



# *New York State Catholic Conference*

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## **MEMORANDUM OF OPPOSITION**

**Re: S.2071-A Hoylman / A.1071-B Paulin  
In relation to Gestational Surrogacy Agreements**

The above-referenced bill would undo New York's longstanding prohibition of compensated surrogate parenting contracts, legalizing such arrangements at precisely the time when other nations are reversing course and outlawing the procedure due to the horrific consequences of such policies.

The international commercial surrogacy trade has been exposed, and several countries such as India, Nepal, Thailand and Cambodia, where brokers found access to impoverished women willing to serve as surrogates, have banned the practice. The European Parliament has asked its member states "to acknowledge the serious problem of surrogacy, which constitutes an exploitation of the female body and her reproductive organs," and the practice has now been almost entirely banned in the European Union nations, where it has been declared to be a human rights issue involving the exploitation of women as well as being vulnerable to human trafficking.

For this and other reasons, the New York State Catholic Conference **opposes** this legislation.

The bill would establish the legal parentage of children conceived through assisted reproduction pursuant to surrogacy agreements. This involves the creation of human embryos in a laboratory through in vitro fertilization (IVF), using egg and sperm that may or may not be from the intended parents, which are then transferred to the uterus of a surrogate mother. This woman, who is genetically unrelated to the child, will then bear that child with the intent of relinquishing the child at birth to the "intended" parent or parents, pursuant to a monetary contract.

Current New York Domestic Relations Law declares surrogacy contracts to be contrary to public policy, void, and unenforceable. This important policy was signed into law in 1992 by then-Governor Mario M. Cuomo, at the unanimous recommendation of the NYS Task Force on Life and the Law, with bipartisan legislative support. This was the right policy then and, given the experience of nations which have legalized it, it is the right policy today.

Nevertheless, New York is now inexplicably revisiting the legality of this trade. In December of 2017 a deeply divided NYS Task Force on Life and the Law released a new report on surrogacy entitled "[Revisiting Surrogate Parenting: Analysis and Recommendations for Public Policy on Gestational Surrogacy.](#)" A majority report signed by fifteen members recommend a repeal of New York's ban on commercial gestational surrogacy, while seven members of the NYS Task Force signed a minority report (which begins on page 92 of the Task Force report) detailing the harms of commercial surrogacy, and recommending that New York's ban be maintained. We concur with the

minority and their well-documented report, and urge that you read it in full. We summarize below the primary harms of surrogacy as detailed in that minority report.

### **The Primary Harms of Commercial Surrogacy**

- **It treats children as commodities to be manufactured, bought and sold.** Children are human beings with inherent rights and dignity, not products to be sold and purchased. We would note that the legislative language offers no protection for children in terms of the intended home in which they will reside. This bill contains no residency requirements for the intended parent(s), no background checks and no home inspections prior to a child being relinquished. We ask why the state would not provide the same protections to the children produced by commercial surrogacy as it gives to children relinquished in adoption and foster care placements. Such protections are necessary to decrease incidents of exploitation and human trafficking. Nothing in this bill would prevent an individual from another state or nation from acquiring a child in New York and disappearing with that child. We recognize that proponents and sponsors of this bill are talking about best-case scenarios. But what about the fate of these children in worst-case scenarios?
- **It exploits women, particularly poor women.** Reproductive commerce is human exploitation. Commercialization denigrates the dignity of women by degrading pregnancy to a service. In states where surrogacy is permitted, surrogate services are advertised, surrogates are recruited – most often on college campuses, in poor neighborhoods, and on military bases – and operating agencies make large profits. The minority members of the New York Task Force on Life and the Law did the math and found that a surrogate mother in a typical pregnancy would be earning far less than New York’s minimum wage per hour.

When a poor woman is bearing a child for a couple who is much better off financially, it is an unequal transaction, and that can easily involve coercion, uninformed consent, and violations of human rights. Surrogacy is not without serious health risks to women. Those who provide the eggs are doused with fertility drugs for superovulation and risk ovarian hyperstimulation syndrome, which can be life-threatening. Those who are surrogates must receive multiple injections of synthetic hormones for embryonic implantation, some of which have not been approved by the FDA for fertility use. If the pregnancy is successful, the surrogate then must endure nine months of challenges, including a higher risk of multiple gestations, which carries with it an increased risk of maternal mortality. This seems completely contrary to the intent expressed in this year’s state budget, which declared maternal mortality a “serious public health concern,” as well as with the unanimous legislative passage of S.1819/A.3276, which establishes a statewide maternal mortality review board.

New York State law prohibits donating an organ for profit; why is renting a womb and purchasing the “reproductive product” any different? Those who live in poverty do not have genuine “freedom of choice” when deciding to carry another’s child.

- **Insufficient evidence of safety for women involved.** The minority report of the Task Force is meticulous in documenting the scarcity of long-term, large-scale studies of the effects of gestational surrogacy on the children born of the process, the surrogate mothers who carry

them, and the siblings of the children born. Measurable evidence, they say, is “scanty, equivocal, sometimes biased, and often anecdotal.” Their bottom line: insufficient evidence means you don’t take the risks.

- **It intentionally fractures families.** Surrogacy deliberately divides the genetic, gestational and social relationships of children with their biological parents. When any sperm, egg and uterus can be ‘combined’ to ‘make’ a baby, the potential exists for a child to have up to six parents -- the male sperm, two female eggs (one for the nuclear DNA, and one for the mitochondrial DNA) the surrogate mom (womb), and the “intended” parent(s). Yes, the law will ultimately recognize just the “intended” parent(s) through the legal vehicle of “judgment of parentage,” but the law saying so does not alter biological realities.

The arrangement compels an unnatural and unhealthy act: telling a mother not to bond with the baby she bears in her womb. Moreover, it can result in confusion, pain, loss and abandonment felt by donor-conceived children, who may never know their true biological origins or experience the natural parent-child bond. The personal testimonies found at [www.anonymousus.org](http://www.anonymousus.org) are enlightening in this regard.

Finally, we would note our strong opposition to the following language which bill sponsors have recently inserted into the newly-amended bill:

**“No fertilized egg, embryo or fetus shall have any independent rights under the laws of this state, nor shall any fertilized egg, embryo or fetus be viewed as a child under the laws of this state.”**

We most certainly understand the intention of this language, since this legislation is being promoted by the assisted fertility industry, with the potential for lucrative profit in this state. However, we will never cease in our advocacy to protect the rights of the unborn members of our human family, and therefore we urge that this unnecessary and offensive language be removed from the bill.

We strongly urge you to examine all facets of this legislation while keeping in mind the best interests of women, children, families and society. We believe this bill, if enacted, will foster grave violations of human rights and human dignity, and will reap many dangerous consequences. We urge you to oppose it.