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To: Governor Andrew Cuomo
From: Judy Norsigian, Co-founder and Board Chair, Our Bodies Ourselves
Date: February 20, 2020
Re: Removal of Surrogacy Legislation (S.2071) from the Governor's Budget
CC: Assembly Speaker Carl E. Heastie; Senate Majority Leader, Andrea Stewart-Cousins

We are writing to urge that you remove the existing proposed surrogacy legislation (S.2071-B) from the Governor's budget. There are many problematic issues in this bill that need much more robust public discourse before the state establishes policy on this important matter. Notably, issues raised by the alternative surrogacy bill S.7717 are of serious concern and should be fully considered.

For almost 50 years, Our Bodies Ourselves has provided evidence based information to the public on pregnancy, birth, and infertility, advocated for LGBTQ rights, and produced nine editions of our landmark book, "Our Bodies, Ourselves." For almost 20 years, we have been actively engaged in emerging issues in assisted reproduction, genetics, and public health. We have paid particular attention to possible risks to women's health associated with these new technologies and contractual surrogacy arrangements, as well as their potential impact on future offspring.

Based on this experience, we know that compensated surrogacy is an important option for people with infertility, LGBTQ individuals and couples, as well as unmarried and single individuals – many of whom have been long marginalized from forming families. At the same time, for the offspring of these arrangements and the women who make them possible – egg providers and surrogates – it can pose significant risks and create new inequities within an inadequately regulated industry.

Compensated surrogacy is a complicated issue with a steep learning curve and involving many participants. The bill currently in the Governor's budget, S.2071-B, has a number of serious problems and lacks adequate protections for the health and rights of all participants – intended parents, surrogates, gamete providers, and children born from surrogacy. From this standpoint, an alternative bill introduced by Senator Krueger, S.7717 is, by far, a more comprehensive and equitable bill. We recognize that this bill needs some improvement, but those changes are not that difficult to make and still preserve a more equitable approach.

In order to reduce potential harms to the least powerful participants in surrogacy arrangements, it is essential that the New York legislature engage in a full discussion of compensated surrogacy in general, and the differences between these two bills in particular. We would like to call your attention to the following differences:

Health & medical care for surrogates, egg providers, and offspring. Senator Krueger's bill goes much further in requiring best medical practices in surrogacy arrangements, ensuring agency in decision-making for egg providers and surrogates, and requiring fuller coverage for health and life insurance. It also would protect future offspring from known risks not now addressed adequately in the Governor's preferred surrogacy bill.

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Assigning parentage and the collision with abortion rights. Senator Krueger’s bill assigns parentage at birth and recognizes the surrogate as a parent until she relinquishes her parental rights. By contrast, S.2071-B assigns parental rights during the pregnancy. This is highly problematic and unworkable, as there is legally no child until birth, and granting intended parents rights to a fetus (i.e., supporting fetal personhood) puts this bill on a collision course with the right to abortion in *Roe vs. Wade*.

The rights of children born through surrogacy. Senator Krueger’s bill also goes further than S.2071-B in protecting the rights of the offspring. Upon attaining adulthood, children born through surrogacy would have the right to access anonymized medical information; and (when voluntarily provided by gestational and genetic parents) to procure identifying information about all of their progenitors. It is notable that these are hallmarks of recent adoption legislation passed in New York.

Public health registry for record-keeping and research. In a long overdue, and first-in-the-nation requirement, Senator Krueger’s bill calls for establishment of a registry that would track health outcomes for egg providers, offspring, and surrogates, and make anonymized medical information available for public health purposes and longitudinal research. Bill S.2071-B misses this opportunity.

Safeguard against human trafficking. Contrary to the bill in the Governor’s budget, Senator Krueger’s bill establishes a 12-month New York State residency requirement for all parties in surrogacy arrangements. This one important safeguard would help to prevent New York State from becoming an international commercial surrogacy hub, and could also prevent the human trafficking of surrogates that has repeatedly been documented in other countries.

Given what is at stake, we urge proponents of S.2071-B and those supporting the Governor’s “Love Makes a Family” campaign to encourage a more robust public discussion of how best to preserve the health and rights of all parties involved.

Organizations like Our Bodies Ourselves that have worked for decades to support people with infertility and LGBTQ individuals agree that it is important for New York to update its surrogacy laws, but it matters how surrogacy arrangements are framed and whose rights get protected. Lodging a sub-par surrogacy bill in a budget is not a wise path forward, especially if equity in family formation is the goal. We urge instead a transparent public discourse as soon as possible. New York State should meet the challenge of this moment and develop a bill that could become a model for other states. It is possible to do this *and, at the same time*, safeguard this important option in family formation for those who need it.

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