

**Prepared Testimony of
Distinguished Professor Emeritus William Wagner
and Katherine Bussard**

**Before the Michigan House of Representatives
Judiciary Committee
Wednesday, November 1, 2023**

Distinguished Chair and Distinguished Members of the Committee: Thank you for the opportunity to provide testimony on the Assisted Reproduction and Surrogacy Parentage Act, which includes House Bills 5207-5215.

Introduction

My name is William Wagner and I hold the academic rank of Distinguished Professor Emeritus (Law). I served on the faculty at the University of Florida and Western Michigan University Cooley Law School, where I taught Constitutional Law and Ethics. I currently hold the Faith and Freedom Center Distinguished Chair at Spring Arbor University. Before joining academia, I served as a federal judge in the United States Courts, as Senior Assistant United States Attorney in the Department of Justice, and as a Legal Counsel in the United States Senate. Most relevant though, I also serve as a Member of the Board of Directors of the Parental Rights Foundation (PRF). PRF is a non-profit research and educational institution dedicated to the promotion and preservation of parental rights and the protection of children.

My name is Katherine Bussard, Executive Director & COO of Salt & Light Global, a faith-based non-profit founded in Michigan that works to protect parents and children, preserve the family, and uphold the sanctity of life around the world through the advancement of good governance.

Today, we testify in our personal capacities in hopes of contributing to this deliberative policy-making process. Because the current drafts of House Bills 5207-5215 present several points of concern to good governance and the value of human life, we oppose the Assisted Reproduction and Surrogacy Parentage Act in its current form.

Good Governance Concerns

Because God created every human being in God's image (Genesis 1:27), all human life holds inherent dignity. Government, therefore, ought to regard all human life with dignity and respect. There are several ways the proposed policy fails to do this, endangering women and children:

Protecting the Human Dignity of the Child

First, by establishing contracts governing the purchase of a human child, this proposal expressly allows for the buying and selling of human beings as property under surrogacy

contracts. Page 2, lines 18-20 of HB 5207 defines a child as “an individual born as a result of assisted reproduction or under a surrogacy agreement...” and gives no voice, rights, or protection to the child, but continues to treat the child as the principal property of a contract throughout the early years of their life. The heinous practice of selling human beings was outlawed at the end of the Civil War, with the abolition of the slave trade and the ratification of the 14th Amendment. The State of Michigan must not move civil and human rights backward, but rather has a duty to take action to ensure that children of surrogates never become mere commodities.¹

In matters of estate law, government commonly assigns the role of Guardian ad Litem (GAL) to represent the interests of an unborn child. In such a serious matter as establishing the parentage and life-long familial relationships that will shape a child’s life, certainly the State has a compelling interest in showing at least equal concern. At a minimum, this bill should be amended to require an impartial advocate who can fill the role of Guardian ad Litem throughout the duration of such a surrogacy agreement, from conception until the intended parents take possession of the child. However, when surrogacy is an act of altruistic kindness (as under current Michigan law), all parties, including the child, are treated with worth and dignity, as opposed to being viewed as worth a mere sum of money.

While this may seem like semantics, to children conceived through paid surrogacy contracts, it makes a huge difference in how they perceive themselves. One such child is Olivia Auriol, of Louisville, KY, who learned of her surrogacy later in life. “There’s nothing ethical in [paid] surrogacy,” Olivia explained, “We’re trading with humans, we’re selling humans, we’re buying uteruses.” In speaking of her own trauma and mental health struggles as a child born of a paid surrogacy agreement, she shares that she felt, “as if I was abandoned by my birth mother... as I was sold. There’s nothing worse than for a child to feel that at one moment in my life I was literally sold for a check. So it screwed me up very badly.” Olivia experienced relationship challenges, struggles with her own fertility and family planning, and a lifetime of clinical mental health struggles resulting from the trauma of her birth.² Accounts like this require legislators to consider the wellbeing of the child, who is wholly without protection in the proposed policy. However, children are not the only party worthy of protection.

Protecting the Human Dignity of the Surrogate

Under the Assisted Reproduction and Surrogacy Parentage Act, a female medically determined to be capable of carrying a child in her womb may effectually lease her body to multiple parties for the purpose of giving birth to a child (or children). Renting or indenturing a human being is no less debasing of a person’s inherent worth than buying or selling a person. It

¹ Doe v. Attorney Gen., 194 Mich. App. 437-438 (1992); The Michigan Court of Appeals reasoned that “the Legislature [had] a compelling state interest sufficient to justify intrusion into plaintiffs’ right to procreate in the surrogacy context” including preventing children from becoming mere commodities and had additional concern with protecting the best interests of the child born to a surrogacy arrangement.

² First-person testimony of Oliva Auriol, *Born of a Surrogate Mother, she Fights against Surrogacy*, as shared with Abolition GPA (<https://www.youtube.com/watch?v=JUobcr4yERw>) and published on <https://thembeforeus.com/olivia-were-trading-with-humans-were-selling-humans-were-buying-uteruses-it-should-be-abolished-worldwide/>, October 19, 2023

singles out females for exploitation and risk in way that is fundamentally based on their physical sex; males cannot be exploited in this way, but they can use females to service their personal desires. The Michigan Court of Appeals in *Doe v. Attorney Gen.*, 194 Mich. App. 439 (1992), ruled that the Legislature has a compelling interest in preventing the exploitation of women serving as surrogates.

The majority of women who enter into paid surrogacy agreements are vulnerable and economically underprivileged, meaning that they are often ill prepared to face the unique legal and medical challenges presented by surrogacy. While HB 5207 provides that surrogates have so-called “independent” legal counsel before entering into a contract, it also specifies on page 9, lines 4-5, that the intended parents *must* pay for that legal counsel, creating a direct conflict of interest. In other states like California and Wyoming, this has led to surrogates finding out that they really don’t have an attorney working for them, and that the intended parent paying the bill (or declining to pay a bill) is the true client of the attorney. When this conflict of interest is created by one party hiring the other party’s attorney, women become the victims. For example, surrogates of minority ethnicities have been found to face the highest rate of chronic medical complications after giving birth, but once the child is born, intended parents who are responsible for paying medical costs often view their contractual obligation fulfilled, and surrogates can be left with medical expenses far beyond their means. Surrogacy agreements further jeopardize reproductive rights and compromise a female’s ability to make potentially life and death decisions with her doctor about her own body. This is especially true under HB 5209, which rescinds the law (MCL 722.857) protecting intellectually disabled persons and minors from being used as surrogates. Furthermore, the broad language of this package fundamentally shifts the establishment of paternity, including natural paternity. Simply put, HB 5207 does not go far enough in setting standards to protect surrogates’ rights, establish what truly independent council is, or protect against conflict of interest.

International Legal Concerns

As an international border state considering public policy that could make Michigan an even greater destination for international health tourism, legislators must carefully consider the unintended consequences the Act creates. Tragically, this bill opens the door to the potential expansion of human trafficking problems by increasing the profitability of trafficked persons as surrogates for hire. The *International Statement for Global Ban on Womb Rental* states that, “the hiring of wombs is the most prominent form of trafficking in women and children for the purpose of reproductive exploitation.”³ Michigan is already battling a human trafficking crisis, yet this bill package makes no provisions for increased law enforcement protection against such

³ *International Statement for a Global Ban on Womb Rental*, September 26, 2018. <http://abolition-ms.org/en/ressources-en/press-release/international-statement-for-a-global-ban-on-womb-rental-sept-2018/> A complete list of hundreds of signatories from more than 18 nations can be viewed at: <http://abolition-ms.org/wp-content/uploads/2018/09/List-of-Organizations-Lista-de-Organizaciones-Liste-des-organisations-25-Sept-2-1.pdf>

risks, making the most vulnerable even more vulnerable. The *Statement* also outlines several conflicts with international human rights law adopted by the United Nations, including, but not limited to:

- Convention for the Elimination of All Forms of Discrimination against Women (CEDAW, Articles 3 and 6)
- Convention to Suppress the Slave Trade and Slavery (Art. 1)
- International Convention on the Rights of the Child (Art. 7, 9 and 35)
- Option Protocol to the International Convention of the Rights of the child (Art. 2 a and 3)
- Additional Protocol to the Convention against Transnational Organized Crime (Art. 3 a)⁴

Before proceeding, the state of Michigan needs to carefully evaluate all potential legal consequences and ensure that adequate protections and mitigations are in place. The legislature should also ensure that our state courts are fully equipped to handle the volume legal disputes this bill package could create, especially when interstate and international “intended parents” may be involved.

Conclusion

The State of Michigan has a compelling interest to protect the life and welfare of its citizens, whether that person is a surrogate, an unborn child, or a newly born child. The numerous loopholes in the proposed policy set human rights backward, allowing for the sale for profit of human children and the exploitation of vulnerable females. Make no mistake: How you vote on this issue—how you act to protect human dignity and fundamental human rights—will define your legacy as a legislator. We urge you to act to protect the human worth of all Michiganders by voting “no” on the Assisted Reproduction and Surrogacy Parentage Act.

⁴ Ibid.