertility Association**

**1760 Old Meadow Road, Suite 500**

**McLean, VA 22102**

**[www.resolve.org](http://www.resolve.org)**

**703.556.7172**

Mr. Chairperson, I am here today representing RESOLVE: The National Infertility Association, a non-profit organization founded in 1974 to provide support and education to women and men diagnosed with infertility. I work at RESOLVE's national headquarters office in McLean, Virginia and am speaking for our President and CEO, Barbara Collura. RESOLVE is the oldest, largest, and most recognized organization which is improving the lives of people living with infertility.

Infertility impacts 1 in 8 couples of reproductive age in this country, or 7.3 million Americans. Infertility is a devastating diagnosis, and impacts you physically, emotionally, spiritually, and financially. RESOLVE provides resources and information to people on all the ways to build your family including adoption, medical treatment, donor egg or sperm, and gestational carrier surrogacy.

For many people, gestational carrier surrogacy may be the only option if the woman is unable to carry a pregnancy to term. RESOLVE strongly encourages intended parents to seek legal counsel, undergo psychological counseling for themselves and the carrier, and follow the guidelines of the American Society for Reproductive Medicine. We are pleased that Bill 20-32 will allow for gestational carrier agreements in the District so that people do not need to leave the area to build their family. Let's work together to provide the best medical care, emotional support, and legal framework for couples wishing to stay in DC and create their family through gestational carrier surrogacy.

I want to also mention that the decision to use a gestational carrier is not taken lightly. By that point couples may have exhausted all other medical options and be emotionally "exhausted". To finally reach this decision, but to then find out the law is against you, is devastating. Let's make the District truly "pro-family" and pass Bill 20-32 so that those who need a gestational carrier can access that care right here, at home, in the District of Columbia. Infertility patients have enough obstacles in their way, they don't need another outdated law standing in the way of building their family. Thank you for support Bill 20-32.

June 20, 2013

The Honorable Tommy Wells  
Council of the District of Columbia  
Committee on the Judiciary and Public Safety  
John A. Wilson Building, Room 412  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004

**Re: Support for Bill 20-32, The "Surrogacy Parenting Agreement Act of 2013"**

Mr. Chairperson and Members of the Committee:

My name is Jennifer Ahern, and I'm the Senior Case Manager and an Associate Attorney at Creative Family Connections located in Maryland.

As Senior Case Manager, I support a number of Intended Parents and Gestational Carriers. The overall nature of this relationship goes way beyond professional: Assisted Reproduction is personal; the individual experience is personal; and everyone, Intended Parents, Gestational Carriers, the associated IVF clinics, and yes, even us attorneys, are all intimately and emotionally involved. In all truth, everyone, including you, as Council Members, have a stake in this Bill, which promotes the best interests of your constituents, and sets a positive precedent for other jurisdictions.

Bill 20-32 promotes the best intentions of Intended Parents and Gestational Carriers, by allowing them to build families by gestational surrogacy in the District of Columbia, while ensuring that best practices are in place to protect everyone's best interests. In short, the Bill creates safeguards, reinforces legal protections, and provides a vehicle for the life-changing event of building a family.

Critics say, "Surrogacy is just for the wealthy."

I can tell you from personal experience that the vast majority of our Intended Parents are not wealthy. They often use their life savings or take out second mortgages to build their families through Assisted Reproduction. We receive checks from not only our clients, but their aunts and uncles, and even grandparents.

I can assure you that I am not rich, nor stand to become rich as a Assisted Reproduction attorney. Diane Hinson, the Founder and Owner of Creative Family Connections, did not start this firm to "get rich." But, there is no question that our *lives* have become *enriched*, as a direct result of being afforded the opportunity to practice in this field, and help our clients build families.

Then, there are our Gestational Carriers, like Carey and Whitney, who are women who renew your faith in womankind. They are the most giving people I have ever met. They may come from all walks of life, but what they all have in common is that they are intelligent, capable, and courageous. They become Gestational Carriers not only to change lives, but often to become catalysts for social change or just to help fight the big fight against infertility. I work with these women every day. And, I can tell you that these women inspire *me*.

On behalf of our Intended Parents, Gestational Carriers, and the Assisted Reproduction community, I urge you to support **Bill 20-32**.



**P.O. Box 33053**  
**WASHINGTON, D.C. 20033-0053**  
[www.adoptionattorneys.org](http://www.adoptionattorneys.org)

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June 20, 2013

Committee on the Judiciary and Public Safety  
Councilman Tommy Wells, Committee Chair  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004

Dear Mr. Chairman and Council Members of the Committee:

I write to you as Director of the American Academy of Assisted Reproductive Technology Attorneys (AAARTA), a credentialed, professional, nonprofit organization of attorneys, judges, and law professors throughout the United States and Canada. Our Fellows have distinguished themselves in the field of family building through assisted reproductive technology. AAARTA is a specialty division of the American Academy of Adoption Attorneys (AAAA). Our mission is to support the rights of families and to insure appropriate consideration of the interests of all parties, including children, in assisted reproductive technology matters. Our Fellows are committed to the ethical practice of assisted reproductive technology law. AAARTA works closely with medical, legal, judicial, psychological, and other professional organizations to improve the services offered to prospective parents seeking to build their families through assisted reproductive technology and to secure legal protections for them, their children and all parties in the process.

AAARTA is in full support of Bill 20-32, the Surrogacy Parenting Agreement Act of 2013 ("the Bill"). The Bill will establish secure parental rights for families formed through assisted reproduction, thereby protecting the best interests of children born from assisted reproduction. It also establishes safeguards for the gestational carriers and their partners, as well as for any donors involved in the process. Additionally, the Bill provides for just and equitable treatment of persons suffering from infertility, by consistent legal recognition of parental rights and responsibilities when they build their families through assisted reproduction.

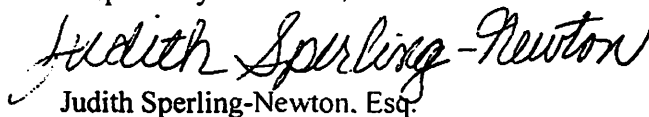


Several of our Fellows have contributed their experience and expertise, gained over years of legal practice, to the drafting of the Bill. This is critical, since these are the very professionals involved in the practical details of these cases, and who understand the intricacies of the application of the Bill, and the implications for their clients. Their hard work has helped to produce a comprehensive, equitable piece of legislation for the people of the District of Columbia.


The passage of this proposal would follow the trend of other legislatures across the country, most recently that of the State of Nevada, and would also mirror current, national practice and procedure in this area of the law.

The Bill, as presented for the public hearing, will protect the families in the District who are participating in collaborative reproduction arrangements, most importantly the children, but also all parties involved in the process. AAARTA endorses the Bill and the protections that it provides.

Respectfully submitted,



Judith Sperling-Newton, Esq.  
AAARTA Director  
[director@aaarta.org](mailto:director@aaarta.org)



Margaret E. Swain, Esq.  
AAARTA Legislative Response Chair

**Testimony of M. C. Elvis Oxley**

**Citizen and small business owner, Washington, DC**

**June 20, 2013**

**In support of Bill 20-32, the "Surrogacy Parenting Agreement Act of 2013"**

Thank you to the Council members for attending this important hearing today. My name is Elvis Oxley and I am a DC resident and DC small business owner. Today I rise in support of Bill 20-32, the "Surrogacy Parenting Agreement Act of 2013". My wife, Jennifer, and our 14 month-old son do as well, in absentia.

Why? Because we are all the beneficiaries of Virginia's surrogacy-friendly law. Our son, Max, was born via our surrogate carrier, another fellow DC resident. Thanks to several neck and back injuries incurred by my wife, doctors advised it was unwise for her to carry a child. Thus, we enlisted the help of Shady Grove Fertility, which then advised us of the labyrinth of procedures that we would need to undergo – not just the science involved in creating a baby, but even more about the archaic laws of who could do what, where.

Upwards of fourteen years ago, DC writ large, was far less progressive and business-friendly. Now DC finally has a new car dealership and I've noticed several manufacturing facilities blossom over the past few years. I salute the majority of the DC City Council for embracing the positive change that our city is undergoing – particularly seeking to change laws that unencumber businesses and families from arcane law. Playing devil's advocate, one might wonder what would happen if DC didn't allow kidney transplants, for instance.

You may hear today from radical groups accusing this law of creating a "puppy mill" environment in DC. I simply counter that with quantitative facts – we quickly learned that there was no standard operating procedure at Virginia Hospital Center for babies being delivered by surrogate because they had so few (less than ten) per year. Secondly, our surrogate carrier invested in her education with the money she earned – and I stress EARNED – from carrying our beautiful baby boy. She is now a fully licensed nurse and we couldn't be more proud of her.

Thanks to the great work of our family law attorney, Meryl Rosenberg (of Maryland), and the excellent staff at Dr. Widra's Shady Grove Fertility (of Maryland), and most importantly our surrogate carrier, Charley, we have a family today. We strongly urge the DC City Council to support the passage of this bill in order to align DC with the more progressive and family-friendly laws of its neighboring states.

I welcome any comments or questions you may have.

Thank you.

...for a human future.

THE CENTER FOR  
BIOETHICS AND  
CULTURE NETWORK

Members of the DC Council, thank you for allowing me to address you today on your Surrogacy Parenting Agreement Act of 2013.

My name is Jennifer Lahl. I am a nurse with over 20 years' experience in pediatric critical care nursing. I have contributed chapters in a nursing textbook on Maternal and Child Health and was three-time editor of *Facts and Comparisons*, a drug reference book for use by healthcare professionals.

In 2000, I received a Master's degree in bioethics and founded, a non-profit organization, the Center for Bioethics and Culture; I have served as its president since then. For 13 years I have written and spoken extensively on reproductive technologies, the exploitation of women by the profit-driven fertility industry and the risks to the health and well-being of women and children. I have testified to members of the European Parliament in Brussels on the exploitation of women for their eggs by the international fertility industry. I have briefed members of the U.S. Congress on Capitol Hill several times and I have been interviewed by numerous media outlets in print, radio and television. I am also an award winning documentary filmmaker, writing and directing "*Eggsploitation*" which addresses the risks to young women who sell their eggs. Currently I am in production to re-release "*Eggsploitation*" since so many more women have contacted me with their stories of harm after selling their eggs. I am in post-production of my latest documentary which addresses surrogacy. I have interviewed many surrogates, adults who were conceived through surrogacy arrangements, medical, legal and psychological experts.

I am here to urge you not to pass this bill. In fact, your current law, which prohibits and renders unenforceable such contracts, even imposing a civil penalty of up to \$10,000 or imprisonment for not more than 1 year, or both, is model legislation for the United States. This law is similar to Canada's *Assisted Human Reproduction Act* which not only prohibits the purchase of eggs and sperm, or the services of a surrogate mother, it makes it a criminal offense to do so that is punishable by up to \$500,000 or ten years in prison. The basis of Canadian law, and your current law, is the concern over the commodification of women and children and the commercialization of reproduction, which treats human reproduction as a product on the open market.

I am deeply concerned with how little focus is placed on the children created via assisted reproductive technologies and contract pregnancies and on the women needed to supply eggs and wombs. I was a pediatric nurse for over two decades. In that field, a priority is given to the maternal-child bond. The most natural environment for the child, his or her mother's womb, is of utmost importance to the physical and emotional development and well-being of a child. With each year, we learn more about the womb and about the life-long connection between the birth mother and child.



...for a human future.

THE CENTER FOR  
BIOETHICS AND  
CULTURE NETWORK

Renowned therapist Nancy Verrier, in her book, *The Primal Wound*, writes about how mothers are biologically, hormonally and emotionally programmed to bond with their babies at birth and in utero. It has been proven over and over again that the baby knows that mother at birth, and that both the mother and the baby will experience grief at any separation at the time of birth; this primal wound is forever present.

The whole new field of epigenetics proves that this nine-month time in the womb plays an important part in the child's later health, sense of identity, and connection. Annie Murphy Paul's new book, *Origins: How the Nine Months before Birth Shape the Rest of our Lives*, addresses maternal programming and the lasting impact the intrauterine environment has on the child. I strongly disagree with those who suggest that the woman's womb is just an oven. Or as the TV show *Modern Family* suggests, women are "Easy-Bake Ovens and the children are cupcakes." There are many things happening *in utero* which cannot be casually and disrespectfully dismissed.

Surrogacy, "traditional" or "gestational", intentionally sets up a negative environment. Instead of encouraging women to bond with their child *in utero* for the benefit of both mother and child, surrogacy demands that she *not* bond with this child. I have interviewed many women who were surrogates who very much regret their decision. Surrogacy is harmful to both the woman who carries the child and to the child she carries.

The health risks to the woman, who must take powerful synthetic hormones to prepare her body to accept an embryo, are real and serious. Women who decide to become surrogates are often motivated by the financial gains they are offered. Most contracts requires that the surrogate mother has already had children so that she can demonstrate her proven track record to carry a child to term, but no one has done any sociological studies on the pre-existing children who observe their mothers keeping some of the babies and giving others away. Living expenses can be an enticement for a woman of low-income with children in the home. Make no mistake; it won't be wealthy women lining up to make themselves available to gestate babies. But it *will* be wealthy individuals or couples seeking to buy such services. Surrogacy takes something as natural as a pregnant woman nurturing her unborn child and turns it into an unnatural contractual, commercialized endeavor. It opens the door for all sorts of exploitation. Your current bill is model legislation. Please, I urge you to keep the status quo which has served the District of Columbia so well for so long.

Jennifer Lahl

President, The Center for Bioethics and Culture



# BIOETHICS DEFENSE FUND

*Law In The Service Of Life*

Nikolas T. Nikas  
*President and General Counsel*

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*Chief Counsel*

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To: Jennifer Lahl, Center for Bioethics and Culture  
From: Dorinda C. Bordlee, Bioethics Defense Fund  
Date: June 6, 2013  
Re: Gestational Surrogacy bill proposed by Councilmember David Catania

As experts in constitutional law and policy in the life issues, **Bioethics Defense Fund (BDF)** attorneys collaborate with leading academics, physicians, scientists and researchers to develop and defend policies regarding a host of bioethics issues across the nation and abroad.

We write today not to support or oppose legislation, but to present information regarding the following legal issues raised by the gestational surrogacy bill pending before the Council of the District of Columbia:

- Renting a woman's womb violates the intent of federal law prohibiting organ sales;
- State-sanctioned financially induced pregnancy necessarily encompasses financially induced eugenic abortion;
- State-sanctioned gestational surrogacy bills commodify women and subject them to health dangers not contemplated by medical malpractice law.

## Overview

The proposed legislation inevitably has the unintended consequence of being the stimulus to a lucrative gestational surrogacy industry whose brokers engage in practices that exploit financially vulnerable women – in contravention of the policy undergirding the federal organ sale prohibition – by means of paid pregnancy and paid eugenic abortion, while not providing for legal or financial protections against serious risks of medical complications.

## Gestational surrogacy violates the spirit and intent of federal prohibition on organ sales

Gestational surrogacy bills like the one under consideration by the Council of the District of Columbia raise critical policy questions about the commercialization of human reproduction.

- ✓ **The human uterus should be treated like other human organ and tissue inducements under the law.** Federal law makes it "unlawful for any person to knowingly acquire, receive or otherwise transfer any human organ for valuable consideration."<sup>1</sup> Of course, the human uterus is an organ. Rather than requiring the

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<sup>1</sup> 42 USC 274e, Prohibition of organ purchases, sets a penalty of \$50,000 or 5 years imprisonment for any person who acts to "knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects

The practice of pregnancy termination demands issued to gestational carriers goes beyond the "traditional" abortion rationale where a woman desires not to be pregnant, and **crosses into the eugenic rationale of whether third parties want a hired woman to terminate a desired pregnancy of an undesirable unborn child.**

Again, this practice is not uncommon in the gestational broker industry. The *Gestational Surrogacy Price List (2013)* available on DreamABaby.com outlines the industry standard of notifying intended parents of possible unspecified additional expenses in the event of **"termination of a genetically abnormal pregnancy" or "selective-reduction of a multi-fetal pregnancy."**

**Gestational Surrogacy bills commodify women and subject them to health dangers not contemplated by medical malpractice law**

While gestational surrogacy bills provide for the protection of the parental rights of intended parents, the bills do nothing to protect the rights or interests of the women serving as gestational carriers. Women targeted by surrogacy broker ads and large sums of "reasonable living expenses" will often not be aware of the consequences related to the hormone injections, the multiple miscarriages, or the injuries and complications related to the surgical embryo transfer or later procedures involving childbirth or abortion.

Current law contemplates medical malpractice and liability when a mother undergoes the documented risks of pregnancy to build a family of her own. But contract pregnancy to build the family of unrelated third parties gives rise to issues of risk and liability that this bill simply provides no framework to address.

As pointed out by Pulitzer Prize-winning columnist Kathleen Parker in her Washington Post column entitled *Surrogacy Exposed (May 24, 2013)*, surrogacy bills have forged interesting alliances based on the common concern for the commodification of women:

Feminists, traditionalists, Catholics, evangelicals, ethicists and atheists alike have united to combat what many convincingly view as the exploitation and commodification of women and the violation of human rights even as perfect babies and happy families are formed.

The Parker piece highlights the high rate of military wives targeted by surrogacy brokers because of their vulnerable and often isolated condition. And the women displayed like products in the catalogs found on surrogacy broker websites reveal that many are single moms who are financially vulnerable.

Attracted by the seemingly natural process of pregnancy, the DC gestational surrogacy bill would subject women to the dangers of undergoing multiple injections of synthetic hormones and other drugs, along with the dangers of surgery for the transfer of another couple's human embryo. The far from natural procedures necessary to prepare a woman's body to serve as a surrogate can have devastating short and long-term health consequences.

The proposed legislation does not contemplate whether military health policies or other individual or group insurance would cover the risks inherent to artificially induced pregnancy for hire. This leaves women at risk of losing their health and their lives for the benefit of wealthy couples who are using them in this new form of human trafficking.

**Testimony to Washington, D.C. City Council Members  
Bill 20-32 Surrogacy Parenting Agreement Act of 2013  
Kathleen Sloan  
June 20, 2013**

My name is Kathleen Sloan and I am a member of the board of directors of the National Organization for Women (NOW), the largest feminist activist organization in the United States. For the last six years, I have worked on issues related to third party reproduction. As Program Director of the Council for Responsible Genetics, I developed extensive programming in the area of women and biotechnology. I am co-author of an international feminist call for a UN Declaration on Global Reproductive Trafficking and its Violations of Women's Human Rights. I have written extensively and traveled around the country, speaking at the U.S. Capitol, state legislatures and universities against exploitation and commodification of women through commercial surrogacy and egg trafficking.

I have come here to testify against Bill 20-32 because it would legalize the commodification of women. I urge you to oppose this legislation because surrogacy not only commodifies and exploits women but poses serious risks to their health.

In order to gestate a child, a woman must undergo multiple injections of carcinogenic synthetic hormones and drugs such as Lupron which is *not* FDA approved for fertility use, along with surgery for embryonic implantation, all of which can have devastating short and long term health consequences. Two of the most serious long-term risks are future infertility and cancers, most commonly ovarian, breast and endometrial.

Given these risks, it is scandalous, not to mention grossly unethical that women contemplating selling their bodies are not provided with relevant information before they give their consent. They are not told that no long term studies have been conducted on the health risks involved. Many, if not most, are not aware that there is virtually no regulation of surrogacy or egg trafficking in the United States; no national registry to provide a centralized repository for records, patient follow-up, and long term studies; that the commercial fertility industry has every reason to minimize the health, legal and economic risks given the enormous profits generated.

Legislators have the opportunity and responsibility to stop the epidemic of commodifying women into objects for sale. Women are universally sexually commodified and surrogacy is yet another form of objectification, a means to a desired end for the benefit and profit of others. It would be a sad day for the nation's capital city should it vote to join the merchants of shame who traffic in women's reproductive capacities by passing a law that turns financially vulnerable women into breeders for the wealthy through commercial surrogacy.

As an advocate for women's equal rights and justice, I must speak out for the voiceless women in your city who will be lured by the siren's song of an economic quick fix,

seduced by a predatory industry's manipulation of their altruistic instincts, and kept ignorant of the risks to their health, into commercial contracts that deny their very humanity.

This country prides itself on being a beacon to other nations. Yet among other developed countries, particularly those in Europe whose emigrants founded the United States, surrogacy is illegal and considered an extreme form of exploitation of women. The U.S. holds the dubious "distinction" of being second only to India world-wide in the supply of surrogates. Have we allowed the worship of profit-driven unregulated private business and facilitation of a selfish entitlement mentality to turn women into machine-like breeders, "ovens" as the author of a surrogacy bill in Louisiana calls them? Is this the image the nation's capital wishes to project to the world? If so, it is a tragic reflection of the "values" of the city you represent to the country and to the world.

For millennia, women's human rights have been abused and ignored with impunity. As developments in biotechnology facilitate the commodification of reproduction, alarm bells should be sounding about the *new* door that has been opened for yet further disregard of women's humanity, wholeness, physical, emotional and spiritual inviolability. If you care about women, their health, and their rights as equal human beings, you must not support their exploitation as disposable commodities.



### **Support Surrogacy? Think Again**

- **Unequal relationships** between the buyers (intended parents) and the women who rent their bodies, favor the needs and desires of the buyers. These unequal transactions, in the absence of regulation of the fertility industry, result in inadequate "informed" consent, low payments, coercion, poor health care, and severe risks to their short and long-term health.
- **Contract pregnancy** is a stark manifestation of the **commodification of women** and their bodies. Surrogate services are advertised, surrogates are recruited, and operating businesses make large profits. The commercialism of surrogacy raises the specter of baby selling and breeding farms, turning impoverished women into baby producers. Pregnancy is reduced to a service and babies to products, an "entitlement" for the financially well-off.
- In the United States, there is **no national regulation** of surrogacy. For this reason, the U.S. is second only to India world-wide in the supply of surrogates and disproportionate numbers of surrogates here are "military wives."
- The list of **health risks** associated with surrogacy procedures reads like a horror novel. They include:
  1. Multiple injections of synthetic hormones and other drugs may cause ovarian hyperstimulation syndrome (OHSS), ovarian torsion, bleeding, infection, premature menopause, pelvic pain, mood swings, ruptured cysts, kidney failure, stroke, and even death.
  2. Two of the most serious long-term risks are future infertility and cancers, most commonly ovarian, breast and endometrial.
  3. Risks to both the pregnant woman and developing fetus of multiple embryos implanted in her uterus, frequently practiced in surrogacy to maximize the chances of a successful birth of a child. There are no caps to the number of embryos that can be implanted in the U.S.
  4. Surrogates are frequently subjected to severe physical tests and exams *even before* a contract is executed. The lack of regulation allows agencies and intended parents to require multiple, unnecessary tests.
  5. Surrogates are pumped with drugs such as Lupron which *is not* FDA approved for fertility use; estrogen which is linked to breast and uterine cancers, heart attack, stroke and blood clots; progesterone; antibiotics; and steroids which are linked to high blood pressure, glaucoma, cataracts, peptic ulceration, and an impaired immune system.
- There are **no registries** that track the health of the women who undergo surrogacy and no long term studies have been conducted on the health risks.
- **Surrogacy exploits** poor and low income women and is rife with classism, racism, ableism and elitism and constitutes selective breeding at a price.

**Surrogacy Parenting Agreement Act of 2013**  
**Testimony of Elaine Petty** **June 20, 2013**

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My name is Elaine Petty and I am speaking today as a pediatric nurse with a master's degree in bioethics from Georgetown University. I would like to speak out against the bill that has been introduced to legalize surrogacy in Washington, D.C. because it breaks biological bonds, creates dissonance in healthy sociological structure and is a source of health risks, economic exploitation and commodification of human beings.

I worked up the street at Children's National Medical Center and observed first-hand the importance of healthy relationships between parents and children. Biologically and physiologically this process begins in the womb where hormones, particularly oxytocin, cause a bonding between mother and child. The months a baby spends in the womb are arguably the most critical period of human development. It is during these important months that the brain begins creating and organizing connections that become the foundation of later learning, socio-behavioral development and emotional adjustment. To create a child by design with a plan to rupture this bond is exploitative and treats the child as a commodity rather than considering what is best for the child. To think that we can treat this relationship as a contract and turn a blind eye to the consequences is to ignore what we know of developmental science and objectifies and subordinates the welfare of both the child and the surrogate mother.

How do surrogates deal with this fragmentation of motherhood that separates the genetic, social and gestational components? Some refuse to release the child they have nurtured for 9 months. Many have been shown to employ cognitive dissonance reduction strategies, otherwise known as self-deception. To cope with the loss of her child, she must view her relationship with the baby as one of ownership, her own role as a "human incubator," and the child as a "product."

For my master's thesis at Georgetown University, I carefully researched the technology that allows us to do 3<sup>rd</sup> party reproduction and learned that it has developed as an industry and not a medical procedure. The commercial aspect of this transaction treats the egg donor or surrogate as a commodity. The health risks, which are real and serious, are often minimized. Wooed by financial need and compassion for those who want to have a child, these women are often uninformed of the risks they are taking. The egg donors self-administer daily injections of powerful hormones for weeks and then undergo a surgical procedure to remove the eggs. The surrogate also takes some of the same hormones to prepare her for the pregnancy. The short term consequences can be serious and have been known to result in a range of medical complications, including their own infertility and even death. The long term results have not been studied and are not known. The conclusions led me to entitle my thesis "Women for Sale and Eggs Needed."

As a resident of Washington, D.C., I am deeply concerned that we create an economic and social environment that supports healthy individuals and families. It is wrong to appeal to a woman's natural generosity toward others who can't have children and exploit their own financial need to draw them into a situation where they will experience physical and emotional health risks and where the resulting child is treated like a commodity. As Kathleen Parker states in her article in the Washington Post, "By turning the miracle of life into a profit-driven, state-regulated industry, the stork begins to resemble a vulture."

"Women for Sale and Eggs Needed: Is the Market for Egg Donation Developing Without the Oversight That Protects Organ Donors?" can be accessed at:  
<http://gradworks.umi.com/1471588.pdf>

# The Washington Post

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## Surrogacy exposed

By Kathleen Parker, Published: May 24

Women's reproductive rights have enjoyed a half-century or so of well-defined proponents and opponents, but the recently flourishing fertility industry, from egg harvesting to surrogacy, has produced fresh and surprising alliances among former foes.

Feminists, traditionalists, Catholics, evangelicals, ethicists and atheists alike have united to combat what many convincingly view as the exploitation and commodification of women and the violation of human rights even as perfect babies and happy families are formed.

Speaking of quagmires.

Latest to the arena is Louisiana, where a pro-surrogacy bill creating a regulatory structure for surrogate parenting passed both legislative houses with few dissenting votes and now faces a possible veto by Gov. Bobby Jindal (R). A thumbs-down from Jindal would constitute an act of principled courage, given widespread public support and lobbying efforts that have included the prominent display of two beautiful, surrogate-produced children born of the bill's chief author, state Sen. Gary Smith.

During his push for the bill, Smith brought his children to the statehouse and circulated photographs of the two.

Whatever one may feel about Smith's happy family, "feel" being the operative term, one should also be aware that not all surrogacy stories are so pretty. There is a dark underbelly to the surrogacy industry — and it *is* a business — including a burgeoning industry that preys on vulnerable women, commodifying them as "ovens," a term Smith himself used. Never mind repercussions for the children themselves, who may have as many as five "parents," from the egg and sperm donors, to the woman who carries them to the couple or single parent who adopts them.

It isn't necessary to demonize anyone here. It is only fair to assume that people who want a child this much are good people with the wherewithal to make dreams come true. The women who carry others' babies to term may be acting out of a sense of service or altruism, but the financial incentive can't be ignored. Surrogacy brokers are wise to their marketplace and specifically target populations that are likely to be attracted to surrogacy. Almost half the surrogates in this country are military wives, according

to Kathy Sloan, a National Organization for Women board member and surrogacy opponent.

Though laws, where they exist, vary from state to state, advertising in military periodicals and elsewhere lists requirements that the woman must already be a mom and thus know the ropes, as well as be a proven breeder. She must be willing to stay in place until the baby is born and, of course, surrender rights to the child. Although the woman is paid between \$25,000 and \$50,000 for her surrogacy, the language of most legislation speaks only to "living expenses" and coverage of medical bills. Most allow for termination of pregnancy should some abnormality be discovered pre-term.

In one such case in Connecticut where a fetus was shown to have abnormalities, the surrogate was offered \$10,000 to abort. She declined. Because state law clearly identified the "purchasers" as the parents, the surrogate moved to another state, had the baby and placed her in an adoptive home.

The simplicity of the human desire for children notwithstanding, there's nothing simple about the surrogacy business — and we haven't scraped the surface of the metaphysical, spiritual, emotional and psychological issues with which a brief flirtation evokes mind-twisting complexities. Physical concerns, meanwhile, are plentiful.

This obviously is rich territory for pro-life crusaders for whom compromise on embryos is impossible, but NOW's Sloan, a pro-choice activist, shares no such concerns. She sees surrogacy only as the exploitation of vulnerable women. She also sees a variety of class and race issues at play. The rich take advantage of the poor for designer babies, Caucasian features for carrier preferred.

The United States is second only to India in providing surrogates, according to Sloan, who also works with the United Nations on human rights. But even India, where some women are warehoused for nine months and forbidden to leave during the pregnancy, recently has set limits on surrogacy. Here in America, New Jersey Gov. Chris Christie (R) recently vetoed a bill similar to Louisiana's upon learning the darker details behind the family portraits.

While no one wishes to cause pain to people who, for whatever reason, can't have a child on their own, there are more compelling principles and consequences in play. Human babies are not things; their mothers are not ovens. But bartering and selling babies-to-order sure make them seem that way. By turning the miracle of life into a profit-driven, state-regulated industry, the stork begins to resemble a vulture.

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[http://m.washingtonpost.com/opinions/kathleen-parker-the-exploitation-of-surrogate-mothers/2013/05/24/90bc159e-c4b0-11e2-8c3b-0b5e9247e8ca\\_story.html](http://m.washingtonpost.com/opinions/kathleen-parker-the-exploitation-of-surrogate-mothers/2013/05/24/90bc159e-c4b0-11e2-8c3b-0b5e9247e8ca_story.html)

**Addendum to Testimony Re: Bill 20-32 Surrogacy Parenting Agreement Act of 2013**  
**Testimony of Elaine Petty** **June 28, 2013**

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I appreciated the opportunity to testify at the Hearing on the Surrogacy Parenting Agreement Act of 2013 on June 20. The importance of the Committee listening to all voices on this important issue before making a decision cannot be overstated. Therefore, I am submitting this addendum to further explain some of the points I made at the hearing and to underscore the fact that women's health is being treated as a fair trade for the possibility of others' ability to have a child.

A lucrative fertility industry has developed as the result of assisted reproductive technologies available today. Many who are benefitting from this commerce often say that there are few or no risks to the women who must take powerful hormones in order to produce the many eggs necessary for in vitro fertilization (IVF) and to prepare the surrogates who will receive the embryos. Nothing could be further from the truth. Concerns regarding the health risks of the egg donor and the surrogate, and questions about whether the decision is truly informed consent, are vital to examine if the Committee wants to consider all pertinent information and to protect all involved.

Fertility clinics and lawyers representing couples seeking to employ surrogates have a strong preference for women to serve as gestational surrogates, not traditional surrogates. A gestational surrogate uses the eggs harvested from yet another young woman and consequently has no genetic tie to the fetus, presumably making it less complicated legally for her to relinquish the baby once it is born.

There are real and potentially serious health risks and medical hazards that are associated with each step of the superovulation and egg retrieval process, as well as the hormonal preparation of the surrogate. In 2007, the Institute of Medicine (IOM) and National Research Council of the National Academies convened a group of medical experts to assess the medical risks of human oocyte donation. Their report states that "experience suggests that there are three main risks associated or potentially associated with the hormone treatment used in ovarian stimulation: ovarian hyperstimulation syndrome, cancer and effects on future fertility. Each risk has its own characteristics and its own implications for egg donors."

There is no question that hormones have a powerful effect on the body. The IOM report references both the short-term and long-term risks of the hormones used for egg donation and surrogacy. The short-term risks are listed and classified. The long-term risks are not known because no longitudinal studies have been done. Surprisingly, the drug most commonly used - Lupron - is not approved by the FDA for use in IVF. Off label usage of any drug is considered to be a "try at your own risk" scenario because it has not been studied for long-term safety. Pharmaceutical firms have not been required to monitor short or long-term safety data concerning incidence of cancer or other health conditions for off label fertility drugs. This is in spite of the fact that these have been used in the US for several decades now. The benefit to the couple desiring a child is out of proportion to the risks that young women take with their bodies for a procedure that is not necessary to save a life, but to create a life. This violates the foundational ethical principle of medicine: "First, do no harm."

The IOM report highlights these concerns. "One of the most striking facts about in vitro fertilization is just how little is known with certainty about the long-term health outcomes for the women who undergo the procedure. There are no registries that track the health of the people who have taken part in IVF." The report continues, "it will be important in the coming years to accumulate extensive health data for women whose eggs are harvested and to monitor them for long-term effects. With more data it will be possible to quantify the various risks of oocyte donation much better than can be done today and to put numbers to the risks that a donor may face." Egg donation began in 1983. Thirty years later we still have not put numbers to the risks, but we do have multiple examples of women whose health has been severely compromised.

By way of comparison, in 2006 five Americans died as a result of eating spinach contaminated with *E. coli*. Ruby Trautz, an 81-year-old Nebraska woman, was the first to die. Two weeks later, the Food and Drug Administration took an unprecedented step by telling Americans to stop eating bagged spinach and even fresh spinach until its safety could be assured. Products were recalled and spinach quickly vanished from grocery shelves, salad bars and menus. The outbreak would ultimately cost the industry more than \$350 million. Why do we take such rapid, costly and precautionary steps with our food, yet are willing to continue to allow young women to inject themselves with hormones that have been shown to potentially do great harm, without stopping or even slowing the process, or studying the information that could protect them? Legalizing surrogacy will increase the number of fertile young women exposed to these unnecessary health risks.

A second area of concern for the women who are contributing parts of their bodies for this transaction to occur is the issue of informed consent. When egg or surrogate candidates are told the hopes of donation and surrogacy without full disclosure of the hazards, it is impossible for them to weigh the risks and make a truly informed decision. Potential contributors who ask are told, "there are no known long-term risks." They are unlikely to understand that this is not the same as, "We've done the studies and *know* that there are no long term risks." And when the candidates enter the process drawn by the sizable amount of money on the table, they have often emotionally moved toward making the decision before hearing the possible perils. This makes it nearly impossible to evaluate the risks even if they are later presented. If the risks are omitted or understated initially, they will often proceed toward their original decision even after hearing them. This is not true informed consent.

In my testimony presented at the Hearing, I opposed the passage of Bill 20-32 due to the concerns of commodification, exploitation, breaking of biological bonds and creation of dissonance in healthy sociological structure that surrogacy creates. I further appeal to the Council Members to consider stopping this Bill because it is unethical and medically irresponsible to gamble with the health and fertility of our young women in Washington, DC for the sake of others who want to have a child. These are some of the reasons most other countries ban and even criminalize surrogacy. As a DC resident, I want to be able to be proud of our city as one that leads in respecting and protecting all people, especially women. One group of people should never gain at the expense of another.

## References

- Darr, Judith. "Regulating the Fiction of Informed Consent." *American Journal of Bioethics* 1, no.4 (Fall 2001): 19-20.
- Goodman, Ellen. "Egg Donation and Morality." *The Boston Globe*, 7 April 2005 [newspaper online]; available from:  
[http://www.boston.com/news/globe/editorial\\_opinion/oped/articles/2005/04/07](http://www.boston.com/news/globe/editorial_opinion/oped/articles/2005/04/07)
- Institute of Medicine and National Research Council of the National Academies Workshop Report. "Assessing the Medical Risks of Human Oocyte Donation for Stem Cell Research." *National Academies Press* (2007); available from: <http://www.nap.edu/catalog/11832.html>
- Kalfoglou, A. L. and J. Gittelsohn. "A Qualitative Follow-Up Study of Women's Experiences with Oocyte Donation." *Human Reproduction* 15, no.4 (January 2000): 802.
- Strong, Carson. "How Should IVF Programs Handle Initial Disclosure of Information to Prospective Ovum Donors?" *American Journal of Bioethics* 1, no.4 (Fall 2001): 23.
- White, Gladys. "Young Women Wanted: The Hopes and Hazards of Oocyte Donation and What Nurses Can Do." *American Journal of Nursing* 101, no.6 (2001): 60.



Thank you to the members of the DC council for letting me address you today on the Surrogacy Parenting Act of 2013.

My name is Jessica Kern. I am a product of a traditional surrogacy. (This is where a surrogate is hired to both donate her egg and carry the child to term.) I am here today to urge you to not change DC's current stance on surrogacy.

As a product of surrogacy I can tell you firsthand what we children of donor conception go through. Children of surrogacy, just like children of a traditional adoption, deal with all the traumas that go along with adoption. We want to know where we come from. We want to know who our biological mothers are. We want to know who gave birth to us and what they are like. We are curious about their family and other siblings we may have. I spent the first 17 years of my life being lied to by my biological father and adopted mother. Only when I read in my medical records, did I discover I was a product of a traditional surrogacy. Imagine the trust issues that this creates when your family lies to you your whole life, about information that is your right to know. I am one of the fortunate children of donor conception because it only took me nine years to find my birth mom, however those of us who are conceived through surrogacy do not have the right to have this information. Often we are lied to, and never are even told our stories of origin. When we are conceived it comes across to me that only the adults involved have their interests looked after. The intended parents might be threatened that their child won't view them as parents if they know who their biological parents are, or the surrogate possibly did the surrogacy for financial reasons and does not want to be tracked down. From where I sit this is a painful thing. When I was blessed to find my birth mom I subsequently developed relationships with my extended family. At 26, for the first time in my life, I saw where I got my sense of humor from, my physical traits etc. Even though I hadn't grown up around these people, the genes from this side of my family are what is dominate in me. I finally made sense to myself in ways that I didn't understand was possible. When we have children in this world who already need homes, why are we intentionally creating children to go through adoption traumas? I am one of the lucky ones who were able to heal some of my pain when I found my birth mother. However, I still deal with the other adoption issues of what makes me different in my biological mom's eyes. How can she consider the children that she intended to have her children, and the children she had through surrogacy not equals. When you know that a huge part of the reason that you came into the world is due solely to a paycheck, and that after being paid you are disposable, given away and never thought of again, it impacts how you view yourself. As a product of surrogacy, when I express this viewpoint to others, I am told, look how much your

parents wanted you, they planned and saved to have you. You should be grateful and thankful for them. But at the end of the day, the adults were looking out for themselves, and what they needed and wanted

The next point I would like to speak to is a psychological effect, called the "Cinderella Effect". This is a real concern for me that I experienced personally. The "Cinderella Effect" describes the risk of abuse to children being raised by who aren't biologically related to the child they are raising. The odds of being abused increase for the child. I experienced this first hand. Growing up in a household where I was biologically related to my father, but not to my adopted mother, I was physically abused until I was 13. I reported my adoptive mother to social services. The physical abuse for the most part stopped at that point, but the verbal abuse increased until my therapist removed me out of their home four years later. I would like to think, that yes my story is the exception to the rule and that the majority of third party conception births go smoothly. From where I'm sitting, sadly that's not the case. I feel that there is a good reason for this though. Parents who go through surrogacy to start their family are not by law required to go through psychological testing like parents who are starting their families through adoption. I really wish that at the very least that when the doctors, lawyers made their contracts with intended families and surrogate moms, while they were nailing down the financial details, this psychological testing is required. That somewhere in the mix of the profit, I really wish that there would have been a thought to make sure the child being created was going to be going into a safe home.

For myself, being born via surrogacy has left me feeling like I don't have any immediate family. I choose not to have a relationship with my biological father and adopted mother because of the abuse. Whenever I'm around them it impacts my mental health negatively, so in order to protect myself I can't be around them. Unfortunately my biological mother and I aren't speaking now, and I'm afraid that since I've decided to speak out against surrogacy we may never have a relationship again. (But this is too important to not speak out about. We now have information that 30 years ago wasn't available.) Out of the people who I consider to be immediate family I have one brother who will speak to me. From where I'm sitting, surrogacy is not the magic answer to creating families; more often it's a source of cause for lifelong pain for everyone involved. I know I've really been hurt through this process, but I can see where my intended parents, birth mother, and I have all been hurt in our own ways. I strongly urge the Council to please consider the needs of the children born via surrogacy and uphold the previous law that penalized surrogacy. This is what's in the best interest of children, and families.

Thank you

**Testimony before the DC Committee on the Judiciary and Public Safety**

**Family Equality Council**

**June 20, 2013**

**Bill 20-32**

**SURROGACY PARENTING AGREEMENT ACT OF 2013**

Good morning. My name is Emily Hecht-McGowan and I am the Director of Public Policy for Family Equality Council – the national organization that represents the three million Lesbian, Gay, Bisexual and Transgender parents in the U.S. and their six million children – including the thousands of LGBT people and the approximately 5,000 same-sex couples currently residing in the District of Columbia.

As this Committee gathers today to consider Bill 20-32 – the “SURROGACY PARENTING AGREEMENT ACT OF 2013” – Family Equality Council is pleased to have this opportunity to express our support for this much-needed legislation.

Family Equality Council’s mission is to ensure that all parents and prospective parents have the opportunity to create and protect their families. Family is a foundational rock to a strong society as strong families help to build strong communities.

In recent years, the advancement of assisted reproductive technologies, or ART, has provided options to individuals and couples otherwise unable to have their own children. Surrogacy is one of the ways in which LGBT people create their families. Today, an individual or a couple, whether gay or straight, may fulfill their dream of having children – thereby reinforcing the family foundation - even when one or both of them is unable to conceive.

However, our laws have not always maintained pace with the advancement of technology – which could not be more clear than right here in the District where the current law prohibits family creation through surrogacy, an increasingly popular method of collaborative reproduction.

When a woman makes the decision to help an individual or a couple bring a child into the world, the law should provide safeguards to protect her rights and to ensure that she is not exposed to unnecessary risk or exploitation. We believe Bill 20-32 does this. This law provides the emotional, medical and financial protection necessary for women who decide to serve as surrogates.

Likewise, when intended parents make the important decision to bring a child into their lives and grow their family, they should be ready, willing and able to bear full responsibility for that child. And, of equal importance, their rights as intended parents should also be recognized and protected. Bill 20-32 ensures these obligations, responsibilities and rights of the intended parents are indeed protected.

**Testimony before the DC Committee on the Judiciary and Public Safety**

**Family Equality Council**

**June 20, 2013**

**Bill 20-32**

**SURROGACY PARENTING AGREEMENT ACT OF 2013**

The DC City Council has gone to great lengths to ensure that its LGBT residents are treated equally under the law and the District has long lead the nation in advancing protections and equality for LGBT people. DC law treats same-sex couples equally to opposite-sex couples and has some of the most comprehensive and progressive parental recognition laws in the country. However, due to the outdated ban on surrogacy in the District, you have forced anyone who chooses surrogacy as their pathway to parenthood – including those LGBT residents you’ve gone to such great lengths to protect –to leave the District in order to realize their dreams of creating a family. For LGBT people, this oftentimes results in them engaging in this process in jurisdictions that provide far fewer protections for them. It creates an undue burden and significant risk to their families and to the LGBT community as a whole. It is time to make this change.

This legislation you are considering today removes the prohibition against surrogacy, bringing it in line with best practices around the country and recognizing this very real and very important pathway to parentage for so many people. This law provides the necessary safeguards for everyone involved and it is consistent with our shared values in caring for the welfare of our residents and families. We urge you to pass Bill 20-32 – the “Surrogacy Parenting Agreement Act of 2013.”

Testimony by Nancy D. Polikoff on Bill 20-32

**"SURROGACY PARENTING AGREEMENT ACT OF 2013"**

**a/k/a "Collaborative Reproduction Act of 2013"**

**D.C. City Council Committee on Public Safety and the Judiciary**

**Thursday, June 20, 2013**

Thank you for the opportunity to present testimony on Bill 20-32, both the original bill and the working draft prepared by Committee staff.

My name is Nancy Polikoff. I am Professor of Law at American University Washington College of Law, where I have taught Family Law for more than 25 years. I also teach a course on Children of LGBT Parents. I have been a D.C. resident for more than 40 years, and a member of the District of Columbia Bar since 1975. I have devoted the bulk of my career to the legal issues facing lesbian, gay, bisexual, and transgender families, and especially LGBT parents. Over the past several years I have worked with the Council of the District of Columbia Committee on Public Safety and the Judiciary on numerous pieces of legislation affecting LGBT families, including the Domestic Partnership Judicial Determination of Parentage Act of 2008.<sup>1</sup>

I unequivocally support the decriminalization of surrogacy in the District of Columbia.

With my limited time today, I would like to focus on two specific points. I will submit supplemental materials at a later date. Those points are: 1) gestational and traditional surrogacy should be regulated equally in this legislation; and 2) a woman who bears a child should have a brief period of time after the child is born to assert a claim of parentage.

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<sup>1</sup> I would like to thank Lauren Nussbaum, WCL Class of 2014, for our discussions in which I developed some of the views I express herein (which are not entirely consistent with her own).

### **Traditional and gestational surrogacy should be regulated equally**

The working draft improves original Bill 20-32 by providing detailed requirements and procedures, but it does so only for gestational surrogacy. It decriminalizes traditional surrogacy, but there are no rules or regulations for implementing traditional surrogacy arrangements.

I strongly believe that gestational and traditional surrogacy should be treated the same. I have three general categories of objection to distinguishing between traditional and gestational surrogacy. One is conceptual inconsistency with all other LGBT parenting work. The second is accessibility to the greatest number of intended parents. The third is the health of the woman who will become pregnant.

One: For more than 20 years advocates for lesbian and gay parents have emphasized that genetics is neither necessary nor sufficient to create parentage. In 2008 and 2009, I worked with this committee on parentage legislation, which the City Council enacted, ensuring that when a lesbian couple plans for a child conceived through donor insemination then both women are the legal parents of that child. The semen donor in such instances is not a parent, absent a written agreement to the contrary. The position that a semen donor is not a parent is consistent with the law in numerous other jurisdictions. This demonstrates the LGBT family law position that a genetic connection is not sufficient to create parentage.

In states that do not make it easy for both women to be legal parents, there has been much litigation when a couple's relationship ends. Unfortunately, the biological mother sometimes claims at that point that she is the child's only parent, because her former partner lacks a genetic connection to the child. Every national LGBT legal rights organization in the country supports and represents nonbiological mothers against such claims, taking the position that a genetic connection is not a necessary component of parentage.

The only difference between a "traditional" surrogate and a "gestational" surrogate is genetics: the pregnant woman in traditional surrogacy has a genetic connection to the child and the pregnant woman in gestational surrogacy does not. Legislation facilitating gestational surrogacy but not traditional surrogacy assumes that the experience of gestating a fetus can be the subject of a binding contract, so much so that in most laws, as well as in the working draft of Bill 20-

32, the gestational surrogate can never change her mind and assert any claim as a parent of the resulting child. In other words, from this point of view, gestation is not a sufficient connection to create parentage.

The District of Columbia has already decided, along with many others jurisdictions, that genetics is not a sufficient connection to create parentage. A semen donor who decides after conception or after birth that he wants to assert a parentage claim to the resulting child will lose in court. Our law, as many others, says he is not a parent. He may have a genuine change of heart. It does not matter. He is not a parent.

To be consistent, the genetic connection a traditional surrogate has to a child also cannot be sufficient to create parentage. Omitting traditional surrogacy from legislation may reflect a belief that a traditional surrogate's acts of gestating the fetus, when added to her genetic connection, create a claim to parentage that cannot be the subject of contract. But this belief can only be premised on the conclusion that *gestation* adds something of legal consequence to her genetic connection. But the premise of enforceable gestational surrogacy agreements is that gestation *cannot* give rise to a claim to legal parentage.

Either gestating a fetus until birth is an act of caregiving that creates a claim of parentage or it does not. I believe that it does, as I will get to in a moment. But those who say it does not, and still want to distinguish between traditional and gestational surrogacy, are taking a position on the importance of the woman's genetic connection to the fetus she gestates that flies in the face of over 20 years of advocacy on behalf of same-sex couples raising children.

If there were no downsides to omitting traditional surrogacy, perhaps the above inconsistency could rest in the domain of theoretical, academic interest. But there are two significant downsides, to which I now turn.

Two: The accessibility issue is simple. Gestational surrogacy, whose costs easily exceed \$100,000, is limited to the richest among us. The intended parents must pay the medical costs of extracting eggs from an egg donor, creating embryos in vitro, and inserting those embryos into the gestational surrogate. They also must pay the egg donor for her eggs. Those who do not have the wealth to pursue this form of assisted reproductive technology want children and can be

good parents. A gay male couple of modest means (as well, of course, as an infertile heterosexual couple) should have the ability to plan for and create a child using the same low-cost method that a lesbian couple uses: insemination of a woman with semen from a man.

I would add the following. People are using traditional surrogacy to have children and will continue to. The only issue before this committee is whether the law of the District of Columbia will give those people clear guidance and procedures, creating more predictable outcomes for families and children. I support the eligibility requirements for the parties in the working draft of Bill 20-32 and believe they should be extended to the parties to a traditional surrogacy contract. Even though some people will continue to conceive children without fulfilling the eligibility requirements and other criteria, that is no reason to abandon those couples who are more than willing to follow prescribed procedures but cannot afford gestational surrogacy. With no such regulation in place, every time a gay male couple wants to conceive and raise a child, and that couple cannot afford gestational surrogacy, they are on their own, as is the woman who agrees to help them become parents. I do not believe the City Council should leave to their own devices that portion of this city's population.

Three: For a woman who wishes to carry and gestate a fetus for intended parents, traditional surrogacy requires less medical intervention, with fewer attendant risks, than does gestational surrogacy. If a woman is willing to be a traditional surrogate, telling her she must undergo these interventions makes her submit to procedures that are invasive and unnecessary.

#### A woman who bears a child has a claim as a parent of that child

When a surrogacy arrangement works as clearly intended, by parties who have met the relevant eligibility criteria, the intended parents are the child's legal parents. The advantage of surrogacy legislation is that it streamlines the process for all who deal with the parties, including the Vital Records office, so that accurate legal documentation of the child's parentage is created. The intended parents are the child's legal parents and no adoption proceeding is necessary to establish that.



But legislation must also address what happens if there is a dispute among the parties. The working draft of Bill 20-32, as is common, provides for specific performance of an agreement that meets the requirements of the law. Of paramount importance is the inability of the surrogate to assert a claim of parentage of the child she gives birth to.

Unlike gamete donation of either egg or sperm, gestation requires acts of caring for a growing fetus. I believe those acts entitle that caregiver, the pregnant woman, to claim parentage of the resulting child. Let me be clear that I believe that properly screened surrogates, who have previously given birth and who satisfy a mental health professional that they are suitable for the task, are highly unlikely to change their minds. In fact, I believe that those involved in the surrogacy process will take extraordinary care in selecting surrogates – as reputable agencies do now – if the consequence of selecting without that care is a broken contract. The most desirable outcome of a surrogacy contract is that all involved will fulfill the terms of their agreement.<sup>2</sup>

I do believe it is reasonable to hold a surrogate to her agreement to relinquish the child unless she makes her position known at the time of the child's birth or shortly thereafter.<sup>3</sup> The child is entitled to stability, and a surrogate loses any claim to be a parent, whether she has a genetic connection to the child or not, once that time has passed. If the surrogate does assert parentage, the intended parents nonetheless remain parents of the child, and if there is no agreement among the parents, custody would be determined by the Superior Court according to the best interests of the child.

I would close by saying that if this committee disagrees with my position on the parentage claim of a surrogate, I nonetheless believe that traditional and gestational surrogacy should be treated alike under this legislation. If specific

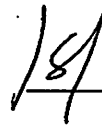
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<sup>2</sup> Even with surrogacy unlawful in the District of Columbia, couples living in the District of Columbia have used surrogates in other jurisdictions to have children. One of the earliest second-parent adoptions in DC, in the early 1990s, was a gay male couple who had a child using a surrogate. There was no disagreement among the parties, and the surrogate relinquished all parental rights in the proceeding in which the genetic father's male partner adopted the child.

<sup>3</sup> I am aware of two states that have such provisions. Florida (for traditional surrogates only) provides a 48 hour period. New Hampshire (which does not allow donor eggs but does allow surrogacy using the egg of the intended mother or the surrogate) provides for a 72 hour period. In the case of a birth without complications, even 24 hours should be sufficient.

performance is an appropriate remedy for a gestational surrogacy contract, it is an appropriate remedy for a traditional surrogacy contract as well.

I look forward to working with this committee to develop the best possible surrogacy legislation for the District of Columbia. Thank you for the opportunity to testify on this important legislation.



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### **Testimony on Bill 20-32, "Surrogacy Parenting Agreement Act of 2013"**

Delivered before the Committee on Judiciary and Public Safety

June 20, 2013

Good morning, Chairman Wells and councilmembers. I am Rick Rosendall, President of the Gay and Lesbian Activists Alliance, which has fought for LGBT equality in the District since 1971.

We strongly support the legalization and regulation of surrogacy parenting agreements. This is one of our key legislative goals, and represents a major step in ensuring that the District's family law reflects the reality of our city's diverse families and affords them equal protection. We thank Councilmember Catania for introducing the original draft of Bill 20-32, and we thank the rest of the Council for cosponsoring it. That unanimity reflects the fruits of collective effort over many years by people from across the District to make real our city's motto, "Justitia Omnibus." We also thank your committee staff for their excellent work.

Our advocacy and the District's family law have been greatly enhanced by the expertise and dedication of our colleague, Professor Nancy Polikoff. We agree with her that this bill should cover traditional surrogacy arrangements in addition to gestational surrogacy arrangements. As she points out, the main difference between the two is the genetic contribution by the traditional surrogate; but central to our evolved concept of parenthood is that genetics are not essential to it. The greater profitability of gestational surrogacy is insufficient reason to regulate it alone rather than both forms of surrogacy. The parties to both types of arrangements need protection.

We have not taken a position on Professor Polikoff's proposal that the surrogate be given 24 hours after the child's birth in which to assert parental rights, though we respect her reasoning that gestation is a form of care and should count more than donation of genetic material. But in that case, we agree with former GLAA President Bob Summersgill that the surrogate, in asserting parental rights, would be breaking the contract and should therefore reimburse the intended parents for their expenses related to the arrangement, plus interest. Regulation is needed here precisely because a surrogacy arrangement is not something to be entered into lightly, without careful consideration of, and legal clarity regarding, the possible implications.

The current law is a relic. Our more recent lawmaking reflects an understanding that love and commitment are what make a family. The District, which was ahead of the national curve in enacting civil marriage equality, must catch up with the new ways by which many families in our city are formed. That is in the best interests of all involved, especially the children.

Thank you.

Good afternoon. My name is Patricia Sachs and I am a licensed clinical social worker at the Shady Grove Fertility Reproductive Science Center in Rockville, Maryland. I have worked with couples and individuals dealing with issues related to infertility and pregnancy loss at Shady Grove since 1991, or for over 22 years. Over my many years in the field I have given numerous presentations to professional organizations as well as patient groups on all aspects of infertility and reproductive loss. I have published research and co-authored a book chapter on third party reproduction.

In our practice at the Shady Grove Fertility Center we have conducted over 100 gestational surrogacy evaluations. We adhere to practice guidelines which require a counseling session with the Intended Parents; a full evaluation of the gestational surrogate with psychological testing; followed by a group meeting with all parties. The intended parents' session includes a discussion of the couple's infertility history and their feelings about using a gestational surrogate. The surrogate's evaluation includes a complete family and relationship history, reasons for wanting to be a surrogate, reproductive history and history of loss or trauma, and support for her decision. In addition, her partner or spouse must also be part of the assessment to determine the level of support and discuss the implications for their family and children. Finally a group meeting is held with all parties to discuss expectations for contact during and after a pregnancy, as well as thoughts on issues like prenatal testing and selective reduction.

In my experience these arrangements foster warm, caring relationships. The Intended Parents have struggled to have a baby for a long time, and they are extremely grateful to these women for their willingness to help them achieve their goal. They express great concern for the well-being of the surrogate, with statements such as "the health of the carrier always comes first," particularly around the issues of higher order multiple pregnancies and selective reduction. For their part the gestational surrogates often become very attached to their couples and very emotionally invested in achieving the goal of delivering a healthy baby. For example, one gestational surrogate carrying a baby for a couple had a late miscarriage, but then went through another successful cycle as she was committed to helping them through to the end.

We take our responsibility to these parties, as well as to any future children, very seriously to above all "Do No Harm." Our rigorous counseling and assessment process is in place to protect all participants. We do our best to ascertain that at this moment in time, this particular surrogacy arrangement appears positive for all involved. Our process has worked well for us thus far, and the patients we have served.

I am testifying today in support of Bill 20-32 because I believe that strict standards need to be in place to govern these arrangements, thereby protecting all parties. Requiring a full psychological assessment of surrogates can identify ahead of time someone potentially too depressed, untreated for past trauma or loss, or at risk in other ways and disqualify her as a candidate before things go too far. Including the surrogate's spouse as part of the assessment helps to insure that he is on board with the greater family responsibilities that may fall on him during the pregnancy and that he is fully functioning, able to consent, and help provide a safe home environment. Clarifying roles and expectations in a group meeting can help to protect against future conflicts over pregnancy-related decisions, and disappointment in the future if the relationships change. This Bill should be passed to ensure that parties in the District of Columbia will have the full protection in these arrangements as do parties in other states.

Respectfully submitted,

Patricia Sachs, LCSW-C  
June 20, 2013

Testimony of  
Dr. Eric Widra of  
Shady Grove Fertility Center and  
The American Society for Reproductive Medicine and  
The Society for Assisted Reproductive Technology  
before the  
Council of the District of Columbia

Public Hearing:  
Committee on the Judiciary and Public Safety  
Bill 20-32, the Collaborative Reproduction Act of 2013

June 20, 2013

I am pleased to speak today on behalf of the American Society for Reproductive Medicine, the Society for Assisted Reproductive Technology and Shady Grove Fertility Center, where I have worked as a reproductive specialist treating patients with infertility since 1996. Thank you for the opportunity to testify.

Like my colleagues in the field, I have had extensive education and training which includes four years of college, four years of medical school, four years of residency training in Obstetrics and Gynecology and another two years of specialized training in Reproductive Endocrinology and Infertility. In addition to my medical license, I am certified in both ob/gyn and in reproductive endocrinology and infertility by the American Board of OB/GYN. To obtain that certification, physicians are subjected to a rigorous exam, and must be re-certified every seven years. To be a member clinic of the Society for Assisted Reproductive Technology (SART), the clinic must have a medical director, myself in this case, with these credentials.

ASRM is a multidisciplinary organization dedicated to the advancement of the science and practice of reproductive medicine. ASRM represents approximately 8,000 medical professionals across the country, including obstetrician/gynecologists, urologists, reproductive endocrinologists, embryologists, family attorneys and mental health professionals. SART is an organization of nearly 400 member practices performing more than 95% of the assisted reproductive technology (ART) cycles in the United States. SART works with the ASRM to create practice guidelines and is actively involved in the collection of data outcomes from its member programs.

Shady Grove Fertility, headquartered in Rockville, Maryland, is the largest infertility medical practice in the country. We care for thousands of individuals struggling with infertility in the DC metro area and are proud to lead our field in helping patients to resolve their infertility in the means most appropriate for them.

Infertility is a disease of the reproductive system that impairs one of the body's most basic functions: the conception of children. In the United States, infertility affects about 7.3 million women and their partners, or about 12 percent of the reproductive-age population. Due to the myriad of causes of infertility, the numerous implications of the disease, and the devastating

effect of the diagnosis, it is vitally important that policymakers work to make combating infertility a priority. As the medical specialists who present treatment options for patients and perform procedures during what is often an emotional time for them, we recognize how important a means to addressing their medical condition can be for those hoping to build their families. We are pleased that the DC Council is examining a policy that hinders family building options for so many - the ban in DC on collaborative reproduction involving surrogate contracts.

Many people misunderstand the nature of gestational surrogacy- this includes physicians, lay persons and elected officials. Gestational surrogacy is simply this: the incredibly generous act of agreeing to carry a pregnancy for another couple for whom carrying a pregnancy is impossible. Most often, this is due to serious medical conditions, prior surgeries like hysterectomy, or congenital abnormalities. In many cases, it is for gay couples who wish to build a family, but for obvious biological reasons, cannot do so on their own. Our practice has helped more than 200 families grow through surrogacy in the last four years.

We firmly believe that those seeking to build families deserve the opportunity to pursue the treatment that is most appropriate for them. We believe, and I especially as a DC resident and practitioner, that intended parents should not have to cross state borders to seek jurisdictions with more family friendly laws. We believe that when the medical process is over and a child is born, it's critically important to make certain that the legal rights and status of all parties is clear — the ones who intend to be parents of the child need to be recognized as parents. The donors and surrogates who want to help but have no intention of being a parent, need to be certain that their rights are protected.

The bill before you will repeal the prohibition on surrogacy in DC. It will ensure that the intent of the parties to a surrogacy agreement is formalized in a written legal document. It will provide safeguards for all the parties involved in collaborative reproduction, including not only any children born of such agreements, but also the intended parents, donors, and gestational carriers who are a part of such agreements. It will make clear the requirements, obligations and rights of all parties in the collaborative reproduction agreement.

The bill follows the national professional guidelines that ASRM has developed for infertility practices utilizing gestational carriers. These guidelines provide for the screening of genetic parents and gestational carriers, and they address the medical and psychological issues that confront the gestational carrier and the intended parents, as well as the hoped for children. They also address the legal issues and the critically important informed consent process which govern the process from beginning to end. And importantly, they include criteria for rejecting intended parents and gestational surrogates when the relationship is not appropriate or unworkable.

Now I would like to address those who suggest there is something intrinsically immoral about surrogacy. True, surrogacy is an issue that forces society to re-examine traditional concepts of parenthood and family structure. But it is also an issue that requires us to reaffirm the ideals and values we have concerning liberty and autonomy and the dignity of the individual to exercise, within the context of the law, liberty and autonomy as defined by his or her self.

What greater dignity is there for a person to choose to help another? Women who enter into a relationship to help another by serving as a gestational carrier, and who are fully informed of and consent to the legal and medical processes associated with the relationship, are not exploited. Rather, these are women who understand the deep desire for a family. These are women who do not have biases against a specific family model. These are women who feel compelled to help others and who freely choose to do so by assisting them in creating a family. Dignity at its finest.

The claims of alarm you have heard about the dangers of these medical procedures are simply not scientifically accurate. SART has been collecting outcomes of ART procedures since the mid 1980s and reporting that data to the CDC since the mid 1990s. The underlying medical procedures used in egg donation and surrogacy have been done over a million times for over 30 years. Today, one of every 100 babies in the U.S. is born as a result of assisted reproductive technology and were there alarming evidence of adverse health outcomes in the children or the women utilizing the treatment, it would be apparent. This is not the case. In fact, the overwhelming weight of evidence demonstrates that these therapies are safe and effective for the parents and children. Of course, as with any medical procedure there are some potential risks, but they are well understood and easily managed in the rare instances in which they occur. We fully explain those risks to patients, including donors or gestational carriers, before we proceed with any procedures. In fact, labor and delivery itself, something faced by thousands of women every day, carries far more medical risks than the procedures we do to establish a pregnancy.

I want to thank you for including experts in the field of reproductive medicine in this hearing and for ensuring that the voices of surrogates and those who have become parents with the assistance of a surrogate were represented here today.



Joyce Migdal, Ph.D.  
5480 Wisconsin Avenue  
Suite 215B  
Chevy Chase, Maryland 20815

June 20, 2013  
The Honorable Tommy Wells  
Council of the District of Columbia  
Committee on the Judiciary and Public Safety  
John A. Watson Building, Room 412  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004

**Re: Support for Bill 20-32, The "Surrogacy Parenting Agreement Act of 2013"**

Good Afternoon Mr. Chairperson and Members of the Committee,

My name is Dr. Joyce Migdal. I have a PhD in Clinical Psychology and have been licensed to practice for 20 years. For the last two decades, I have been working with individuals and couples participating in collaborative reproduction.

I appear before you today to express my support for the Bill and the purpose of this legislation—permitting surrogate parenting contracts between gestational surrogates and individuals and couples engaged in collaborative reproduction within a proper legal framework.

I'd like to describe the process that I undertake to evaluate the parties who will enter into collaborative reproduction, a role that I take very seriously. If I have concerns that this process will not be good for the mental health of any one of the individuals, including the existing children, I do not give my approval for them to go forward. Anyone who works with me knows that I am very concerned for the mental health of each of the participants, and I have disqualified many a surrogate candidate.

I initially meet with the intended parents for an intensive interview and consultation in which we discuss their parenting desires and their infertility history. The ultimate goal of this session is to make sure that they have grieved the loss of their "traditionally conceived" child and are 100% comfortable creating a child through collaborative reproduction. We also discuss what parenting issues may arise and how to be the best parents for these children. We discuss when and how to disclose to the children their prenatal history in a developmentally appropriate context in order to foster self-confidence and connection with their parents. We discuss the relationship they hope to have with the gestational carrier during as well as after the pregnancy. Finally, we discuss any problematic pregnancy issues that may occur and how they would resolve each of them.

Following this session, I meet with the gestational carrier and her significant other if she is romantically involved or living with someone. After I take a thorough history in which I obtain background information, mental health history, legal history, education and employment history, I also take a detailed history of each of her pregnancies. I learn what their motivations are for participating in a gestational surrogacy as well as who they have shared this with and what support they have. We discuss the relationship they hope to have with the intended

parents during as well as after the pregnancy. Finally, we discuss any problematic pregnancy issues that may occur and how they would resolve each of them. Following this interview, I administer the Minnesota Multiphasic Personality Inventory to both the gestational surrogate and her partner. This 567 True/False questionnaire is designed to help with understanding a person's personality as well as addressing psychiatric concerns. If either the gestational surrogate or their partner, in conjunction with the clinical interview, illicit a red flag, then their participation is either rejected or put on hold until the concerning issue is resolved.

Finally, I meet with all the parties together for a joint face-to-face consultation to make sure that all parties are on the "same page" for all of the "tough" pregnancy possibilities. If the parties have different communication needs or different views regarding selective reduction or termination, then the partnership is dissolved and they will be matched with others who share their perspective. I believe this level of evaluation, consultation and communication is why the over 100 gestational surrogacy cases I have evaluated in the past 6 years have gone without incident. The fact is that the few cases that go wrong (and have high public visibility) are either (1) traditional surrogacy or (2) cases in which the issues were not vetted up front. They are outlier cases. The reason we need this legislation is to make sure the guidelines are in place so that these outlier cases will not occur.

I also want to make just a few comments, as a professional psychologist, about some of the criticism of the Bill that I have heard today.

Specifically, we have heard a lot today about the failure to consider the impact on the child and the woman whose womb is allegedly being "rented" – an extraordinarily pejorative term and one that we can be sure that the surrogate we have already heard from would have a good deal to say about. First, let me state that there is no published clinical research that demonstrates a negative impact on the gestational carrier herself.

Second, let me state the obvious: The issue is not whether or not collaborative reproduction exists, because it clearly does, throughout the rest of the country, but the most appropriate legal framework and whether "best practice" will be used to structure the process in formulating their relationship. As a mental health professional, I am happy to see that you have included the mental health evaluation as a part of the process.

Third, To the extent I have heard criticism by some of the witnesses that the child is not with the birthing female, that the relationship between a mother and a child in her womb has been ignored, that the child will be harmed by not being reared by the woman who carried it, my response is this: this argument casts into doubt the entire alternative family building option we recognize as adoption. That is an option that the DC Council has recognized as in the public interest, that our Federal government has recognized as in the public interest, and that I know some people in this room have participated in, myself included.

These children are wanted. They are planned for, carefully considered and the intended parents submit to psychological counseling to make sure they are comfortable with this method of family building. Unlike other children whose birth mothers may not even know they are pregnant, the gestational carrier has agreed from the start to take proper prenatal care of the child. How can this be a bad thing for the child?

Thank You.

Committee on the Judiciary and Public Safety  
Councilman Tommy Wells, Committee Chair  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004

RE: Testimony regarding support of Bill 20-32 Collaborative Reproduction Act of 2013

Dear Mr. Chairman and Council Members of the Committee,

I am an attorney admitted to practice in Maryland and in DC. I have practiced primarily in the assisted reproduction field for over 20 years, ensuring that the rights of all parties involved are protected to the best of my ability and in accordance with the highest standards of care. I am a member of the American Academy of Assisted Reproductive Technology Attorneys (AAARTA), a credentialed, professional, nonprofit organization of attorneys, judges, and law professors throughout the United States and Canada. One of the greatest challenges to this field of practice is that it is highly unregulated. Though thankfully there are many in the field such as myself who work to ensure that parties are protected and the rights of the children born are secure, there are no safeguards in DC currently to ensure that this is so for the many who seek to build their families through Assisted Reproductive Technology (ART) and working with a gestational surrogate. It is critical in order to protect the surrogates, the intended parents, and most importantly the children that there be safeguards put into place. This will prevent abuses in this field, and will ensure the desired outcome for everyone involved. Bill 20-32, the "Collaborative Reproduction Act of 2013" ("The Bill") will firmly establish secure parental rights for families formed through ART, protecting the best interests of children born as a result of ART. The Bill safeguards the gestational carriers and their partners, as well as donors involved in the ART process. Importantly, it also allows for just and equitable treatment of persons suffering from infertility by providing for consistent legal recognition of parental rights and responsibilities when they build their families through ART.

General background: Many citizens of DC suffer from infertility with a desire to have a child but are unable to. For many in this population, the only way suitable medical treatment is in-vitro fertilization with embryo transfer to a gestational carrier. And, there are many incredible women who make the intentional and thoughtful decision to carry a child for those suffering from such infertile individuals. To date, all citizens of DC have needed to travel elsewhere to be able to have a family through the gestational surrogacy process. And hundreds have done so. We are very fortunate to have careful, experienced and cautious reproductive endocrinologists who practice in DC, as well as qualified, concerned attorneys both in DC and in the surrounding states who advocate for intended parents and who vigorously represent the interests of their gestational carrier clients in the states where it is currently legal practice. All Parties involved have been assisted by the reproductive mental health professionals who counsel intended parents, gestational carriers and their families. The process has worked well in Maryland, Virginia and

in many other states; in fact, the parties and the child are well protected by judicial review of petitions recognizing parentage in MD and by statutory practice in VA. Of course, the citizens of DC are not so protected to date.

Specifics of a gestational carrier/surrogacy process – why it works in a place like Maryland, DC's sister community: The gestational carrier process has in fact worked well in Maryland and other states in the past, protecting all parties and the children born from such arrangements. Under the Current process in Maryland, similar to that of the proposed DC Bill, after the appropriate medical and psychological screening is done, the parties enter into a gestational carrier agreement, represented by independent counsels who are knowledgeable about the gestational carrier process. Once there is a conception pursuant to the gestational carrier arrangement, the intended parents' counsel will file a petition for declaration of parentage. The subsequent Order of Parentage is a final order of parental rights, determining that the intended parents are the sole legal parents of any child born and recognizing that the Gestational Carrier does not have parental rights. Remember, she is not actually the genetic donor for the child. This Order also assists the hospital staff at the time of delivery of the child, allowing them to of course treat the intended parents as the sole parents of the child, and also is important for insurance reasons following the delivery. We believe that because the process has worked well in the past with the guidance of attorneys experienced in the field of ART and of course with the critical assistance of medical and mental health professionals, there have been no reported cases of disputes in the State of Maryland. This demonstrates that Gestational Carrier arrangements in fact work as solutions for family building.

Codification of this process assures safeguards will be followed by all professionals involved in assisting the families, and that children will be assured of a secure status within the family; this will of course critically ensure that the parent-child relationship will not be subject to attack. The many families that have been built through the Gestational Carrier process in MD, VA and other states where it is legal are of course grateful that the process has worked well in the past due to the diligence of our judges, attorneys, and all professionals involved. This Bill is important not only to ensure that those protections are in place for the citizens of DC, but also are in fact followed in each and every case.

The Bill's particulars: The Bill is a carefully drafted one that not only is designed to carefully protect all involved parties and to ensure that they are properly screened medically and psychologically, but it also critically protects the best interests of the resultant children by ensuring that the legal determination of who is their parent is clear from the start and is determined prior to conception and to birth. There is no confusion regarding who is a legal parent and who is not. There is also no confusion about a "mother" giving up her parental rights. This Bill does not in fact cover traditional surrogacy where a woman who carries a pregnancy for another is also the genetic donor.

Specifically, the Bill defines clearly that it is covering gestational surrogacy arrangements. It does not cover traditional surrogacy, so under this Bill there is no decision -making or relinquishment of parental rights by the surrogate, as she has no genetic link to the child she is carrying for another. She enters into the arrangement voluntarily specifically in order to carry a child for someone else and not to have a child of her own. The Bill then carefully and methodically details the steps necessary to enter into such an arrangement, careful to ensure that all parties are medically and psychologically screened so that there is a specific recommendation to proceed together in the surrogacy process (or not). All parties must of have independent representation in entering into the surrogacy agreement, and the agreement must contain certain provisions and protections. The Bill is very specific as to the legal process to determine legal parental rights so there is no confusion as to who is the legal parent of the child.

The Bill is in accordance with expectations of all parties who enter into these agreements and ensures, via legal representation and counseling, that third parties know their rights, that their interests are protected and that they are fully informed when they sign the agreement. Citizens of DC currently must and do travel outside of the DC area in order to have their child through gestational surrogacy. This Bill will protect the rights of its citizens. In drafting this Bill, statutes and proposed statutes from every jurisdiction across the country that has passed or has considered similar legislation was carefully reviewed. Attorneys and stakeholders across the country were interviewed; the issues that have been presented in these cases were carefully considered. The specific language is designed to address all concerns, and takes many measures to ensure that the legislation is inclusive and comprehensive. I urge you to support the Collaborative Reproduction Act of 2013.

Thank you for your careful consideration of this matter.

Respectfully,

Meryl B. Rosenberg, Esq.

June 20, 2013

The Honorable Tommy Wells  
Council of the District of Columbia  
Committee on the Judiciary and Public Safety  
John A. Wilson Building, Room 412  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004

**Re: Support for Bill 20-32, The "Surrogacy Parenting Agreement Act of 2013"**

Mr. Chairperson and Members of the Committee:

My name is Whitney Watts. I reside in the surrogacy-protected state of Maryland, and I thank you for this opportunity to testify on behalf of Bill 20-32, the "Surrogacy Parenting Agreement Act of 2013."

I am here today to share with you how my personal experience as a Gestational Surrogate has changed not only the lives of a couple struggling to build a family, but also my own life, for the better.

I was a Gestational Surrogate for Susan and Bob, a wonderful couple who were working with Creative Family Connections, a surrogacy and legal services firm based in Maryland.

Growing up as the child of a couple who struggled for more than ten years with infertility, I told myself that if I was lucky enough to be fertile and carry a healthy pregnancy of my own, I would someday want to help others become parents as well.

As you can imagine, I was very thankful when my husband and I decided to start our family and I was able to carry to term a healthy baby boy. When I saw how much happiness our child brought to our lives, I decided it was time to help someone else experience this joy.

Allow me to tell you that the experiences of a Gestational Surrogate are like none other. One of the first amazing moments happened on Christmas Eve, when I was able to email the Intended Parents a photograph of the first positive pregnancy test showing two lines and letting them know that the journey had truly begun.

Of course, not everything is easy – or expected. In my case, the doctors wanted to ensure my health and the health of the twins, so I was placed on hospitalized bed rest, at Johns Hopkins Hospital, in Baltimore, which I referred to as "mommy deployment." It was hard being away from my husband and son, but I knew that the end goal was to deliver two healthy babies to the most deserving of parents.

And, I was very fortunate that I could be admitted to a hospital as fine as Johns Hopkins Hospital for my pregnancy care. It concerns me to think what could have happened to me or anyone else involved in my surrogacy journey if I had gone into preterm labor and given birth at a hospital in the District -- where I could have put in jail under the existing statute. Jail!!

Thankfully, however, after the extended period of bed rest, I gave birth to healthy twins, a boy and a girl, as my Intended Mother held my hand in the operating room and my Intended Father remained in the waiting room with my own husband and son.

I will never forget the instant the twins' mother looked into their eyes. I saw that this was the moment she had been dreaming about her entire life, and that it was worth all the blood, sweat and tears we all sacrificed to make this miracle happen. That image is, and will forever be, etched in my mind.

So, why would anyone become a Gestational Surrogate?

For me, it was because I could offer one of the greatest gifts anyone could ever ask for: the ability to become a parent.

And, I would like to debunk some myths about surrogacy. I have read and heard them all. You heard some today.

No, we are not just "doing it for the money." It is something we want to do and something our families fully support.

No, we are not "exploited." Anyone who thinks that doesn't understand how much we receive from it, too. When else will I have the opportunity to change someone's life in such a fundamental way? I will carry this experience with me forever.

This bill is a good law and strikes a good balance, and I like the fact that it will protect surrogate-parenting agreements in the District of Columbia. Surrogacy is a huge commitment. It requires sacrifices on the part of one's entire family, but it is an incredible gift that benefits two families, and the Intended Parents of DC deserve the right to build the families of their dreams, just as I was able to build my own family.

If I could, I would be a Gestational Surrogate again in a heartbeat but I am no longer a healthy candidate. Now instead, I support my fellow Gestational Surrogates, especially those on bed rest with emotional support.

I can tell you that nothing in my life will ever compare to the experience I had carrying a family's dream and bringing it to life.

Thank you for allowing me this opportunity to offer my support.

Written Testimony of MM. Roy Daiany and Fabrice Houdart  
June 20<sup>th</sup>, 2013  
Surrogacy Contracts

Madame Chair and Members of the Committee:

My name is Roy Daiany, and I am here with my fiance Fabrice Houdart, to express our strong support for decriminalizing surrogacy contracts in the District of Columbia. Fabrice and I are longtime residents of the District– Fabrice for 13 years and I myself an alumnus of Georgetown University, have lived here for over 5 years. I currently work for Google here in the district and Fabrice works for the World Bank. We are also the proud fathers of twins boys just born on June 3<sup>rd</sup> of this year in Harrisburg Pennsylvania. A gestational carrier carried our babies for nine months.

I had long dreamed of being a father. When I was coming out at age 17, I understood I would probably have to give up on getting married because of my sexual orientation. But I knew I would never sacrifice having a family. For me, creating a family of my own and being a father was indispensable.

I met Fabrice six years ago, here in DC. Of course it was very important to me that he shared this dream of having children. Over the years, we discussed at length the ways for us to realize our dream and in particular explored the social, ethical and political meanings of surrogacy. We concluded that we would be comfortable with compensating someone to carry our child provided it be done in the most ethical way possible and we would minimize potential tangible harms. For this reason, we discarded the idea to pursue surrogacy abroad – like in India or Panama – where women may be more vulnerable and surrogacy can lead to exploitative situations.

In February, 2012, Fabrice and I met with a reproductive law attorney named Meryl Rosenberg. Meryl has years of experience with the complexities involved and soon began introducing us to potential gestational carriers. During those initial calls I quickly realized these women were interviewing us as much as we were them. And they too wanted to find someone like-minded, trustworthy and pleasant - someone they'd want to share this long term experience with.

A couple of months later we met Amanda, who would ultimately carry our children. We felt instantly comfortable with her: Amanda is laid back, honest and shares Fabrice's sense of humor.

Amanda lives in Hershey, Pennsylvania with her 15 year-old son. The drive up to Hershey can take up to 4 hours depending on traffic, and while some couples need to travel much further to meet a gestational carrier, it was still tough on us. I made the first drive up to meet Amanda and her son in person prior to signing any agreements. I knew she'd appreciate



us getting to know each other and I wanted her to feel really comfortable. I appreciated Amanda's warmth and straightforward manner and the fact that her son had obviously been raised very well. But there was something else that drew me to her —she seemed not so different from us and I could relate to her.

I worried about having to travel so far to see Amanda, but of course surrogacy is not permitted here closer to home and we were determined to move forward. In the end, the distance was a major challenge. Throughout the pregnancy, we attended a few doctor's visits, but each one required taking at least one day off of work to allow for the long drive. And with twins there are lots of doctor's appointments and ultrasounds, so unfortunately we had to miss most of them. Amanda kept us updated and sent pictures, but as the parents we should've been there. I was concerned about not being able to ask face-to-face questions to her doctor and hear first hand the details of our progress. One time Amanda got really sick and I regretted not being able to be by her side at the hospital. That's something that would have been possible with a carrier in DC. We also would've liked to spend more time with Amanda and contribute to the care and support she needed during pregnancy. It's clear to us that would've benefited not only Fabrice and I, but also Amanda and our baby boys. But the distance was prohibitive.

Amanda works at a Credit Union in PA which provides her with a comfortable salary. The \$25,000 compensation she received from us surely made an impact on her life, but she wasn't desperate for the money, and so our relationship didn't feel like a purely commercial enterprise, or a charitable one. Still, Amanda never lingered on the topic of money, she mostly mentioned wanting to experience being pregnant at this stage in life and wanting to help a couple have a child.

There was also no coercion. Amanda understood fully the consequences of her decision to carry these children for us. We met separately and together with a social worker in DC and talked through all the potential outcomes and concerns. Amanda was as excited to get started as we were.

Throughout the pregnancy we formed a very close relationship and two weeks after the birth of our twins we still remain in close contact. Amanda is still recovering from the birth, but I have no doubt had she been closer, we would have met these past weeks and helped each other with the transition.

Madame Chair and Members of the Committee: I hope that with this short testimony I managed to convey our strong belief that not only can a surrogacy agreements be carried out in an ethical manner, but they can also be a positive experience for both the parents and the gestational carrier. The truth is that DC couples, both gay and straight, are already creating families with carriers. Allowing them to do this within the district would significantly improve the experience and protect the safety and well-being of everyone involved.

Michele A. Clark

Public Hearing: Surrogacy Parenting Agreement Act of 2013/June 20, 2013

**Committee on the Judiciary and Public Safety  
Public Hearing  
Bill 20-32: The Surrogacy Parenting Agreement Act of 2013  
June 20, 2013  
Testimony of Michele A. Clark**

**Members of the Committee:**

Thank you for holding this hearing and inviting public testimony. My name is Michele Clark. I am an adjunct professor at the Elliott School of International Affairs at the George Washington University, where I teach courses in human rights – notably the human rights of women. I am a recognized professional in the field of combating human trafficking. I am a small business owner and a registered voter in the District of Columbia.

I am here to unequivocally oppose the passage of the Surrogacy Parenting Agreement Act of 2013 on the grounds that the practice of surrogacy is highly exploitative of those women who are surrogates. I also oppose this act because I do not want to live in a city that attaches price tags to the human body. I am not an object. My body is not a fungible, interchangeable, impersonal commodity. In a world that purports to respect the dignity of a human being, we cannot allow the making of profit by renting or buying human body parts. I am sure you are aware that commercial surrogacy is illegal in many countries including Canada, the Netherlands, France, Italy, Belgium, Switzerland and the UK.

Commercial surrogacy is a form of exploitation because it reduces a woman's body to an object with a price tag. A surrogate becomes nothing more than a tool for the accomplishment of someone else's long term goals. A surrogate is not chosen for her unique value as a human being; she is chosen because she has a functioning womb and has demonstrated that she can carry a child to term. Her womb becomes, *de facto*, a commodity controlled by the prospective parents and the facilitators of the fertilization process.

For exploitation to exist in a relationship, several conditions need to be met.

The first is the condition of unequal value. In the case of surrogacy, this means that persons other than the woman carrying the child, such as an agency or clinic, earn disproportionately more than the surrogate and that the money earned is not commensurate with the effort involved. Clearly, this is the case in commercial surrogacy as practiced in the United States. While she might have a legal representative to assist with contractual negotiations, the surrogate will make merely a fraction of the total costs paid by the hopeful parents, and will have little true negotiating power in deciding the terms of her compensation. Often, she will make between 15 and 30 percent of the total cost. So, if a couple pays \$100,000, the woman will make between \$15,000 and \$30,000. Keep in mind that this is for a 9-month pregnancy with a 24/7 commitment, for hourly wage of between \$2.25 to \$4.45. This is unequal value.

Michele A. Clark

Public Hearing: Surrogacy Parenting Agreement Act of 2013/June 20, 2013

The second condition is that of wrongful use, in which a person is used to advance the goals of another with little or consideration of his/her own goals. The very idea of surrogacy originates with goals of the prospective parents. Independent of such a need, a woman would never strive to be a surrogate. To offer a financial incentive to a woman in economic duress is the exploitation of vulnerability.

I would like to close with a lesson we have learned from the murky world of fertility tourism: American couples are deciding in growing numbers that US surrogacy fees are too high to pay and are traveling to other countries to rent wombs for their prospective children where the fees paid to surrogates can be as low as \$5,000. This demonstrates the total objectification of the process, in which the woman herself is separated from the value of her womb. In these countries, the practices of commercial surrogacy are not regulated; women can be coerced into surrogacy arrangements by male relatives who see opportunity for financial gain, may live in dorms far from family and community, receive an even smaller percentage of the fee than they do here – because they do not know any better, and face ostracism for an action that they might have been forced into. Your acceptance of commercial surrogacy through the passage of the Surrogacy Parenting Agreement Act establishes an elitist institution, available to people of means, that opens the door to abuse and exploitation in Washington DC and in parts of the world where women do not have even the appearance of the protection of the law.

Thank you.

**Jennifer Fairfax**

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Admitted to MD & DC

## **Committee on Judiciary and Public Safety**

### **RE: Proposed Law 20-32: Collaborative Reproduction**

**Dear Committee Members,**

I am writing you as a member of the legal community in the District of Columbia. I am licensed in both the State of Maryland and the District of Columbia where my law practice focuses primarily on family building through adoption and assisted reproductive technology (ART). I am a member of the American Academy of Assisted Reproductive Technology and the American Academy of Adoption. As an adoption and ART attorney I strongly support legislation that ensures good ethical practice in family building and creates standards and procedures that protect not only the participants in forming a family but also perhaps most importantly the children who are born or adopted into these families.

My first comment is to complement you and the District of Columbia on passing many cutting edge laws that protect families when it comes to how they wish to form their families such as the D.C. Parentage Act. This law brought D.C. to the forefront of country in recognizing and protecting children who are born or adopted into loving families. So, thank you for that work and I urge you to continue down this path with the Collaborative Reproduction bill.

My second comment is on the Collaborative Reproduction Act that is now before you. As you probably know, assisted reproductive technologies have been around for over fifty years beginning with sperm donation to where we are today with the creation of embryos and use of Gestational Carriers. I have been working in this field for over fifteen years and can attest to what you have probably heard from speakers, which is that most Gestational Carriers are educated, independent woman who wish to help another family fulfill the dream of a family. Many of these women are my clients, have completed their families and they include professionals such as lawyers, nurses and business owners. They all have two things in common – they enjoy being pregnant and they want to help another family have a child of their own.

As one of the attorneys asked to comment on this Bill and having participated in the drafting I know firsthand that this bill covers the many facets of assisted reproductive technology, while always focusing on and protecting the children. My colleagues and I reviewed statutes and proposed statutes from every jurisdiction across the country that has passed or has considered similar legislation. We spoke to attorneys and stakeholders across the

country and took to heart the issues that have been presented in these cases. We then came up with specific language to address concerns, and took many measures to ensure that the legislation is inclusive and comprehensive. I am proud to have been a part of this legislation and I encourage you to pass it.

This Act, once again, will bring the District of Columbia in line with other States that are protecting children and are also setting the bar for those States still lagging behind. I am proud to be a member of a community that takes necessary and precedent setting steps to ensure all children are protected by insuring their parents' rights are secure.

Sincerely,



Jennifer Fairfax

**Sharon N. Covington, MSW, LICSW, LCSW-C, BCD**

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[sharon.covington@integramed.com](mailto:sharon.covington@integramed.com)

**BILL 20-32  
SURROGACY PARENTING AGREEMENT ACT OF 2013**

June 28, 2013

Dear Judiciary and Public Safety Committee:

I am writing as a Clinical Social Worker licensed in the District of Columbia and as Director of Psychological Support Services at Shady Grove Fertility Reproductive Science Center, where I supervise a staff of 8 psychologists and social workers who provide counseling, assessment, and support for infertility patients, gamete donors, and gestational carriers. I have been working as mental health professional in reproductive medicine for over 35 years and am a founding member and past chair of the Mental Health Professional Group of the American Society of Reproductive Medicine. I, also, chaired the committee that established their "Qualification Guidelines for Mental Health Professionals working in Reproductive Medicine" which served as a framework of establishing competency of mental health profession doing psychosocial assessments in Bill 20-32. I have co-authored and edited the foremost text in the world on Infertility Counseling: A Comprehensive Handbook for Clinicians, published over 50 peer-reviewed clinical and research articles on the psychological aspects of infertility, including Gestational Surrogacy, while lecturing nationally and internationally on this subject.

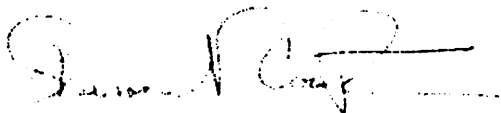
I am writing to express my support for this legislation. I believe this Bill provides protection for all the participants by codifying the safeguards that have been previously been voluntarily followed by providers of collaborative reproductive services. It also provides for the best interests of children born through Assisted

Reproductive Technologies (ART) which is always a fundamental concern of mental health professionals, like myself, who are involved in the assessment, counseling, and psycho-educational preparation of donors, intended parents, and gestational surrogates. By requiring that all parties undergo psychological evaluation by a trained mental health professional who specializes in infertility counseling, the Bill helps to ensure that all parties are prepared for collaborative reproduction as well as helping children created through these technologies.

I am aware that you have received testimony that women who serve as egg donors or gestational surrogates are being exploited, risking their lives, and being used without concern for their health or welfare. I can tell you from my years of experience counseling these women that that statement is distorted and cannot be further from the truth. First and foremost, we see these women as our patients, with their physical and emotional health, welfare, and relationships being our primary concern. Psycho-education and evaluation provides the patient with what is needed to give informed consent. If we feel there is the possibility of putting this woman or her family at risk, we will make the recommendation to exclude her from moving forward as a donor or carrier, and do so regularly. Our team of physicians, nurses, and mental health professionals believe that our first responsibility is "to do no harm" and this may mean excluding someone from being a donor or carrier despite their desire to be one. This collaborative process, which is codified in Bill 20-13, works and helps to ensure that the best interest of all participants in assisted reproduction are met.

I urge you to support this legislation.

Respectfully,

A handwritten signature in black ink, appearing to read "Sharon N. Covington", with a long horizontal line extending to the right.

Sharon N. Covington, MSW, LICSW, BCD

**TESTIMONY TO THE COMMITTEE ON JUDICIARY AND PUBLIC SAFETY  
ON BILL 20-32  
SUBMITTED FOR THE RECORD  
JUNE 20, 2013  
BY  
PETER D. ROSENSTEIN**

I appreciate the opportunity to submit testimony on Bill 20-32 to AMEND Title 16 of the District of Columbia Official Code to permit surrogacy arrangements.

For a number of years I have called on the District of Columbia to pass legislation that would legalize and regulate surrogacy parenting agreements. I have many friends who have had children through these types of agreements but even though they live in the District of Columbia they have been forced to go to other states because we haven't legalized or protected these types of arrangements.

In today's society surrogacy is no longer unusual but rather a way for many to have children who for one reason or another can't have them without these arrangements. Those entering into surrogacy agreements do so because of a strong desire to have children and include both gay and straight members of society.

I thank Councilmember Catania for introducing the original bill and the rest of the Council for supporting it. I agree with many of the changes that have been made to the original bill and thank the Committee staff for their diligence in reaching out to the community and those with a detailed knowledge of these issues. It is important that the bill cover both traditional surrogacy arrangements and gestational surrogacy and as Professor Nancy Polikoff has pointed out the main difference between the two is the genetic contribution of the traditional surrogate.

I believe that in either case we must protect both the surrogate and the intended parents of the child. But I believe that in all cases of surrogacy it is the intended parents who will be paying for the care and any additional fees involved in the contract who must have the right to bring up the child and that right must be protected based on any contractual language.

I agree with the statement made by the GLAA in their testimony that "The District, which was ahead of the national curve in enacting civil marriage equality, must catch up with the new ways by which many families in our city are formed. That is in the best interests of all involved, especially the children.

Again I thank the Council for moving forward this very important legislation.



**Testimony by Commissioner Bob Summersgill, ANC 3F07  
on Bill 20-32, the "Surrogacy Parenting Agreement Act of 2013"  
for the record with the Committee on the Judiciary and Public Safety**

June 20, 2013

Chairman Wells:

Thank you for holding a hearing on Bill 20-32, the "Surrogacy Parenting Agreement Act of 2013." I regret that I cannot attend in person. Please accept this testimony for the record.

The Surrogacy Parenting Agreement Act of 2013 is a very good piece of legislation. It modernizes the D.C. Code to create a legal structure for gestational surrogacy reproduction. I appreciate the difficulty in writing this very technical bill and ensuring that everyone's rights are protected.

The bill would be stronger if traditional surrogacy arrangements were also covered. The legislation creates a legal framework for surrogacy arrangements. It would be very helpful to establish the legal framework for traditional surrogacy arrangements, as well, so that everyone's rights are protected in those circumstances. Without legal guidelines and protections, it is far too easy for a person to be taken advantage of, and be left without legal recourse.

Professor Nancy Polikoff, provides three additional reasons for including traditional surrogacy arrangements.

1. Genetics is not the only or the strongest basis for parentage. Professor Polikoff states, "...the only difference between a 'traditional' surrogate and a 'gestational' surrogate is genetics."
2. Gestational surrogacy costs far more than traditional surrogacy, pricing gestational surrogacy out of range for most people. The bill as is, would only apply to the richest among us.
3. The health of the woman who is the surrogate should be protected. Gestational surrogacy requires more intervention and associated medical risks than traditional surrogacy.

Professor Polikoff will detail those reasons in her testimony. I agree with her. You have done an outstanding job with the rest of the legislation, but you should include traditional surrogacy as well.

Professor Polikoff also proposes a 24-hour period in which the woman gestating the child has 24 hours after the birth of the child to assert parental status. I am neutral on this idea. However, if it is adopted, the intended parents must be re-compensated for all of their expenses related to the surrogacy, plus interest that they would have earned had they not engaged in the process. Their financial interests must be respected.

Sincerely,

Commissioner Bob Summersgill  
ANC 3F07  
3701 Connecticut Avenue, NW #139  
Washington, DC 20008  
202-341-0457

**TESTIMONY TO THE COMMITTEE ON JUDICIARY AND PUBLIC SAFETY  
ON BILL 20-32  
SUBMITTED FOR THE RECORD  
JUNE 20, 2013  
BY  
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Again I thank the Council for moving forward this very important legislation.



## THE NATIONAL CATHOLIC BIOETHICS CENTER

6399 Drexel Road, Philadelphia, PA 19151 Tel. 215-877-2660 Fax. 215-877-2688 [www.ncbcenter.org](http://www.ncbcenter.org)

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.<sup>1</sup>

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.<sup>2</sup>

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

<sup>1</sup>[http://www.uniformlaws.org/shared/docs/anatomical\\_gift/uaga\\_final\\_aug09.pdf](http://www.uniformlaws.org/shared/docs/anatomical_gift/uaga_final_aug09.pdf).

<sup>2</sup> "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.<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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

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

<sup>4</sup> DC Council, *Surrogacy Parenting Agreement Act of 2013*, Sec. 2(4):

<http://dcclims1.dccouncil.us/images/00001/20130110154659.pdf>.

<sup>5</sup> 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.

<sup>6</sup> *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.<sup>7</sup>

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.<sup>8</sup>

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.

<sup>7</sup> 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/>.

<sup>8</sup> 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.thecassidyfirm.com/Practice-Areas/After-Baby-M-The-Legal-Ethical-and-Social-Dimensions-of-Surrogacy.pdf>.

**Statement of Phillip L. Husband  
General Counsel, Department of Health**

**Before the**

**Committee on the Judiciary and Public Safety  
Tommy Wells, Chairperson**

**Bill 20-32, the Surrogacy Parenting Agreement Act of 2013**



**Office of the Attorney General  
for the District of Columbia**

**June 20, 2013**

**Room 412  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, D.C.**

## **Introduction**

Good morning Chairman Wells, Councilmembers, and staff. I am Phillip Husband, General Counsel of the Department of Health. On behalf of the Executive Branch, I am pleased to testify today on Bill 20-32, the Surrogacy Parenting Agreement Act of 2013. It is my understanding that the Committee has redrafted Bill 20-32 and renamed it the "Collaborative Reproduction Act of 2013." My comments today will reflect the provisions of the working draft, which we received on June 16. We understand the Committee will be further refining the bill and we would be pleased to work with the Committee after further changes are made to give review and suggestions.

Bill 20-32 would repeal the existing provision in D.C. Official Code § 16-402, which prohibits surrogate parenting in the District. In its place, it would substitute a new chapter 4 dealing with collaborative reproduction. Collaborative reproduction differs from traditional surrogate parenting in that it involves an arrangement whereby a woman carries a fertilized egg to term on behalf of one or two intended parents, as opposed to having one of her eggs fertilized and carrying it to term. The Executive supports generally the intention and purpose of Bill 20-32. However, we have the following substantive comments, based on our initial review of the working draft:

## Definitions

- The Committee should add a definition of “Ancillary expenses.” It could read: “(1) “Ancillary expenses” means expenses that a gestational carrier incurs because of Surrogacy and may include expenses for maternity clothes; legal and counseling; actual lost wages; childcare; housekeeping; insurance premiums; various intangible expenses associated with rise, inconvenience, forbearance, restriction from usual activities, and recovery; and travel expenses incurred during and directly related to a gestational carrier agreement or pregnancy.” If this language is used, the term “pregnancy” should be defined for the purposes of the section.
- The bill is inconsistent in its use of the words “parent,” “parents,” and “parent(s).” This should be made consistent, possibly by having the definitions of “parent” and “intended parent” include the plural. The term “parent(s)” should not be used.
- The term “collaborative reproduction” is vague and used inconsistently throughout the bill. The Committee should address this term.
- The definition of “egg” is unnecessary. The definition establishes the term’s regular meaning. The definitions of “genetic parent” and “parent” are also unnecessary for the same reason.
- Definitions of the terms “mental health professional” and “reproductive endocrinologist” are unnecessary. If the qualifications for these individuals are needed, they should be included in the substantive provisions of the bill.
- The definition of “parentage” is incorrect. This word suggests a relationship, not a court order. There is already a definition of “order of parentage” in the bill.
- The Committee should delete the definition of “parent-child relationship.” It is unnecessary and inconsistent with Title 16, Chapter 9.
- The definition of “partner or partnership” should be deleted. The term “domestic partner” should be used instead and the definition reference from other sections of the D.C. Official Code.



- The term “psychological evaluation” does not need a definition. The bill defines it according to its ordinary meaning.
- A separate definition of “medical expenses” is needed.
- The definitions of “traditional surrogate” or “traditional surrogacy arrangement” should be eliminated. The bill should spell out which arrangements are permitted and which prohibited. The policy reasons for prohibiting use of the surrogate’s ova for reproduction and allowing other forms of “collaborative reproduction” should be clarified.

#### Comments on specific sections

- New section 16-403 requires “substantial satisfaction” of certain requirements. We believe that full satisfaction should be required, unless there is a reason for something less. If so, it should be clear what constitutes substantial satisfaction.
- In new section 16-404, the text does not seem to match the subsection headings, and the headings should be deleted. The provisions relate to parentage, not to donor or gestational carrier agreements.
- The text of new section 404(b) should be eliminated and replaced with the following: “(b) If an intended parent uses donor sperm, a donor egg, or a donor embryo to conceive a child through collaborative reproduction, the intended parent shall be the legal parent of the child and have all the rights and obligations of parentage with respect to the child. The child shall have all the rights of a parent-child relationship with the intended parent, including the rights of inheritance, from the moment of birth. Neither the donor nor his or her domestic partner or spouse, if any, shall be a parent of a child conceived through collaborative reproduction or have any rights or obligations with respect to the child.
- In new section 16-405 it is questionable whether the jurisdictional ground of having the embryo transfer occur in the District is appropriate. Generally, birth certificates are issued according to the law of the state in which the child is born. Conflicting requirements could occur.

- New section 16-405 is drafted to suggest that both intended parents must be domiciled in the District. It is not clear whether this was the Committee's intent and should be clarified.
- New section 16-405 is also problematic in that it sets out a process for the issuance of an order of parentage that appears to be almost perfunctory or ministerial. There may be cases where a party to a gestational carrier agreement has a basis for challenging the agreement. The court should not be required to issue a parentage order with these issues unresolved. New section 16-413 contains a requirement that the agreement contain a provision for alternative dispute resolution. This should be in the section that establishes the requirements for these contracts, and how the dispute resolution process relates to the order of parentage should be spelled out.
- The provision in new section 16-405 that requires judges to issue a parentage order within a reasonable time is vague and does not add much. We recommend that it be eliminated.
- The provision in new section 16-405(e) conflicts with the requirements for sealing contained in the Vital Records Act, which should be followed. If they are, it will be the intended parents who are entitled to request sealing.
- Subsections (f) and (g) of new section 16-405 are unnecessary. If legal parentage is established, it must be recognized. Further, subsection (g) should be revised to delete the requirements for the Vital Records Division and accomplish its objectives through amendments to the Vital Records Act.
- New section 16-405(h) should be eliminated. Judgments of parentage are already given full faith and credit. The rest of the subsection would be better accomplished by an amendment to D.C. Official Code § 16-909.02.
- The requirement in new section 16-407 that requires a gestational carrier to be a woman could cause issues in cases involving a transgender gestational carrier whose gender is male but is anatomically female. The Committee should consider this issue.
- Also in new section 16-407, the requirement of independent attorneys for the parties should be moved to the section addressing gestational carrier agreements.

- New section 16-407(b)(5) is unclear as to whether costs can be assigned to all parties depending on who is responsible for the failure of the contract. As drafted, it appears that only the intended parents are entitled to receive costs.
- New section 16-407 refers to the requirements of the section, but the section has no requirements, only eligibility factors. This language in the lead-in language to subsection (a) should be deleted and the section redrafted.
- New section 16-408(a)(2) is unclear. It is not clear what is required for authentication and it is not clear whether the requirement for two witnesses applies to the notarization or authentication or is an alternative means for verifying the signatures.
- In new section 16-408(b)(3), it is not clear what it means to maintain clinical management of one's body.
- The provisions of new section 16-408(c) are problematic. As noted above, there may be situations where a gestational carrier may have a valid reason for challenging the agreement. This provision would waive those rights.
- New section 16-408(b)(4) states that a distribution may not be made upon the direction of any single party to the agreement, but does not specify how distributions should be authorized. This should be corrected.
- The basis for a refusal to accept custody of the child could be that the child turns out to be a different race or gender than anticipated. The drafters should consider whether to add language that directly addresses this issue.
- New section 16-409 relates to the dissolution of a marriage or relationship or partnership. These terms are vague – for example, when does a relationship become a partnership? These provisions should be limited to marriages and formal domestic partnerships. Allowing a friend of an intended parent to add his or her name to the agreement also seems to be a mechanism for avoiding the adoption process. The Committee should thoroughly review these policy issues and the language revised to ensure that the subsequent spouse of the intended parent does not automatically become a legal parent.

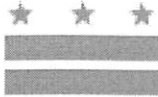
- With respect to the same above section, it is not clear why the spouse or domestic partner of an intended parent should be included by addendum.
- In new section 16-409(d)(C), it is questionable whether divorced parents should be required to parent together a child born by assisted reproduction. It may be better to require a provision in the agreement addressing this possibility. In addition, it is not clear how an embryo transfer could occur without all parties. If it could, it seems unreasonable to allow the agreement to continue if a gestational carrier proceeds with the transfer without the intended parents' consent.
- New section 16-410 describes the rights of intended parents in the event of death. It is not clear why the bill would assign parental rights and obligations to a dead person, except possibly for inheritance purposes. The Committee should consider whether this relationship depends on the dead parent's contribution of genetic material.
- Withdrawals of consent specified in new section 16-411 should be handled more comprehensively and should include notice to the court that approved the original agreement. As drafted, it is unclear how costs will be assessed and the type of writing that is required to effectuate a withdrawal. In addition, if a withdrawal provision must be included in the agreement, this should be stated in the section governing these agreements.
- New section 16-412 provides that if there is no parentage order, the parentage of the child shall be governed by District law. However, it is not clear that current parentage law governs or was intended to govern parentage under these circumstances. If parentage by biology or some other method should be determinative, this should be directly stated. For example, a child born to a gestational carrier who is married, would be the presumed child of the gestational carrier's husband, which does not seem to be intended. There are other problematic variations.
- New section 16-413 requires a provision in the gestational carrier agreement that requires alternative dispute resolution where reasonable under the circumstances. As noted above, this should be reconciled with the process for obtaining and order of parentage. In addition, it is not clear what "reasonable under the circumstances" means.

- New section 16-414 should be deleted. There is no such thing as a “temporary birth certificate” and the Vital Records Act controls the issuance of birth certificates. The objectives of this proposed section should be accomplished by amendments to the Vital Records Act. In addition, the term “foreign jurisdiction” should include other states.
- The conforming amendments section in Title II is not complete. Amendments should include changes to Title 16, Chapter 9, which governs parentage, and changes to the Vital Records Act to update the process for issuing birth certificates.

In addition to the above-mentioned substantive concerns, there are a number of technical drafting issues the Committee should address. I will not address the technical issues at this time since the Committee is continuing to revise the working draft. I hope these comments are useful to you as the Committee continues to revise Bill 20-32. Thank you for the opportunity to testify. I am happy to answer any questions that you may have.

## ATTACHMENT F

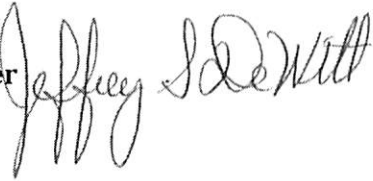
Government of the District of Columbia  
Office of the Chief Financial Officer



Jeffrey S. DeWitt  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Jeffrey S. DeWitt  
Chief Financial Officer 

**DATE:** November 30, 2016

**SUBJECT:** Fiscal Impact Statement – Collaborative Reproduction Amendment Act of 2016

**REFERENCE:** Bill 21-16, Committee Print as shared with the Office of Revenue Analysis on November 18, 2016

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**Conclusion**

Funds are sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill.

**Background**

The bill authorizes<sup>1</sup> District of Columbia residents to enter into surrogacy agreements<sup>2</sup> for the purpose of facilitating collaborative reproduction.<sup>3</sup> Children born by gestational surrogates<sup>4</sup> and traditional surrogates<sup>5</sup> must be the children of an intended parent,<sup>6</sup> regardless of whether the

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<sup>1</sup> By amending Chapter 4 of Title 16 of the District of Columbia Official Code.

<sup>2</sup> A surrogacy agreement is a written contract between a surrogate, the surrogate's spouse or domestic partner, if any, and the intended parent or parents, pursuant to which the intended parent or parents shall be the parent or parents of the child.

<sup>3</sup> Collaborative reproduction is assisted reproduction that involves a surrogate or a donor and an intended parent or parents. The term does not include the birth of a child conceived by means of sexual intercourse, or the birth of a child conceived through assisted reproduction by an individual or couple who use their own gametes and intend to gestate and parent the child themselves.

<sup>4</sup> A gestational surrogate is an individual who is not the intended parent or donor and who agrees to become pregnant, gestate, and deliver, through collaborative reproduction, the intended parent's child on behalf of the intended parent.

<sup>5</sup> A traditional surrogate is an individual who is not the intended parent and who agrees to serve as a donor of their own egg to become pregnant, gestate, and deliver, through collaborative reproduction, the intended parent's child on behalf of the intended parent.

intended parent has a genetic relationship to a child. Both gestational and traditional surrogates and their spouse or domestic partner will not have corollary rights or obligations with respect to the child and will not be the child's parent or parents.

Petitions for parentage for an intended parent to a gestational or traditional surrogacy agreement may be filed with the Superior Court of the District of Columbia (Court) as long as the intended parent and surrogate have been legal residents of the District for at least one year and the child is born in the District. The petition for parentage must include:

- An affidavit by the medical professional who performed the embryo transfer<sup>7</sup> or the intrauterine or intracervical insemination<sup>8</sup> attesting to the facts pertaining to the creation of an embryo or insemination;
- A copy of the executed surrogacy agreement; and
- An affidavit for each attorney representing a party that includes the party's identities and terms of the agreement.

The Court must issue a sealed court order within 48 hours of a child's birth. The order must declare that the intended parents are the sole legal parents of the child. The Court must require the Registrar of Vital Records to issue a birth certificate naming the intended parents as the sole parents.

In order to enter into surrogacy agreements, surrogates must be 21 years of age, must have given birth to at least one live child, must undergo a medical evaluation, must complete a mental health evaluation, and must complete a joint mental health consultation with the intended parent. Intended parents must be 21 years of age, must guarantee payment of all reasonable medical expenses, and must complete a joint mental health consultation with the surrogate.

Surrogacy agreements must:

- Be in writing and executed by the surrogate and the surrogate's spouse or domestic partner, and the intended parent or parents;
- Be executed prior to the embryo transfer or insemination;
- Include an affirmation by all parties that they have read the agreement;
- Include an affirmation that a surrogate and the surrogate's spouse or domestic partner:
  - Acknowledge and agree that the surrogate and the surrogate's spouse or domestic partner are not the parents of the child;
  - Agree to surrender physical custody of the child to the intended parent or parents immediately after the child's birth;
  - Agree that at all times during the pregnancy and until delivery, regardless of whether the court has issued an order of parentage, the surrogate shall maintain control over her body;
  - Agree to cooperate in any necessary legal proceedings to recognize the intended parent or parents as the legal parent or parents; and,

---

<sup>6</sup> Intended parent is an individual, married or unmarried, who manifests the intent to be legally bound as the parent of a child.

<sup>7</sup> Embryo transfer is a medical procedure of transferring an embryo to a uterus.

<sup>8</sup> Intracervical insemination is a fertility treatment that involves the placing of sperm inside a vagina to facilitate fertilization. Intrauterine insemination means the fertility treatment that involves the placing of sperm inside a uterus to facilitate fertilization.



- Agree to all terms mutually negotiated and agreed upon by the surrogate, the surrogate's spouse or domestic partner, and the intended parent or parents;
- Include an affirmation that an intended parent or parents:
  - Accept physical custody of the child immediately after the child's birth, regardless of number of children, gender, or mental or physical condition; and
  - Assume sole responsibility for the support of the child immediately upon the child's birth;
- Provide that the intended parent or parents shall assume the costs of all agreed upon reasonable medical and ancillary expenses;
- Allocate responsibility for the assumption of costs in the event of termination of the pregnancy, termination of the contract, or breach of the contract by any party;
- Provide procedures for dispute resolution; and
- Be notarized before a minimum of two witnesses.

The bill specifies that if a surrogate or the intended parent wishes to withdraw consent, the withdrawal must be prior to successful insemination or embryo transfer, must be in writing, and must be delivered to all parties involved included the court that approved the agreement.

### **Financial Plan Impact**

Funds are sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill. Surrogacy agreements are executed between private parties so no additional resources are required to implement the bill.

## **ATTACHMENT G**



**OFFICE OF THE GENERAL COUNSEL**

Council of the District of Columbia  
1350 Pennsylvania Avenue NW, Suite 4  
Washington, DC 20004  
(202) 724-8026

**MEMORANDUM**

**TO: Councilmember Kenyan McDuffie**

**FROM: Ellen Efros, General Counsel** *EAF*

**DATE: November 30, 2016**

**RE: Legal sufficiency determination for Bill 21-16, the Collaborative Reproduction Amendment Act of 2016**

---

This measure is legally and technically sufficient for Council consideration.

This bill:

- (1) Provides that a surrogacy agreement is enforceable;
- (2) Establishes requirements for a surrogate, as well as the intended parent or parents;
- (3) Outlines the contents and requirements of an enforceable surrogacy agreement;
- (4) Provides that the intended parent or parents of a child born by a surrogate are deemed the parent or parents of the child and have all rights associated with parentage;
- (5) Authorizes the intended parent or parents or the surrogate to file a petition for parentage at any time after the confirmation of the pregnancy; and
- (6) Provides for the withdrawal of consent to collaborative reproduction by the intended parent or parents or the surrogate.

I am available if you have any questions.

## ATTACHMENT H

**Section 101**

**Chapter 4. ~~Surrogate Parenting Contracts~~ Collaborative Reproduction.**

**16-401. Definitions.**

**16-402. Prohibitions and penalties [Repealed].**

**16-403. Collaborative reproduction authorized.**

**16-404. Surrogacy agreements authorized.**

**16-405. Requirements of surrogates and intended parents.**

**16-406. Contents of surrogacy agreements.**

**16-407. Parentage in collaborative reproduction.**

**16-408. Court order of parentage.**

**16-409. Effect of subsequent marriage or domestic partnership or dissolution of marriage or domestic partnership.**

**16-410. Effect of death of intended parent.**

**16-411. Effect of withdrawal of consent.**

**D.C. Official Code § 16-401. Definitions.**

~~For the purposes of this chapter, the term:~~

~~—— (1) "Artificial insemination" means the process by which a man's fresh or frozen sperm sample is introduced into a woman's vagina, other than by sexual intercourse, under the supervision of a physician.~~

~~—— (2) "District" means the District of Columbia.~~

~~—— (3) "In vitro fertilization" means a procedure in which an ovum is surgically removed from a genetic mother's ovary and fertilized with the sperm of the genetic father in a laboratory procedure, with the resulting embryo implanted in the uterus of a birth mother.~~

~~—— (4) "Surrogate parenting contract" means any agreement, oral or written, in which:~~

~~—— (A) A woman agrees either to be artificially inseminated with the sperm of a man who is not her husband, or to be impregnated with an embryo that is the product of an ovum fertilization with the sperm of a man who is not her husband; and~~

~~—— (B) A woman agrees to, or intends to, relinquish all parental rights and responsibilities and to consent to the adoption of a child born as a result of insemination or in vitro fertilization as provided in this chapter.~~

For the purposes of this chapter, the term:

(1) "Ancillary expenses" means those expenses that a surrogate incurs due to the surrogacy, including legal and counseling expenses; actual lost wages; compensation for risk, inconvenience, forbearance, or restriction from usual activities; insurance premiums; expenses associated with recovery; childcare expenses; housekeeping expenses; birthing classes; nutritional expenses;

maternity clothing; and travel expenses incurred during the pregnancy and directly related to the surrogacy.

(2) “Assisted reproduction” or “assisted reproductive technology” means the treatments or procedures that include handling both eggs and sperm and embryos by a medical professional for the purpose of establishing a pregnancy.

(3) “Assisted reproduction center” means the medical facility that performs the medical procedures related to collaborative reproduction.

(4) “Child” means a child who is born as the result of collaborative reproduction.

(5) “Collaborative reproduction” means assisted reproduction that involves a surrogate or a donor and an intended parent or parents. The term “collaborative reproduction” does not include the birth of a child conceived by means of sexual intercourse, or the birth of a child conceived through assisted reproduction by an individual or couple who use their own gametes and intend to gestate and parent the child themselves.

(6) “Domestic partner” shall have the same meaning as provided in section 2(3) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3)).

(7) “Domestic partnership” shall have the same meaning as provided in section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)).

(8) “Donor” means a person other than an intended parent who contributes gametes or embryos for use in collaborative reproduction, including a traditional surrogate.

(9) “Embryo” means one or more fertilized eggs prior to week 8 of a pregnancy.

(10) “Embryo transfer” means the medical procedure of transferring an embryo to a uterus.

(11) “Fertilization” means a multi-step process that results in the formation of a zygote by the union of a sperm and an egg.

(12) “Fetus” means an embryo that has developed during the period of gestation between 8 weeks and the birth of the child.

(13) “Gamete” means a male (sperm) or female (egg) human reproductive cell.

(14) “Gestational surrogate” means an individual who is not the intended parent, who has not provided the egg used to form any embryo that is transferred to the gestational surrogate’s uterus, and who agrees to become pregnant, gestate, and deliver, through collaborative reproduction, the intended parent’s child on behalf of the intended parent.

(15) “Insemination” means either intracervical insemination – the fertility treatment that involves the placing of sperm inside a vagina to facilitate fertilization – or intrauterine insemination – the fertility treatment that involves the placing of sperm inside a uterus to facilitate fertilization. The term “insemination” does not include the placement of sperm inside the vagina through sexual intercourse.

(16) “Intended parent” means an individual, married or unmarried, who manifests the intent in a written agreement to be legally bound as the parent of a child.

(17) “Medical evaluation” means an evaluation and consultation by a medical professional.

(18) “Medical expenses” means those expenses, not otherwise covered by medical insurance, that a surrogate incurs due to the medical effects of surrogacy, including expenses directly related to the pregnancy and expenses related to complications or other medical issues arising from the pregnancy.

(19) “Order of parentage” means a judgment by a court of competent jurisdiction in which the parent of a child is declared.

(20) "Parent" means an individual who is legally recognized to have all rights provided under District law with respect to a child.

(21) "Surrogate" means an individual who is not the intended parent and does not intend to parent the child, but who agrees to become pregnant on behalf of an intended parent through collaborative reproduction with the intention of gestating and delivering the intended parent's child. The term "surrogate" includes a gestational and traditional surrogate.

(22) "Surrogacy agreement" means a written contract between a surrogate, the surrogate's spouse or domestic partner, if any, and the intended parent or parents, pursuant to which the intended parent or parents shall be recognized as the parent or parents of the child.

(23) "Traditional surrogate" means an individual who is not the intended parent and does not intend to parent the child, but who agrees to donate their own egg and to become pregnant, gestate, and deliver, through collaborative reproduction, the intended parent's child on behalf of the intended parent.

(24) "Zygote" means a single cell resulting from fertilization of an egg by sperm.

#### **D.C. Official Code § 16-402. Prohibitions and penalties.**

~~(a) Surrogate parenting contracts are prohibited and rendered unenforceable in the District.~~

~~(b) Any person or entity who or which is involved in, or induces, arranges, or otherwise assists in the formation of a surrogate parenting contract for a fee, compensation, or other remuneration, or otherwise violates this section, shall be subject to a civil penalty not to exceed \$ 10,000 or imprisonment for not more than 1 year, or both.~~

#### § 16-403. Collaborative reproduction authorized.

An intended parent or parents shall be recognized as the parent or parents of a child; provided, that the surrogate and the intended parent or parents comply with the requirements of this chapter.

#### § 16-404. Surrogacy agreements authorized.

A surrogacy agreement shall be enforceable provided that all parties to the agreement and the agreement itself meet the requirements of § 16-405 and § 16-406.

#### § 16-405. Requirements of surrogates and intended parents.

(a) An individual seeking to serve as a surrogate shall enter into a written surrogacy agreement and, at the time that the surrogacy agreement is executed, shall:

(1) Be at least 21 years of age;

(2) Have given birth to at least one live child;

(3) Have undergone a medical evaluation in which the individual was approved to serve as a surrogate;

(4) Have completed a mental health evaluation by a mental health professional in which the individual was approved to serve as a surrogate; provided, that the mental health professional has received specialized training in, or has a practice that includes a specialty in, collaborative reproduction; and

(5) Have completed, with the intended parent or parents, a joint consultation with a mental health professional regarding issues that could arise during the surrogacy.

(b)(1) An individual or individuals seeking to become an intended parent or parents shall enter into a written surrogacy agreement and, at the time the surrogacy agreement is executed, shall:

(A) Be at least 21 years of age; and

(B) Have completed, with the surrogate, a joint consultation with a mental health professional regarding issues that could arise during the surrogacy.

(2) In an individual or individuals is married or in a domestic partnership, both parties to the marriage or domestic partnership must satisfy the requirements of this subsection.

#### § 16-406. Contents of surrogacy agreements.

(a) An enforceable surrogacy agreement shall:

(1) Be in writing and executed by the surrogate and the surrogate's spouse or domestic partner, if any, and the intended parent or parents;

(2) Be executed prior to the embryo transfer or insemination;

(3) Include an affirmation by all parties that they have independent legal counsel, and have read the surrogacy agreement and this chapter and understand the requirements of both;

(4) Include an affirmation by the surrogate and the surrogate's spouse or domestic partner that the surrogate and the surrogate's spouse or domestic partner:

(A) Acknowledge and agree that the surrogate and the surrogate's spouse or domestic partner are not and shall not be the parents of the child;

(B) Agree to surrender physical custody of the child to the intended parent or parents immediately after the child's birth;

(C) Agree that at all times during the pregnancy and until delivery, regardless of whether the court has issued an order of parentage, the surrogate shall maintain control and decision making authority over the surrogate's body;

(D) Agree to cooperate in any necessary legal proceedings to recognize the intended parent or parents as the legal parent or parents or any other proceeding related to the surrogacy agreement; and

(E) Agree to all other terms, consistent with this chapter and as mutually negotiated and agreed upon by the surrogate, the surrogate's spouse or domestic partner, and the intended parent or parents;

(5) Include an affirmation by the intended parent or parents that the parent or parents shall:

(A) Accept physical custody of the child immediately after the child's birth, regardless of the child's gender, or mental or physical condition, or the number of children; and

(B) Assume sole responsibility for the support of the child immediately after the child's birth, including paying for any funeral expenses if a stillbirth, preterm birth, or any other birth issue occurs that results in the child's death;

(6) Provide that the intended parent or parents shall assume the costs of all agreed upon reasonable medical and ancillary expenses;

(7) Allocate responsibility for the assumption of costs in the event of termination of the pregnancy, termination of the contract, or breach of the contract by any party;

(8) Provide procedures for dispute resolution; and



(9) Be notarized or signed before a minimum of 2 witnesses who shall document their names, addresses, and phone numbers.

(b) The surrogate and the surrogate's spouse or domestic partner, if any, and the intended parent or parents shall be represented by independent counsel in the preparation, counseling, and negotiation of the surrogacy agreement. Nothing in this provision shall prevent the intended parent or parents from assuming the costs of the surrogate's legal fees.

(c) A surrogacy agreement may not limit the right of the surrogate to make decisions to safeguard the surrogate's health or that of the embryo or fetus.

(d) Payment of reasonable medical and ancillary expenses shall be made by one or more of the following means:

(1) Insurance;

(2) Cash;

(3) Escrow;

(4) Or other arrangements satisfactory to the parties, pursuant to the terms of the surrogacy agreement.

(e) Any dispute related to a surrogacy agreement shall be resolved by the terms set forth in the surrogacy agreement.

#### § 16-407. Parentage in collaborative reproduction.

(a)(1) In the case of a child born by a gestational surrogate, an intended parent or parents shall be the parent or parents of the child and have all rights under District law, regardless of whether the intended parent or parents has a genetic relationship to the child.

(2) The child shall have all rights, powers, privileges, immunities, duties, and obligations existing under law between a parent and child with the intended parent or parents, including the rights of inheritance.

(3) A gestational surrogate and the gestational surrogate's spouse or domestic partner, if any, shall not be the parent or parents of the child, and shall not have any rights, powers, privileges, immunities, duties, or obligations with respect to the child.

(4) A gamete or embryo donor who is not an intended parent and that donor's spouse or domestic partner, if any, shall not be the parent or parents of the child, and shall not have any rights, powers, privileges, immunities, duties, or obligations with respect to the child. For purposes of this paragraph, a traditional surrogate is not a donor.

(b)(1) In the case of a child born by a traditional surrogate, an intended parent or parents shall be the parent or parents of the child and have all rights under District law, regardless of whether the intended parent or parents has a genetic relationship to the child.

(2) The child shall have all rights, powers, privileges, immunities, duties, and obligations existing under law between a parent and child with the intended parent or parents, including the rights of inheritance.

(3) A traditional surrogate and the traditional surrogate's spouse or domestic partner, if any, shall not be the parent or parents of the child, and shall not have any rights, powers, privileges, immunities, duties, or obligations with respect to the child.

(4) A gamete donor who is not an intended parent and that donor's spouse or domestic partner, if any, shall not be the parent or parents of the child, and shall not have any rights, powers, privileges, immunities, duties, or obligations with respect to the child.

§ 16-408. Court order of parentage.

(a) A petition for parentage for the intended parent or parents of a child may be filed by the intended parent or parents or the surrogate in the Superior Court of the District of Columbia at any time after confirmation of the pregnancy.

(b) The Superior Court of the District of Columbia will have jurisdiction over a petition filed under subsection (a) of this section if the court determines that:

(1) The intended parent or parents or the surrogate is a legal resident of the District;

(2) The intended parent or parents or the surrogate has actually resided in the District for at least one year preceding the filing of the petition; or

(3) The child was born in the District.

(c) A petition for parentage shall include:

(1) An affidavit by the medical professional who oversaw the embryo transfer or insemination attesting to the facts pertaining to the creation of the embryo and the embryo transfer or insemination, if applicable;

(2) A copy of the executed surrogacy agreement;

(3) An affidavit by each party attesting to each party's identity and that no other proceedings exist which could affect the current proceedings; and

(4) An affidavit by an attorney representing each party, attesting:

(A) That the attorney did not represent both the intended parent or parents and the surrogate and the surrogate's spouse or domestic partner, if any; and

(B) That the terms of the surrogacy agreement comply with the requirements of this chapter.

(d) The order of parentage issued under this section shall:

(1) Declare the intended parent or parents to be the parent or parents of the child;

(2)(A) Direct the Registrar of Vital Records to issue the certificate of birth naming the intended parent or parents as the parent or parents.

(B) If the intended parent or parents are named on the certificate of birth after the child's discharge from the hospital, direct:

(i) The Registrar to substitute the new certificate of birth for the original certificate of birth, naming the intended parent or parents as the parent or parents.

(ii) That when a new certificate of birth is issued, the original certificate of birth shall be sealed from inspection; and

(3) Declare that the surrogate and the surrogate's spouse or domestic partner, if any, are not the legal parents of the child.

(e)(1)(A) In the case of a child born by a gestational surrogate, the court may issue an order of parentage for the child at any time after a petition for parentage has been filed. The order of parentage shall be effective upon the birth of the child.

(B) If the order of parentage is not issued before the birth of the child, the court shall issue the order as soon as possible after the birth, but no later than 45 days after the birth.

(2) In the case of a child born by a traditional surrogate, the court shall issue an order of parentage for the child no less than 48 hours and no more than 45 days after the birth of the child.

(f) An order of parentage issued under this section shall be sealed to protect the privacy of the parties and the child.

§ 16-409. Effect of subsequent marriage or domestic partnership or dissolution of marriage or domestic partnership.

A subsequent marriage or domestic partnership or dissolution thereof for either the surrogate or the intended parent or parents shall have no bearing on the validity of the surrogacy agreement or the child's parentage.

§ 16-410. Effect of death of intended parent.

If an intended parent dies after a successful insemination or embryo transfer, the surviving spouse or domestic partner shall assume all obligations with respect to the surrogacy agreement, and both will be considered the parents of the child.

§ 16-411. Effect of withdrawal of consent.

Either the surrogate or the intended parent or parents may withdraw consent to collaborative reproduction. Such withdrawal must be:

- (1) In accordance with the terms of the surrogacy agreement;
- (2) In writing;
- (3) Delivered to:

(A) All parties to the surrogacy agreement and, if applicable, to the assisted reproduction center by certified mail with receipt acknowledged by the parties or by hand delivery with a witness to each hand delivery; and

(B) The Superior Court of the District of Columbia, if an order or parentage has been issued; and

(4) In the case of a child born by a traditional surrogate, within 48 hours after the birth of the child.

**Section 201**

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to carry out the purposes of this act.

## **ATTACHMENT I**

1 Committee Print  
2 Committee on the Judiciary  
3 B21-0016  
4 November 30, 2016  
5  
6

7 A BILL

8  
9 B21-0016  
10

11  
12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
13  
14  
15

16 To amend Chapter 4 of Title 16 of the District of Columbia Official Code to permit collaborative  
17 reproduction and surrogacy agreements, establish requirements for surrogates, intended  
18 parents, and the contents of surrogacy agreements, establish parentage of a child, provide  
19 for court orders of parentage, and establish the effect of a subsequent marriage or  
20 domestic partnership, dissolution of a marriage or domestic partnership, death of an  
21 intended parent, and withdrawal of consent.  
22

23 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
24 act may be cited as the “Collaborative Reproduction Amendment Act of 2016”.  
25

26 TITLE I – COLLABORATIVE REPRODUCTION.

27 Sec. 101. Chapter 4 of Title 16 of the District of Columbia Official Code is amended as  
28 follows:

29 (a) The chapter name is amended to read as follows:

30 “Chapter 4. Collaborative Reproduction.”.

31 (b) The table of contents is amended by adding new section designations to read as  
32 follows:

33 “16-401. Definitions.

34 “16-402. Prohibitions and penalties. [Repealed].

35 “16-403. Collaborative reproduction authorized.

36 “16-404. Surrogacy agreements authorized.

37 “16-405. Requirements of surrogates and intended parents.

38 “16-406. Contents of surrogacy agreements.

39 “16-407. Parentage in collaborative reproduction.

40 “16-408. Court order of parentage.

41 “16-409. Effect of subsequent marriage or domestic partnership or dissolution of  
42 marriage or domestic partnership.

43 “16-410. Effect of death of intended parent.

44 “16-411. Effect of withdrawal of consent.”.

45 (c) Section § 16-401 is amended to read as follows:

46 “§ 16-401. Definitions.

47 “For the purposes of this chapter, the term:

48 “(1) “Ancillary expenses” means those expenses that a surrogate incurs due to the  
49 surrogacy, including legal and counseling expenses; actual lost wages; compensation for risk,  
50 inconvenience, forbearance, or restriction from usual activities; insurance premiums; expenses  
51 associated with recovery; childcare expenses; housekeeping expenses; birthing classes;  
52 nutritional expenses; maternity clothing; and travel expenses incurred during the pregnancy and  
53 directly related to the surrogacy.

54 “(2) “Assisted reproduction” or “assisted reproductive technology” means the  
55 treatments or procedures that include handling both eggs and sperm and embryos by a medical  
56 professional for the purpose of establishing a pregnancy.

57 “(3) “Assisted reproduction center” means the medical facility that performs the  
58 medical procedures related to collaborative reproduction.

59 “(4) “Child” means a child who is born as the result of collaborative reproduction.

60           “(5) “Collaborative reproduction” means assisted reproduction that involves a  
61 surrogate or a donor and an intended parent or parents. The term “collaborative reproduction”  
62 does not include the birth of a child conceived by means of sexual intercourse, or the birth of a  
63 child conceived through assisted reproduction by an individual or couple who use their own  
64 gametes and intend to gestate and parent the child themselves.

65           “(6) “Domestic partner” shall have the same meaning as provided in section 2(3)  
66 of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114;  
67 D.C. Official Code § 32-701(3)).

68           “(7) “Domestic partnership” shall have the same meaning as provided in section  
69 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-  
70 114; D.C. Official Code § 32-701(4)).

71           “(8) “Donor” means a person other than an intended parent who contributes  
72 gametes or embryos for use in collaborative reproduction, including a traditional surrogate.

73           “(9) “Embryo” means one or more fertilized eggs prior to week 8 of a pregnancy.

74           “(10) “Embryo transfer” means the medical procedure of transferring an embryo  
75 to a uterus.

76           “(11) “Fertilization” means a multi-step process that results in the formation of a  
77 zygote by the union of a sperm and an egg.

78           “(12) “Fetus” means an embryo that has developed during the period of gestation  
79 between 8 weeks and the birth of the child.

80           “(13) “Gamete” means a male (sperm) or female (egg) human reproductive cell.

81           “(14) “Gestational surrogate” means an individual who is not the intended parent,  
82 who has not provided the egg used to form any embryo that is transferred to the gestational

surrogate's uterus, and who agrees to become pregnant, gestate, and deliver, through collaborative reproduction, the intended parent's child on behalf of the intended parent.

“(15) “Insemination” means either intracervical insemination – the fertility treatment that involves the placing of sperm inside a vagina to facilitate fertilization – or intrauterine insemination – the fertility treatment that involves the placing of sperm inside a uterus to facilitate fertilization. The term “insemination” does not include the placement of sperm inside the vagina through sexual intercourse.

“(16) “Intended parent” means an individual, married or unmarried, who manifests the intent in a written agreement to be legally bound as the parent of a child.

“(17) “Medical evaluation” means an evaluation and consultation by a medical professional.

“(18) “Medical expenses” means those expenses, not otherwise covered by medical insurance, that a surrogate incurs due to the medical effects of surrogacy, including expenses directly related to the pregnancy and expenses related to complications or other medical issues arising from the pregnancy.

“(19) “Order of parentage” means a judgment by a court of competent jurisdiction in which the parent of a child is declared.

“(20) “Parent” means an individual who is legally recognized to have all rights provided under District law with respect to a child.

“(21) “Surrogate” means an individual who is not the intended parent and does not intend to parent the child, but who agrees to become pregnant on behalf of an intended parent through collaborative reproduction with the intention of gestating and delivering the intended parent's child. The term “surrogate” includes a gestational and traditional surrogate.



106                   “(22) “Surrogacy agreement” means a written contract between a surrogate, the  
107 surrogate’s spouse or domestic partner, if any, and the intended parent or parents, pursuant to  
108 which the intended parent or parents shall be recognized as the parent or parents of the child.

109                   “(23) “Traditional surrogate” means an individual who is not the intended parent  
110 and does not intend to parent the child, but who agrees to donate their own egg and to become  
111 pregnant, gestate, and deliver, through collaborative reproduction, the intended parent’s child on  
112 behalf of the intended parent.

113                   “(24) “Zygote” means a single cell resulting from fertilization of an egg by  
114 sperm.”.

115           (d) Section 16-402 is repealed.

116           (e) New sections 16-403 through 16-411 are added to read as follows:

117           “§ 16-403. Collaborative reproduction authorized.

118           “An intended parent or parents shall be recognized as the parent or parents of a child;  
119 provided, that the surrogate and the intended parent or parents comply with the requirements of  
120 this chapter.

121           “§ 16-404. Surrogacy agreements authorized.

122           “A surrogacy agreement shall be enforceable provided that all parties to the agreement  
123 and the agreement itself meet the requirements of § 16-405 and § 16-406.

124           “§ 16-405. Requirements of surrogates and intended parents.

125           “(a) An individual seeking to serve as a surrogate shall enter into a written surrogacy  
126 agreement and, at the time that the surrogacy agreement is executed, shall:

127                   “(1) Be at least 21 years of age;

128                   “(2) Have given birth to at least one live child;

129                   “(3) Have undergone a medical evaluation in which the individual was approved to  
130 serve as a surrogate;

131                   “(4) Have completed a mental health evaluation by a mental health professional in  
132 which the individual was approved to serve as a surrogate; provided, that the mental health  
133 professional has received specialized training in, or has a practice that includes a specialty in,  
134 collaborative reproduction; and

135                   “(5) Have completed, with the intended parent or parents, a joint consultation with  
136 a mental health professional regarding issues that could arise during the surrogacy.

137                   “(b)(1) An individual or individuals seeking to become an intended parent or parents  
138 shall enter into a written surrogacy agreement and, at the time the surrogacy agreement is  
139 executed, shall:

140                                 “(A) Be at least 21 years of age; and

141                                 “(B) Have completed, with the surrogate, a joint consultation with a  
142 mental health professional regarding issues that could arise during the surrogacy.

143                   “(2) In an individual or individuals is married or in a domestic partnership, both  
144 parties to the marriage or domestic partnership must satisfy the requirements of this subsection.

145                   “§ 16-406. Contents of surrogacy agreements.

146                   “(a) An enforceable surrogacy agreement shall:

147                                 “(1) Be in writing and executed by the surrogate and the surrogate’s spouse or  
148 domestic partner, if any, and the intended parent or parents;

149                                 “(2) Be executed prior to the embryo transfer or insemination;

150                                 “(3) Include an affirmation by all parties that they have independent legal counsel,  
151 and have read the surrogacy agreement and this chapter and understand the requirements of both;

152                   “(4) Include an affirmation by the surrogate and the surrogate’s spouse or  
153 domestic partner that the surrogate and the surrogate’s spouse or domestic partner:

154                   “(A) Acknowledge and agree that the surrogate and the surrogate’s spouse  
155 or domestic partner are not and shall not be the parents of the child;

156                   “(B) Agree to surrender physical custody of the child to the intended  
157 parent or parents immediately after the child’s birth;

158                   “(C) Agree that at all times during the pregnancy and until delivery,  
159 regardless of whether the court has issued an order of parentage, the surrogate shall maintain  
160 control and decision making authority over the surrogate’s body;

161                   “(D) Agree to cooperate in any necessary legal proceedings to recognize  
162 the intended parent or parents as the legal parent or parents or any other proceeding related to the  
163 surrogacy agreement; and

164                   “(E) Agree to all other terms, consistent with this chapter and as mutually  
165 negotiated and agreed upon by the surrogate, the surrogate’s spouse or domestic partner, and the  
166 intended parent or parents;

167                   “(5) Include an affirmation by the intended parent or parents that the parent or  
168 parents shall:

169                   “(A) Accept physical custody of the child immediately after the child’s  
170 birth, regardless of the child’s gender, or mental or physical condition, or the number of children;  
171 and

172                   “(B) Assume sole responsibility for the support of the child immediately  
173 after the child’s birth, including paying for any funeral expenses if a stillbirth, preterm birth, or  
174 any other birth issue occurs that results in the child’s death;

175                   “(6) Provide that the intended parent or parents shall assume the costs of all  
176 agreed upon reasonable medical and ancillary expenses;

177                   “(7) Allocate responsibility for the assumption of costs in the event of termination  
178 of the pregnancy, termination of the contract, or breach of the contract by any party;

179                   “(8) Provide procedures for dispute resolution; and

180                   “(9) Be notarized or signed before a minimum of 2 witnesses who shall document  
181 their names, addresses, and phone numbers.

182                   “(b) The surrogate and the surrogate’s spouse or domestic partner, if any, and the  
183 intended parent or parents shall be represented by independent counsel in the preparation,  
184 counseling, and negotiation of the surrogacy agreement. Nothing in this provision shall prevent  
185 the intended parent or parents from assuming the costs of the surrogate’s legal fees.

186                   “(c) A surrogacy agreement may not limit the right of the surrogate to make decisions to  
187 safeguard the surrogate’s health or that of the embryo or fetus.

188                   “(d) Payment of reasonable medical and ancillary expenses shall be made by one or more  
189 of the following means:

190                   “(1) Insurance;

191                   “(2) Cash;

192                   “(3) Escrow;

193                   “(4) Or other arrangements satisfactory to the parties, pursuant to the terms of the  
194 surrogacy agreement.

195                   “(e) Any dispute related to a surrogacy agreement shall be resolved by the terms set forth  
196 in the surrogacy agreement.

197                   “§ 16-407. Parentage in collaborative reproduction.

198           “(a)(1) In the case of a child born by a gestational surrogate, an intended parent or parents  
199 shall be the parent or parents of the child and have all rights under District law, regardless of  
200 whether the intended parent or parents has a genetic relationship to the child.

201           “(2) The child shall have all rights, powers, privileges, immunities, duties, and  
202 obligations existing under law between a parent and child with the intended parent or parents,  
203 including the rights of inheritance.

204           “(3) A gestational surrogate and the gestational surrogate’s spouse or domestic  
205 partner, if any, shall not be the parent or parents of the child, and shall not have any rights,  
206 powers, privileges, immunities, duties, or obligations with respect to the child.

207           “(4) A gamete or embryo donor who is not an intended parent and that donor’s  
208 spouse or domestic partner, if any, shall not be the parent or parents of the child, and shall not  
209 have any rights, powers, privileges, immunities, duties, or obligations with respect to the child.  
210 For purposes of this paragraph, a traditional surrogate is not a donor.

211           “(b)(1) In the case of a child born by a traditional surrogate, an intended parent or parents  
212 shall be the parent or parents of the child and have all rights under District law, regardless of  
213 whether the intended parent or parents has a genetic relationship to the child.

214           “(2) The child shall have all rights, powers, privileges, immunities, duties, and  
215 obligations existing under law between a parent and child with the intended parent or parents,  
216 including the rights of inheritance.

217           “(3) A traditional surrogate and the traditional surrogate’s spouse or domestic  
218 partner, if any, shall not be the parent or parents of the child, and shall not have any rights,  
219 powers, privileges, immunities, duties, or obligations with respect to the child.

220           “(4) A gamete donor who is not an intended parent and that donor’s spouse or

domestic partner, if any, shall not be the parent or parents of the child, and shall not have any rights, powers, privileges, immunities, duties, or obligations with respect to the child.

“§ 16-408. Court order of parentage.

“(a) A petition for parentage for the intended parent or parents of a child may be filed by the intended parent or parents or the surrogate in the Superior Court of the District of Columbia at any time after confirmation of the pregnancy.

“(b) The Superior Court of the District of Columbia will have jurisdiction over a petition filed under subsection (a) of this section if the court determines that:

“(1) The intended parent or parents or the surrogate is a legal resident of the District;

“(2) The intended parent or parents or the surrogate has actually resided in the District for at least one year preceding the filing of the petition; or

“(3) The child was born in the District.

“(c) A petition for parentage shall include:

“(1) An affidavit by the medical professional who oversaw the embryo transfer or insemination attesting to the facts pertaining to the creation of the embryo and the embryo transfer or insemination, if applicable;

“(2) A copy of the executed surrogacy agreement;

“(3) An affidavit by each party attesting to each party’s identity and that no other proceedings exist which could affect the current proceedings; and

“(4) An affidavit by an attorney representing each party, attesting:

“(A) That the attorney did not represent both the intended parent or parents and the surrogate and the surrogate’s spouse or domestic partner, if any; and

244 “(B) That the terms of the surrogacy agreement comply with the  
245 requirements of this chapter.

246 “(d) The order of parentage issued under this section shall:

247 “(1) Declare the intended parent or parents to be the parent or parents of the child;

248 “(2)(A) Direct the Registrar of Vital Records to issue the certificate of birth  
249 naming the intended parent or parents as the parent or parents.

250 “(B) If the intended parent or parents are named on the certificate of birth  
251 after the child’s discharge from the hospital, direct:

252 “(i) The Registrar to substitute the new certificate of birth for the  
253 original certificate of birth, naming the intended parent or parents as the parent or parents.

254 “(ii) That when a new certificate of birth is issued, the original  
255 certificate of birth shall be sealed from inspection; and

256 “(3) Declare that the surrogate and the surrogate’s spouse or domestic partner, if  
257 any, are not the legal parents of the child.

258 “(e)(1)(A) In the case of a child born by a gestational surrogate, the court may issue an  
259 order of parentage for the child at any time after a petition for parentage has been filed. The  
260 order of parentage shall be effective upon the birth of the child.

261 “(B) If the order of parentage is not issued before the birth of the child, the  
262 court shall issue the order as soon as possible after the birth, but no later than 45 days after the  
263 birth.

264 “(2) In the case of a child born by a traditional surrogate, the court shall issue an  
265 order of parentage for the child no less than 48 hours and no more than 45 days after the birth of  
266 the child.

267           “(f) An order of parentage issued under this section shall be sealed to protect the privacy  
268 of the parties and the child.

269           “§ 16-409. Effect of subsequent marriage or domestic partnership or dissolution of  
270 marriage or domestic partnership.

271           “A subsequent marriage or domestic partnership or dissolution thereof for either the  
272 surrogate or the intended parent or parents shall have no bearing on the validity of the surrogacy  
273 agreement or the child’s parentage.

274           “§ 16-410. Effect of death of intended parent.

275           “If an intended parent dies after a successful insemination or embryo transfer, the  
276 surviving spouse or domestic partner shall assume all obligations with respect to the  
277 surrogacy agreement, and both will be considered the parents of the child.

278           “§ 16-411. Effect of withdrawal of consent.

279           “Either the surrogate or the intended parent or parents may withdraw consent to  
280 collaborative reproduction. Such withdrawal must be:

281                   “(1) In accordance with the terms of the surrogacy agreement;

282                   “(2) In writing;

283                   “(3) Delivered to:

284                           “(A) All parties to the surrogacy agreement and, if applicable, to the  
285 assisted reproduction center by certified mail with receipt acknowledged by the parties or by  
286 hand delivery with a witness to each hand delivery; and

287                           “(B) The Superior Court of the District of Columbia, if an order or  
288 parentage has been issued; and

289                   “(4) In the case of a child born by a traditional surrogate, within 48 hours after



290 the birth of the child.”.

291 TITLE II – RULES; FISCAL IMPACT STATEMENT; EFFECTIVE DATE.

292 Sec. 201. Rules.

293 The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act,  
294 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules  
295 to carry out the purposes of this act.

296 Sec. 202. Fiscal impact statement.

297 The Council adopts the fiscal impact statement in the committee report as the fiscal  
298 impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
299 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

300 Sec. 203. Effective date.

301 This act shall take effect following approval by the Mayor (or in the event of veto by the  
302 Mayor, action by the Council to override the veto), a 60-day period of congressional review as  
303 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
304 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
305 Columbia Register.