

PANDEMIC NO EXCUSE FOR GOVERNOR TO FAST TRACK UNDER-DEBATED BILL ON SURROGACY REGULATION

Just before COVID-19 demanded all attention turn to public safety in New York, Governor Cuomo had renewed his commitment to overturning the state's ban on gestational surrogacy. In a bid to sway skeptical lawmakers toward approving a bill in this year's budget legalizing surrogacy arrangements, his office launched an advocacy campaign that declared: "Love makes a family."

That may be so – but does that love not extend to all participants in a surrogacy arrangement, including the women who act as surrogates to help make that family possible?

At a time when the need for scientific evidence to keep all New Yorkers healthy and safe is at the forefront of everyone's minds, it makes no sense to forge ahead with legislation that deserves far more public debate and a better understanding of the health risks it poses to women and children.

Organizations like Our Bodies Ourselves have worked for decades to support people with infertility and LGBTQ individuals. And though we agree that it is important for New York to update its surrogacy laws, it matters how these arrangements are framed and whose rights get protected.

Lodging a sub-par surrogacy bill in a budget is not a wise path forward. Based on our experience, we believe the proposed legislation doesn't go far enough in protecting the health and rights of all participants, including the surrogates, egg providers, and children born from surrogacy. This bill, as is, would unnecessarily put the health of women and children at risk.

For the past two decades, Our Bodies Ourselves has provided evidence-based information on issues related to assisted reproduction, both domestically and globally, paying particular attention to the health and rights risks associated with emerging technologies and contractual surrogacy arrangements.

We know that compensated surrogacy is an important option for family formation. We also know that the egg providers and surrogates who make these arrangements possible face significant risks and serious inequities without adequate regulation of what has become a global industry.

Though promoted as an extension of marriage equality, the Governor's preferred bill is designed primarily to protect the interests of intended parents in a contractual and commercial relationship. If the "Love makes a family" campaign is to address the interests of all parties involved, lawmakers must press pause on this important matter to ensure that the most vulnerable parties receive adequate protection. This requires robust public discussion.

Fortunately, a more equitable surrogacy bill, introduced in February by New York State Senator Liz Krueger and Assemblymembers Didi Barrett and Daniel J. O'Donnell, offers a more promising starting point and more comprehensive protections for all involved, particularly on the following issues:

Health and medical care for surrogates, egg providers, and offspring. The rates of pregnancy complications are higher for gestational surrogates than for women who conceive naturally; young

women face significant health risks in egg extraction; and multiple embryo transfer poses dangers to the health of offspring. Senator Krueger's bill goes much further in calling for best medical practices, requiring intended parents to purchase life insurance and health insurance for the surrogate, and putting limits on egg extraction. The Governor's preferred bill has few such protections.

Assigning parentage. Senator Krueger's bill assigns parentage at birth. By contrast, the Governor's preferred bill assigns parental rights during the pregnancy. This is unworkable, as there is legally no child until birth, and granting intended parents rights to a fetus puts this bill on a collision course with the right to abortion in *Roe v. Wade*.

The rights of children born through surrogacy. Under Senator Krueger's bill, children born through surrogacy would, at age 18, have the right to access anonymized medical information and, if voluntarily provided by gestational and genetic parents, identifying information. It is notable that these are hallmarks of the state's new adoption legislation but are not included in the Governor's preferred bill.

Public health registry for record-keeping and research. In a long-overdue requirement, Senator Krueger's bill calls for establishing a registry that would track health outcomes for egg providers, offspring, and surrogates, and make anonymized medical information available for public health study and longitudinal research. The Governor's preferred bill misses this opportunity.

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

New York's Legislature should engage in a transparent discussion of compensated surrogacy and the differences between these two bills – and that cannot happen now, when emergency legislation to protect New Yorkers from a pandemic is the top priority. Governor Cuomo has spoken about expanding surrogacy "to make the dream of parenthood" attainable for all. With the right surrogacy policy in place, New York can do just that while minimizing harm to the children and women so centrally involved and affected. By acting out of haste and ignoring a better bill, the Governor is risking his reputation as a leader who genuinely cares for the health and safety of all.

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