

Society of St. Sebastian

To: Members of the South Dakota House of Representatives

From: Joe Kral, MA, President of the Society of St. Sebastian

Re: Letter in Support of HB 1096

Date: January 30, 2020

Dear House Members:

Greetings; my name is Joe Kral and I am the President of the Society of St. Sebastian and editor-in-chief of its publications *The Journal of Bioethics in Law & Culture* and *Sebastian's Point*. I write to urge each of you to support HB 1096 which would ban commercial surrogacy within the state of South Dakota. I have an extensive background in bioethics, which, I believe, makes my insight into the discussion of this bill valuable for your consideration.ⁱ

I write this letter urging support because, as many of you are already aware, the in vitro fertilization (IVF) industry is largely unregulated.ⁱⁱ This, of course, is one of the reasons why this bill is being filed. Unfortunately, precisely because of the lack of regulation many abuses have arisen; one of which is commercialized surrogacy and the ethical problems that arise from its practice. I believe this bill, HB 1096, will address several of the ethical problems that result from commercialized surrogacy and I detail just how below.

One such abuse is the number of extra embryonic children that are created, stored, and destroyed. It is no secret that IVF clinics routinely create more embryonic children than are typically used to help initiate a pregnancy. This is why the United States is facing a problem with over one million embryonic children being perpetually cryopreserved because of abandonment.ⁱⁱⁱ Furthermore, it is no myth that human life is destroyed in its earliest stages of personhood rather frequently within the IVF industry.^{iv} Many times the IVF industry will use the term “pre-embryo” to try and describe those embryos prior to implantation. But make no mistake this name is not a scientific term. Rather it is a term designed to confuse and obfuscate. The simple truth is life begins at conception and it is at this point that an embryo exists. When IVF techs create a human zygote (the earliest stage embryo-the one cell stage embryo) a new individual member of the species *Homo sapiens* has come into existence. We at the Society of St. Sebastian certainly believe that this new human person is deserving of protection under the law. Surrogacy helps perpetuate the aforementioned problems by the mere fact that it gives the IVF industry the ability to generate a situation in which couples, who either cannot carry a pregnancy or do not want to carry a pregnancy, create these extra embryonic children who will either be unjustly destroyed or cryopreserved. I use the term “unjustly” here to denote the reality that what is being done to these children is contrary to actual justice. These children are owed a right to live once they are created. They are not mere things to be discarded by being frozen or destroyed. It is my belief that by enacting HB 1096, South Dakota will reduce the amount of embryonic children that will be created and, as a result, it will reduce the numbers of embryos that will be destroyed.

Secondly, there are legitimate fears that commercialized surrogacy essentially commodifies both women and children. Much of this commodification centers on the incorrect belief that one has a right

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to a child. Rights imply duties. For example, when one speaks of the right to life, the implication is that in order for one to enjoy that right others have the duty to let the other live. Here, when one tries to argue that there is a right to a child, one is arguing that others essentially have the duty to provide him with the necessary materials (gamete cells, a uterus, and an actual child) to provide a child. It is in this misguided belief that one sees the commodification of both women and children.

Particularly, in the practice of surrogacy, one believes that they have a right to use someone's uterus that is not the "intended mother" or "intended parent". As a result, a suitable "surrogate mother" is sought. Typically, this surrogate mother is someone who is in financial need.^v However, from an ethical perspective the real problem lays within the fact that surrogacy, especially commercialized surrogacy, ignores the biological reality that a real bond is formed between the child and the surrogate mother. For example, it is a known biological reality that the unborn child responds more strongly to his mother's voice than any other. Why? Because the child has formed a natural bond while gestating within the womb. The child is naturally nurtured within the womb and his first knowledge of family is from what he experiences within the womb.^{vi} As Katie Breckenridge, one of the 2020 Fellows for the Society of St. Sebastian, argued, when a pregnancy is designed, even before the child has been conceived, to be carried by a surrogate, the action essentially ignores the bonds that are created naturally and regards the surrogate as a "babysitter".^{vii} Unfortunately, it is in this role that one can see the commodification of the surrogate. The surrogate merely is contracted to be an incubator for the "intended parents" all the while biological reality is disregarded. In essence, the right of the child is ignored. The fact remains that the state has more guidelines for the adoption of children because it recognizes the right of the child to have certain rights met by the adoptive parents. This simply does not exist in the realm of commercial surrogacy. Adoption is not viewed as a process of exchange of material "goods" (money for the child) as seen in commercial surrogacy, but rather seeks to ensure that the adoptive parents will live up to their legal (and moral) responsibilities as parents. It is my belief that if HB 1096 is enacted it will help prevent the commodification of these women in need and will help prevent infants from suffering emotional abandonment.

Finally, I also believe that HB 1096 will prevent commodification of children. Children are not mere objects to be bought and sold. Yet, surrogacy certainly makes it appear as this is the case. A price is paid to the surrogate and a baby is exchanged at the end of the pregnancy. But furthermore, it is the case that embryonic children are treated as mere things that can be destroyed at whim because they are not deemed suitable. And by banning commercial surrogacy, the IVF industry will not be able to make more embryonic children that will be subject to this abuse. Not to mention the cases where the surrogate is pressured into having an abortion because it is found out that the unborn child may be suffering from a genetic abnormality. As I am sure many of you are already aware, many states are trying to pass legislative initiatives that are referred to as Prenatal Non-Discrimination Acts. These bills seek to prohibit the abortion of unborn child if it is known that the unborn child suffers from a genetic abnormality or disability. While many of these states are fighting in the courts to keep these laws, it is still interesting to note that 1) states are still willing to pass such legislation and 2) there is a clear conviction within these states that aborting these unborn children constitutes a moral wrong. Unfortunately, we live in a time where many think it is acceptable to abort children that have Down Syndrome^{viii} or any other disability. No doubt, if it is found out that the unborn child in a commercial surrogacy arrangement suffers from some abnormality it will be highly likely that the surrogate will be

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pushed to abort. By banning commercialized surrogacy, South Dakota will be able reduce the amount of incidents of this happening.

In conclusion, I thank you all for your commitment to your great state. I think HB 1096 is a step in the right direction in helping establish a Culture of Life. I strongly urge your support of this measure and urge you to remember that this bill, if enacted, will have the positive effect of reducing the unjust practice of embryonic children that are frozen or destroyed, recognizing that women are not mere incubators, and that children are not commodities to be bought, sold, or aborted because they are not perfect. Thank you for all you do.

Sincerely,
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ⁱ If you wish to see more of my bio you may view it here: <https://www.societyofstsebastian.org/board-of-directors>

ⁱⁱ See <https://www.businessinsider.com/assisted-reproduction-ivf-industry-regulation-2015-6>.

ⁱⁱⁱ See <https://www.nbcnews.com/health/features/nation-s-fertility-clinics-struggle-growing-number-abandoned-embryos-n1040806>.

^{iv} See https://www.washingtonpost.com/opinions/fertility-clinics-destroy-embryos-all-the-time-why-arent-conservatives-after-them/2015/08/13/be06e852-4128-11e5-8e7d-9c033e6745d8_story.html.

^v See <https://www.nytimes.com/roomfordebate/2014/09/22/hiring-a-woman-for-her-womb/paid-surrogacy-is-exploitative>.

^{vi} See <https://www.today.com/parents/unborn-babies-are-hearing-you-loud-clear-8C11005474>.

^{vii} To read more about the moral problems of surrogacy that Ms. Breckenridge discussed please see <https://www.societyofstsebastian.org/copy-of-sebastian-s-point-63>.

^{viii} See <https://lozierinstitute.org/improving-joyful-lives-societys-response-to-difference-and-disability/>.