Dear Members of the Law and Justice Committee:

My name is Jennifer Lahl and I am here today to offer my expertise on the subject of surrogacy, which is part of SB 6037, the Uniform Parentage Act.

I worked as a pediatric critical care nurse for nearly two decades. As a bioethicist, I have served as the president of The Center for Bioethics and Culture in the San Francisco Bay Area for the last 18 years.

As a person with expertise in third-party conception, assisted reproductive technologies, as well as being an award-winning documentary filmmaker making films that tell the stories of those harmed by commercial, contract pregnancies, I am often called upon to speak nationally and internationally on human rights violations and the exploitation of women and children. I have twice spoken on surrogacy and human egg harvesting before the United Nations as part of the annual Commission on the Status of Women.

I have read, written and commented on, and testified against many pieces of legislation similar to SB 6037. What always strikes me is how little reflection is given to, what in my mind, should be our first question: Is surrogacy and good and right thing to do?

To underscore, let me quote Dr. Renate Klein, from her new book, *Surrogacy: A Human Rights Violation*.

> In a regulatory approach, a fundamental analysis that, in my view, inexorably leads to a *categoric* rejection of surrogacy, is pushed under the carpet and never even contemplated. Or, to put it differently: a regulatory inquiry does not start at the bottom and ask whether the practice of surrogacy should be abolished; it starts half way up and asks the questions about how different aspects of surrogacy could or should be regulated. It is thus never a holistic search to understand the nature of the problem, but instead a *compartmentalised dissection* of multiple problems arising from surrogacy. *Regulation enables the practice of surrogacy to continue. It institutionalises disconnection* (emphasis mine).

Is it good and right and just to turn pregnancy into a commercial, contract endeavor? Is it ethical to ask a young woman—almost always a young mother, responsible for the care of her own children—to potentially jeopardize her health by engaging in technologies with known risks to her health and well-being as well as risks to the baby or babies she cares for another? Is it ethical to ask her to do this for money or as an altruistic act? Is it ethical to create children in a novel, new way, without those children being able to consent to being part of what is in fact one of the largest human social experiment of our time?

As a pediatric nurse, I often remind people there is only one thing a baby is born knowing: she knows her mother. If we've learned anything from years of adoption, it is that children often go

in search of their mother once grown up. The missing attachment is deep. Babies have no interest in contracts or money; they have a deep interest in the one person they have known for nine months. Maternal-child bonding is good and natural. We ignore it to the detriment of all of us.

Instead of asking whether surrogacy is something that should even be legal, SB 6037 simply attempts to safeguard against all of the many ethical, legal, and medical problems.

However, I have seen time and again how such safeguards—laws, regulations, and contracts—leave surrogate mothers vulnerable and exploited, and treat children as mere commodities to be ordered, discarded, or abandoned.

I live in California, a very surrogacy "friendly" state with laws meant to protect all the stakeholders. I have personally been involved with two surrogates pregnant with healthy triplets who sought out my assistance when the intended parents demanded they reduce the pregnancies. Melissa Cook and BrittneyRose Torres were both low-income women who were threatened with breach of contract and told they'd have to return all the money, which of course was already spent paying bills. Neither had money to secure legal representation. Even though these women signed contracts with "termination clauses," they had a change of heart because they bonded with the babies they were carrying. These children will now grow up with the story of their contract birth arrangement gone bad, perhaps being raised by parents that didn't want them—if the intended parents even kept the children. This is similar to the famous Baby Gammy case in Thailand: a couple from Australia (where commercial surrogacy is illegal) hired a Thai woman to give birth to their twins. The couple took the little girl, but left Baby Gammy because he was born with Down Syndrome. Baby Gammy is now three and lives with his surrogate mother.

Recently, my organization brought to light the story of Jessica Allen, a surrogate mother, also in California, who gave birth to twins for a Chinese couple (surrogacy is illegal in China). Unbeknown to anyone, one of the children was Jessica's own child. As most surrogates are not allowed to see the babies at birth, it wasn't until two months later that Jessica was told something was wrong. How could a Caucasian surrogate mother, married to an African-American man, give birth to a Chinese baby and an obviously bi-racial baby? This is a rare event known as superfetation. Jessica and her husband had to fight to get their own child back.

Kelly Martinez is a low income, three-time gestational surrogate. She was lied to, lied about, almost ruined financially, and left for nearly dead. Kelly did two international surrogacies. The first for a gay couple in France and then for a heterosexual couple in Spain (surrogacy is illegal in both of these countries—in fact Surrogacy is illegal in almost all European countries). The gay couple threatened that Kelly would have to keep and raise the twins herself if she didn't agree not to challenge their scheme to lie about having an affair with her in order to secure passports so that the babies could leave the United States. France doesn't recognize children born by surrogacy as French citizens. She had no legal representation, but went to the French consulate

where a meeting was held in French. She speaks no French and was not offered an interpreter. She had to sign an eight-page agreement written entirely in French. Out of fear, with no money and no legal representation, she felt she had no other option.

During her twin pregnancy for the Spanish couple, Kelly suffered from severe maternal hypertension and pre-eclampsia (common in surrogate pregnancies, especially when the woman is pregnant with multiple babies). Kelly had to be hospitalized early and had to deliver by emergency C-section at 30 weeks. The Spanish intended parents accused Kelly of deliberately delivering early since her contract stated she would receive her full compensation if she carried the pregnancy to 30 weeks. The couple left the country with their twin boys without paying Kelly's hospital bills of nearly $8,000. After a year of trying to get her bills paid, Kelly found me through the internet, and I was able to assist her in getting these paid by the fertility agency in the U.S. Kelly spoke with me at the U.N. and traveled with me to Madrid, Spain to speak with members of the Spanish Parliament.

I could go on and on with the women who I have met and their tragic stories, but I hope you see that regulation can never protect against or dictate maternal-child bonding.

Regulation can never prevent superfetation from occurring.

Regulation can never protect surrogate mothers from the real medical risks and dangers they expose themselves to, often because they need the money and are being told they are doing an altruistic thing in helping another have a child.

Regulation can never protect the children born, designed, or abandoned when adults change their minds.

I encourage you to not institutionalize what many around the world rightly see as a human rights violation to surrogate mothers and the babies they carry.

Three Things You Should Know About Surrogacy

1. Surrogacy Carries Health Risks that often Go Untold

- There have been confirmed deaths of surrogate mothers in both the United States and abroad.[i]
- Due to the high costs involved in surrogacy and the strong desire to boost success rates, multiple embryos are often transferred into the surrogate mother. In addition to the increased risk of caesarian sections and longer hospital stays, the *British Journal of Medicine* warns, "Multiple pregnancies are associated with maternal and perinatal complications such as gestational diabetes, fetal growth restriction, and pre-eclampsia as well as premature birth."[ii]
- Multiple studies have found "increased in multiple births, NICU admission, and length of stay with hospital charges several multiples beyond that of a term infant conceived naturally and provided care in our nursery" for surrogate pregnancies.[iii] [iv]
- Studies show that women pregnant with donor eggs, very common in surrogate pregnancies (the definition of gestational surrogacy), have a more than three-fold risk of developing pregnancy induced hypertension and pre-eclampsia.[v]
- Lupron use in preparing a gestational surrogate to receive transferred embryos has been documented to put a woman at risk for increased intracranial pressure.[vi]

2. There are Health and Psychological Risks to the Children Born via Surrogacy

- Children born through surrogacy are much more likely to suffer from low and very low birth weights.[vii] In addition, a 2014 study from the *Journal of Perinatology* found a 4-5 fold increase in stillbirths from pregnancies through assisted reproductive technologies.[viii]
- Surrogate pregnancies intentionally sever natural maternal bonding that takes place during pregnancy. A study in the *Journal of Child Psychology and Psychiatry* found: "surrogacy children showed higher levels of adjustment difficulties at age 7" and "the absence of a gestational connection to the mother may be more problematic." The study also reported that such difficulties "may have been under-reported by reproductive donation mothers who may have wished to present their children in a positive light."[ix]
- Young adult children born via anonymous gamete donation suffer serious genealogical bewilderment according to both empirical studies and actual testimonies.[x] A study in the journal *Human Reproduction* concluded, "Disclosure to children conceived with donor gametes should not be optional."[xi]

3. Surrogacy is Expensive, Risky, and Eugenic, and it Involves Coercion

- The fertility industry is estimated to be a multi-billion dollar industry in the United States alone. A review of most agency websites reveals a dehumanizing approach where patients are referred to as "clients," surrogate mothers are referred to as "carriers," and surrogate pregnancy arrangements referred to as "sales."
- During a surrogate pregnancy, intended parents have borne the financial costs of IVF, egg donation, surrogacy, etc. but the health insurance industry picks up the long-term costs associated with these high risks pregnancies, which require longer hospitalization stays and intensive care for the surrogate mother and child(ren).[xii]
- When compared to a natural pregnancy, surrogate pregnancies of a singleton or twin resulted in hospital charges 26 times higher and 173 times higher when triplets or more were born.[xiii]
- Teresa Erickson, a reproductive attorney convicted of baby selling, called herself "the tip of the iceberg."[xiv] Rudy Rupak, founder of Planet Hospital, a global IVF provider, told the *New York Times*, "Here's a little secret for all of you. There is a lot of treachery and deception in I.V.F./fertility/surrogacy because there is gobs of money to be made."[xv]
- It has been suggested that marketing and advertising that states only the "benefits" of renting your womb should also state the risks. In short, there are "significant ethical and policy problem[s] with the status quo." And yet, brokers and clinics who stand to profit most resist calls to do the necessary studies or warn women of potential risks.[xvi]
- Surrogacy often depends on the exploitation of low income and poor women by those with means to pay for surrogacy. These unequal transactions result in "uninformed" consent, coercion, low payments, poor health care, and severe risks to the short- and long-term health of women. As the European parliament stated in a 2011 resolution, surrogacy is "an exploitation of the female body and her reproductive organs."[xvii]
- The New York State Task Force on Life and the Law stated that commercial surrogacy "could not be distinguished from the sale of children and that it placed children at significant risk of harm."[xviii]

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i Riben, Mirah. *The Huffington Post.* "American Surrogate Death: Not the First." October 25, 2015. http://www.huffingtonpost.com/mirahriben/american-surrogate-death-_b_8298930.html
ii Kamphuis, E., Bhattacharya, S., van der Veen, F., and Mol, B.W.J., (2014). *British Journal of Medicine.* "Are We Overusing IVF?" http://www.bmj.com/content/348/bmj.g252
iii Yona Nicolau, Austin Purkeypile, T. Allen Merritt, Mitchell Goldstein, Bryan Oshiro (2015). *World Journal of Obstetrics and Gynecology.* "Outcomes of surrogate pregnancies in California and hospital economics of surrogate maternity and newborn care." November 10; 4(4).
iv T.A. Merritt, M. Goldstein, R. Philips, R. Peverini, J. Iwakoshi, A. Rodriguez, B. Oshiro (2014) *Journal of Perinatology.* "Impact of ART pregnancies on California: analysis of maternity outcomes and insights into the added burden of neonatal intensive care." February, 2014.
v *Science Daily.* "Pregnancies following egg donation associated with more than 3-fold higher risk of hypertension" July 1, 2014.
vi Alexander, J., and Levi, L. (2013). *Journal of Neuro-Opthalmology.* "Intracranial Hypertension in a Patient Preparing for Gestational Surrogacy with Leuprolide Acetate and Estrogen," 33:307-318.
vii Schieve, L., Meikle, S., Ferre, C., Petersen, H., Jeng, G., and Wilcox, L. (2002). *New England Journal of Medicine.* "Low and Very Low Birth Weight in Infants Conceived with Use of Assisted Reproductive Technology," 346:731-737. http://www.nejm.org/doi/full/10.1056/NEJMoa010806
viii Merritt, T. "Impact of ART on Pregnancies in California: An Analysis of Maternity Outcomes and Insights into the Added Burden of Neonatal Intensive Care," *Journal of Perinatology*, February 2014, 1-6.
ix Golumbok, S., Blake, L., Casey, P., Roman, G., and Jadva, V. (2013). *The Journal of Psychology and Psychiatry* "Children born through reproductive donation: A longitudinal study of psychological studies," 54:6, pp 653-660.
x See AnonymousUs.org, an online story collective for real life testimonials for voluntary and involuntary participants of assisted reproduction, as well as our 2012 documentary *Anonymous Father's Day*. http://www.anonymousfathersday.com
xi McGee, G., Brakman, S.V., and Gurmankin, A.D. (2001). *Human Reproduction.* "Gamete donation and anonymity: disclosure to children conceived with donor gametes should not be optional". http://www.ncbi.nlm.nih.gov/pubmed/11574486
xii Yona Nicolau, Austin Purkeypile, T Allen Merritt, Mitchell Goldstein, Bryan Oshiro (2015). *World Journal of Obstetrics and Gynecology.* "Outcomes of surrogate pregnancies in California and hospital economics of surrogate maternity and newborn care." November 10; 4(4).
xiii Ibid.
xiv Rory Devine and R. Stickney, "Convicted Surrogacy Attorney: I'm Tip of Iceberg," *NBC San Diego*, February 29, 2012. http://www.nbcsandiego.com/news/local/Theresa-Erickson-Surrogacy-Abuse-Selling-Babies-140942313.html
xv Tamar Lewin, "A Surrogacy Agency that Delivered Heartache," *The New York Times*, July 27, 2014. http://www.nytimes.com/2014/07/28/us/surrogacy-agency-planet-hospital-delivered-heartache.html
xvi Alberta, H., Berry, R., and Levine, A. (2014). *Journal of Law, Medicine and Ethics* "Risk Disclosure and the Recruitment of Oocyte Donors: Are Advertisors Telling the Full Story?"
xvii European Parliament resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women. http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0127
xviii New York State Task Force on Life and the Law. *Surrogate Parenting: Analysis and Recommendations for Public Policy*, 1988. https://www.health.ny.gov/regulations/task_force/reports_publications/#surrogate_parent

Contract Pregnancies Exposed: Surrogacy Contracts Don't Protect Surrogate Mothers and Their Children

by Jennifer Lahl, CBC President *on* November 1, 2017

The United States currently has a hodge-podge of state-level legislation regulating surrogacy. High-profile disputes over surrogate pregnancies demonstrate this is not a workable solution. Regulating surrogacy does not protect women and children. It only commodifies them more.

The current debate over surrogacy in the United States has two main positions. One side argues we should allow the practice with regulations. The other side argues it should be prohibited altogether. All parties in the debate generally acknowledge that there can be abuses and exploitation, and that the best interests of the children produced should be considered.

Is a contract that involves the exchange of money for the gestation and delivery of a child against public policy? The debate over this question both fuels and is fueled by competing ideas on parenting, family configuration, women's rights, and the human desire for children. In recent decades, a new, commercial, profit-making industry has emerged, making the regulation vs. prohibition debate ever more pressing.

The crux of the disagreement is over what should be done in order to minimize the harms to those women who serve as surrogates and to the children who are produced from these contract arrangements. How can we protect all the stakeholders, including the intended parents? Many trust that regulations, laws, and contracts will provide sufficient protection. My position, however, is that regulations, laws, and contracts do not—in fact, they *cannot*—protect women and children. The only way forward is to pass laws to stop surrogacy now.

Milestone "Traditional" Surrogacy Cases

The first surrogacy arrangements were what are now called "traditional" surrogacies, in which the child the surrogate carries is genetically related to her—that is, created using her own egg. These early surrogacies were achieved by artificial insemination, generally with the sperm of the intended father. More common today are "gestational" surrogacies, arrangements in which the surrogate is not genetically related to the child she carries. In such cases, either donor eggs are used, or the egg of the intended mother is used. The sperm may come from the intended father (or fathers, in the case of gay male couples), or from a sperm donor.

Elizabeth Kane (a pseudonym) gave birth to a baby boy on November 9, 1980, in what is the first traditional surrogate contract pregnancy in the United States. Kane was artificially inseminated with the intended father's sperm, producing a child biologically related to Kane and the intended

father, who was married to a woman unable to bear children. Kane's book, *Birth Mother: The Story of America's First Legal Surrogate Mother*, documents her story. It is a heartbreaking saga of depression, despair, and damage to her family. Kane was eventually forced to surrender her child in exchange for $11,500.

Only six years later, another surrogacy captured the nation's attention. On March 27, 1986, in New Jersey, Mary Beth Whitehead, a married mother who served as a traditional surrogate for William and Elizabeth Stern, gave birth to a little girl, the biological child of William Stern and Whitehead. This baby girl is famously remembered as "Baby M."

Whitehead agreed to be artificially inseminated with the sperm from the intended father, and the Sterns agreed to pay $10,000 to Whitehead in return for her surrendering the child at birth and terminating her parental rights. But before that could happen, Whitehead came to the conclusion that she could not relinquish her child. What ensued was an extremely public custody battle that played out in national news and in the courts.

Eventually, the New Jersey Supreme Court reached a unanimous decision *In the Matter of Baby M*, which fueled a brief national policy debate. The court's decision prohibited surrogacy arrangements in that state unless "the surrogate mother volunteers, without any payment, to act as a surrogate, and is given the right to change her mind and to assert her parental rights." The law in New Jersey continues to hold that traditional surrogacy is illegal, and only compensated gestational surrogacy is prohibited.

The Rise of Gestational Surrogacy

The next notable case in the United States was unique in that it involved the first disputed commercial gestational surrogacy. The shift away from traditional surrogacy to gestational surrogacy was underway. In September 1990, Anna Johnson, a twenty-nine-year-old African-American woman and former Marine, entered into a gestational surrogacy contract with Crispina and Mark Calvert. As a result of a hysterectomy, Mrs. Calvert was unable to carry a pregnancy, but because her ovaries had not been removed, she was able to provide her eggs. The Calverts paid Johnson $10,000, per the contract.

Johnson bonded with the child in her womb and sought legal recognition as the mother, with access to the child. California Judge Parslow placed great weight on the fact that the Calverts were the genetic parents, declaring that Johnson was a "genetic stranger" to the child. Judge Parslow acknowledged Johnson's "nurturing, feeding, and protecting the child," but held that the role of the "gestational environment" of the womb was not clear. Further, he saw "no problem with someone getting paid," and made the point that surrogacy was not baby selling but compensating the surrogate mother for pain and suffering. In ruling against Johnson, Judge

Parslow found it in the best interest of the child to recognize as "mother" the person intending to raise the child according to the prior written agreement.

The case eventually made its way to the California Supreme Court, which rejected the argument that surrogacy contracts are against public policy, thereby making California a "regulation" state. In a powerful dissenting opinion, Justice Kennard stated, "the majority recognizes no meaningful contribution by a woman who agrees to carry a fetus to term for the genetic mother beyond that of mere employment to perform a specified biological function." Further, Kennard recognized that the "gestational mother has made an indispensable and unique biological contribution, and has also gone beyond biology in an intangible respect that, though difficult to label, cannot be denied."

These three cases prompted several states to enact surrogacy legislation. As the first state to make surrogacy a felony, punishable with up to five years in jail and a fine of up to $50,000, Michigan became a "prohibition" state. In 1988, The New York State Task Force on Life and the Law released a report, following one year of study after the *Baby M* case, with the following analysis:

> The Task Force unanimously recommended that public policy should prohibit commercial surrogate parenting. The members concluded that the practice could not be distinguished from the sale of children and that it placed children at significant risk of harm. They also agreed that surrogacy undermines the dignity of women, children, and human reproduction. The Task Force rejected the notion that rights as fundamental as the right of a parent to a relationship with his or her child should be bought and sold or waived irrevocably in advance of the child's birth.

Ultimately, New York deemed surrogacy contracts contrary to public policy, and thus void and unenforceable. It remains a "prohibition" state, although recent efforts have sought to change it to a "regulation" state.

Thirty-seven years after the first contract pregnancy legal dispute, we find ourselves still debating whether allowing contracts that involve the exchange of money for the gestation and delivery of a child are against public policy. Without any federal policy regulating or prohibiting contract surrogate pregnancies, this debate continues state by state. Today, some states are entirely silent on the matter, some states regulate surrogacy through laws and contracts, and some states prohibit the practice altogether by refusing to recognize surrogacy contracts as legal or enforceable.

Real Surrogacy Contracts

Perhaps the most effective argument against surrogacy agreements is the language of the contracts themselves. Have you ever read a surrogacy contract?

I have. Quite a few, in fact, many drawn up in my state of California. California is one of our country's most surrogacy-friendly states. A surrogacy-friendly state is one that allows commercial contracts, does not limit payment to a surrogate mother, and ensures that the intended parents will be the legal parents of the child, protecting intended parents from a surrogate mother's changing her mind and not relinquishing the child once born.

I believe that all surrogacy should be prohibited, not simply regulated. Laws, regulations, and contracts cannot ever protect women and children from all of its many harms. The typical surrogacy contracts that I will analyze below demonstrate clearly that regulations and contracts do not protect women and children. Instead, they facilitate their use as mere commodities—just another collection of products, goods, and services to be exchanged.

What's in a Typical Surrogacy Contract?

Surrogacy contracts contain a lot of standard legalese. The typical Gestational Surrogacy Agreement opens with the names of the intended parents (or parent) and the name of the surrogate entering into the agreement. Notably, the word "mother" is never used with regard to the surrogate. It is used only if there is an intended mother involved. Indeed, the word "mother" is entirely absent when the agreement is between a single man or a gay couple and a surrogate.

A recitals section is also included, describing the intended parents and the surrogate (and her husband if married), and declaring that the surrogate is fully informed and intends not to assert parental rights or claims to the child. There is typically language declaring that the agreement is not for the purchase of a child nor for the surrogate's consent to surrender the child for adoption. One contract boldly states that it is not in violation of anything "prohibited under California Penal Code Sections 181 and 273," which would be baby selling or forced coercion to surrender a child.

A lot of medical and psychological testing and screening are required in these agreements. Sometimes it is only required of the surrogate, to assure she is physically healthy and mentally sound, but at other times the intended parents are required to be screened and tested as well. The payment structure is outlined, along with reimbursable expenses (clothing allowance, gas and mileage reimbursement to and from doctor appointments, lost wages in the event the surrogate has to miss work or stop working due to pregnancy-related complications, etc.). And there is always language establishing maternity and paternity once the child or children are born.

The most troubling aspect of such contracts is usually not the nuts and bolts, but the addition of all the whims and wishes of the intended parents. The intended parents get to direct nearly every detail of the surrogate's life up to the moment of birth and surrendering the child. This makes the commercial use of the woman's entire body for the duration of the pregnancy very clear.

Most contracts explicitly control the surrogate's diet, exercise, living arrangements, travel, and activities. I've seen language requiring the surrogate to consume a vegan diet or only eat organic foods. Some intended parents do not permit the surrogate to dye her hair. One contract stipulated that "The Surrogate and her Husband agree that they will neither form, nor attempt to form, a parent-child relationship with any Child the surrogate may bear." Contracting against maternal-child bonding, as if such a thing is even possible!

The confidentiality of personal health information is so serious that the federal government has instituted strict guidelines (HIPAA) to maintain it. Yet this confidentiality is simply written away in many surrogacy contracts. All of the surrogate's medical information is available to the intended parents, who are often total strangers. Here is the language from one contract:

> The surrogate expressly waives the privilege of confidentiality and hereby directs the release to the Intended Parents, upon their request, of the report and other information obtained as a result of any and all psychological, psychotherapy, or medical evaluations or testing obtained or performed as contemplated by this Agreement. The surrogate agrees that the Intended Parents are privy to psychological information relating to the Surrogate's mental health and any other pertinent information relating specifically to this surrogacy arrangement.

Another contract states:

> The surrogate waives her doctor-patient privilege, as required to perform on this Agreement, and hereby agrees to any release form required to allow the Intended Parents, the Agency, and the Alternative Intended Parents to communicate with all treating or attending medical personnel, and to review relevant medical records pertaining to Surrogate's pregnancy or health.

Contracts also regulate when the surrogate can engage in sexual activity and with whom. Allow me to quote a lengthy section to demonstrate how complicated this gets:

> Surrogate agrees that she will not partake in any sexual/intimate relations with any person, except her Partner (but only if he submits to medical testing as required in section X), while this Agreement is in effect and in particular from her initial medical screening as provided for in Section X up to and through the embryos transfer procedure and during her pregnancy with Intended Parent's Child unless a future partner is medically screened and approved pursuant to

> subsection X. Notwithstanding Surrogate's agreement to abstain from sexual/intimate relations with others, Surrogate further agrees that for a period of three weeks before an attempted transfer of the Intended Parent's embryo to Surrogate's uterus and continuing during Surrogate's pregnancy with Intended Parent's embryos, to the extent Surrogate or her Partner anticipate any intimate relations with an individual other than each other, and in the case of Surrogate's Partner, he continues to maintain an intimate relationship with Surrogate, then Surrogate or Surrogate's Partner shall arrange for any individual with whom they may become or are sexually active, being tested for any venereal and sexually transmitted diseases (including AIDS and the HIV Virus) and hepatitis prior to engaging in sexual intercourse.

Contracts also contain an Abortion/Termination Clause:

> Surrogate specifically agrees to terminate prior to eighteen weeks at the election and discretion of the Intended Parents. With the exception of termination based on gender selection, which will not be permitted, the right of the Intended Parents to request termination/abortion is absolute and does not require any explanation or justification to the Surrogate, including but not limited to if any genetic abnormality or defect has been determined such as cerebral palsy or Down syndrome.

Fetal reduction is addressed as well:

> The Intended Parents reserve the ultimate and sole legal right to selectively reduce before the completion of twenty (20) weeks of gestation . . . The Intended Parents have the sole right to determine the number of fetuses to selectively reduce taking into consideration the recommendation of the Surrogate's treating physician . . . The right of the Intended Parents to request a selective reduction is absolute and does not require any explanation or justification to the Surrogate.

As a nurse, I have to confess that when I read this clause on end-of-life decision-making, my blood ran cold:

> If the surrogate is in her second or third trimester of pregnancy and in the event that medical life support equipment is required to preserve and maintain the life of the Surrogate and if requested by the Intended Parents, the Surrogate and her husband agree that the Surrogate's life will be sustained with life support equipment for a period to achieve viability of the fetus taking into account the best interests and well-being of the fetus . . . The Intended Parents will make the decision with regard to how long the life support should be continued prior to the birth of the Child taking into account the obstetrician or perinatologist's

> recommendation and the desires of the family of the Surrogate. The Surrogate's husband, or her next of kin, is solely responsible for determining the time at which life support treatment will be discontinued following the birth of the Child.

These contracts always include language regarding how to deal with a surrogate who does not comply. If the surrogate decides she will not terminate the pregnancy at the demand of the Intended Parents, contracts often state, in this kind of bold, uppercase formatting:

> TO THE EXTENT THAT THE SURROGATE CHOOSES TO EXERCISE HER RIGHT TO ABORT, OR NOT ABORT, IN A MANNER INCONSISTENT WITH THE INSTRUCTIONS OF THE INTENDED PARENTS, IT IS UNDERSTOOD THAT SUCH ACTION MAY BE DETERMINED TO CONSTITUTE A BREACH OF THIS AGREEMENT.

What happens when the surrogate is in breach of her agreement?

> Surrogate understands and agrees that she will surrender any fees received, any future fees and may be liable for damages resulting from breach of this Agreement. Surrogate understands and agrees that reimbursable costs may include but not be limited to the following list of items: IVF Fees, Agency Fees, Attorney's Fees, Medications and Travel Expenses. Surrogate also understands that she may be liable for care and costs for a child born, until that child reaches the age of 18, if the child is born due to a breach of the section X, (ABORTION/SELECTIVE REDUCTION/TERMINATION) of this agreement.

I'm often asked, whether these contracts are legal. If they are written and executed in a surrogacy friendly state, they absolutely *are* legal. But do surrogacy contracts violate aspects of the common good? How can they not? Take your pick—privacy, doctor/patient confidentiality, bodily integrity, medical decision-making power, and more. Surrogacy contracts are written to protect the Intended Parents, not the surrogate mother nor the child.

People often ask me why a woman would sign a contract that surrenders so much of her personal life—her very bodily integrity—to strangers? The short answer is "money." Financial motives often compel women to become involved in a marketplace that is, frankly, predatory. Surrogacy is presented to potential surrogates as an opportunity to "give the gift of life," and the risks are minimized. This is exactly why it is illegal to buy and sell organs. We know that if organ donation were to become a commercial marketplace, the need for money combined with the opportunity to help someone in need would drive people to take serious risks with their health. Money undermines the informed consent process. It will always be the people who need money who are selling; the wealthy will be the consumers/buyers.

Reading surrogacy contracts can make you weep, make you angry, and turn your stomach. I hope it will inspire you to demand that surrogacy be prohibited in your state, in the whole of the

United States, and, ultimately, in the entire world. The truth is, surrogacy is an international problem in need of an international solution. That solution can only be to prohibit contract pregnancies entirely.

Jennifer Lahl is the Founder and President of the Center for Bioethics and Culture and producer of the documentary films, Eggsploitation, Anonymous Father's Day*,* Breeders: A Subclass of Women? *and* Maggie's Story, *which tells of a ten-time egg donor and her battle with stage-four cancer.*