

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Michael O'Neal at
Chairperson

3:30 ~~xxx~~/p.m. on March 15, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Moomaw and Peterson, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Senator Wint Winter, Jr.
Sharon Huddle DeAngelo, Attorney, National Coalition Against Surrogacy, Citrus Heights, California
Charlotte Lee, Clay Center and her twelve year old daughter
2 birth fathers
Kris Jordan
Genia Ternes
Denise Voyles
Janelle Nelson

HEARING ON SB 671 Surrogate motherhood agreements, voidable criminal penalties for arranging for certain persons. Proposal No. 35

Senator Wint Winter, Jr., informed the Committee SB 190 was studied by the Interim Special Committee on Judiciary. SB 190 made surrogate motherhood contracts for consideration void and unenforceable and contracts with no consideration were voidable. Brokers that bring the parties together would be violating the law and would be punishable with a class B misdemeanor. The Interim Committee recommended amendments to SB 190.

SB 671, introduced by the Senate Committee on Judiciary, in its original form, changed the Interim Committee's recommendations to make surrogate contracts for pay voidable, and questions of custody after a contract had been rendered void would be determined in accordance with the best interests of the child. SB 671 also exempted attorneys, health care providers, social workers or any child placement agency licensed in the state from the class B misdemeanor.

The Senate Committee of the Whole amended the bill back to the original form of SB 190.

Senator Winter stated surrogate contracts should not be allowed and should not be enforceable and there should be criminal penalties for any person involved in promoting, arranging or mediating surrogate agreements.

Sharon Huddle DeAngelo, Attorney, National Coalition Against Surrogacy, said SB 671 does not prevent a woman from becoming pregnant, having a child and putting the child up for adoption. She said contracts for children would raise constitutional problems. She recommended all contracts should be void.

Charlotte Lee testified she was a surrogate mother and gave birth to a baby girl she gave to her half sister and her husband, the baby's father. This caused her and her family disillusionment, despair, hardship, emotional turmoil and grief. She recommended all surrogate contracts should be illegal, see Attachment I.

Charlotte Lee's twelve year old daughter related her experiences and feelings about her mother being a surrogate. She said her mother and the family had been neglected during her mother's pregnancy. She was also upset that she couldn't see her baby sister and show her to her friends.

A birth father testified in opposition to SB 671. He and his wife had tried for seven years to conceive or adopt a child. They considered surrogacy and contacted the Hagar Institute. They now have two children, one by surrogacy and one by adoption. He said SB 671 would take away the rights of citizens. He brought to the attention of the Committee that surrogate fathers are not outlawed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S Statehouse, at 3:30 ~~xxx~~ p.m. on March 15, 19 90

In answer to Committee questions he replied they had counseling and legal advice. The money the surrogate mother received was probably a factor but not the primary factor that she agreed to be a surrogate.

A second birth father testified in opposition of SB 671. The same surrogate had two children for his wife and himself. He said they dealt with the Hagar Institute. He didn't believe the surrogate mother did this for the money. It was a gift relationship. He said surrogate motherhood should not be criminalized.

In answer to Committee questions, he said it was very important that professional social workers be involved. He said the Hagar Institute had conducted home studies and were concerned about why they wanted a child and how they felt about the process. He stated counseling was a very important part of the process.

Kris Jordan testified she wants to be a surrogate mother. She said she has a son and has had three miscarriages. She enjoyed being pregnant and would like to physically bear another child. The surrogate process gives her the perfect opportunity to experience pregnancy again and to help someone else in the process. She said compensation is a factor but not the sole factor.

Ms. Jordan said she is associated with the Hagar Institute. She recommended licensed agencies should have guidelines and requirements to make the surrogacy process a viable, workable, safe option for childless couples. She urged the Committee to kill SB 671, see Attachment II.

Genia Ternes testified she was a surrogate mother. She gave birth to a baby on January 5, 1990 and she would do it again. She felt she was helping someone else. She said she did not do it for the money. The money did help her pay her bills when she was not working, however, it wasn't as much as her salary would have been. The money is not paid to the surrogate until after the baby is born.

Denise Voyles said she was a surrogate mother. She has not heard from the people she had the baby for. She said she is proud to be a surrogate mother. She asked her Doctor about being a surrogate mother and he referred her to Hagar Associates. She said without the support and help of Hagar Associates, she probably would not have become a surrogate mother.

Janelle Nelson testified she was a surrogate mother. She delivered a baby girl two years ago. She receives pictures, videos and letters from time to time which she enjoys, but doesn't desire more contact with the family. She said she would not have been able to do this if it were not for Hagar Associates. She stated she didn't do it for financial gain, but that it was just something she wanted to do.

The Chairman announced the hearing on SB 671 would be continued to another date to be announced.

The Committee meeting adjourned at 5:30 p.m.

I am Charlotte Lee, I am a Mother-By-Agreement. On December 27, 1987 I gave birth to my baby girl. My baby I would give to my half sister and her husband the baby's father to raise. My baby resides in the state of Missouri. Our children residing at home during this time were in their adolescent years the growing years, the questioning years, their ages 11, 13, and 15.

I see a need for legislation, I ask you to understand that any attempt to create a family by methods labeled "surrogacy", will necessitate in breaking up another family, in taking away a family member. We as individuals for a short time sat aside the human factor. The human factor is the root of our individuality, I as the Mother-By-Agreement brought unknowingly to my family, disillusionment, despair, hardship, emotional turmoil, and grief. I thought I'd thought thru all the in's and out's being a Mother-By-Agreement. I speak freely of these human factors because I had no contract with a payment of ten thousand dollars or more as a dark cloud above my head. Nor was I programmed by counseling therapist keeping my thought patterns on track in feeling pride, telling my self what I was doing, I would be rewarded with a sense of joy.

I ask you to strongly ask yourselves as you listen here, to me today. Who is being considered in any "SURROGATE CONTRACT"? The CHILD TO BE? No I don't believe the child had been taken into consideration as I later found in my Mother-By-Agreement, the parties of the second made failure to mention the termination of a life during it's first stages of life, yes a life had been aborted. The life of my half sisters own child ten years ago. I'd been led to believe "ALL THE TEST PROVED A INABILITY TO CONCEIVE". We as americans have arrivied to a state "WHAT WE WANT WE WILL GET NO MATTER THE COST!" The cost is too high. I felt pittty for my half-sister and relinquished my rihgts to my own child, I'd been wrongly informed. Think for a moment hear, was it the previous termination preventing an ability to conceive? The best interest of the child hadn't been considered, no the person considered was the adult whom at one time had no need for a child, it's life was terminated, Later as years passed the desire for a child now fit my half-sister's life style, at a time choosen by the "ADULT", took under false pretense

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Attachment I

from one family "OURS" to make their family and now there's another broken family by means of surrogacy.

No I can't blame my half-sister for not understanding the turmoil my children of the home went through as the nine months passed. My oldest daughter boldly and hatefully told me "but your're giving away your baby my sister". MY daughter now wrote "THE TEARING APART OF FAMILIES THAT BECOME VERY CLOSE OVER A YEAR IS VERY HARD FOR A TEENAGE GIRL. FAMILIES DON'T NEED TO BE TORN APART THE WAY OURS WAS AND THE WAY OTHERS WERE. PASSING THIS BILL COULD SAVE ALOT OF PEOPLE FROM ALOT OF PAIN. ALL THAT I CAN DO IS ASK: BUT YOU MIGHT BE ABLE TO HELP IN AN EVEN BIGGER WAY IN SUPPORT OF SB671" You see her friend in a exchange of words ask her, Why dosen't your mother give you away like she did her baby. Do we realize the lasting scars to their emotional being?

My son is aware of the pain yet wants to hide the pain, he refuses to discuss the matter, but in support of SB671 wrote "I DON'T THINK SURROGACY SHOULD BE ALLOWED IN ANY STATE NO MATTER WHAT, THERE ARE MANY KIDS IN THE WORLD THAT ARE HOMELESS. WHY DON'T WE HELP THEM FIRST INSTEAD OF CREATING MORE CHILDREN".

My youngest daughter writes, "THE ONLY THING WE GET OF MY SISTER, IS PICTURES SOME TIMES THEY ARE ALREADY TWO THREE MONTHS OLD BEFORE THEY REACH US, AND IT'S NOT BECAUSE SHE LIVES ACROSS SEAS, BECAUSE SHE LIVES IN MISSOURI. I WOULD LIKE YOU TO CONSIDER THE FACTS OF HOW WE WERE A FAMILY AT ONE TIME". It was my family whom saw the tormoil as I wept, they have stood steadfast in my support. Yes, we have pictures and even received a box of candy at christmas time.

MY children want to see their baby sister and know how she's doing They're aware their sister is alive. We were all a family, now we're a broker family and it's not because a parent has died, nor a divorce took place, or has a child been abandon, only because I the decision maker thought this was good for mankind.

My half-sister and husband now make us aware of the rigided restrictions, misleading of all the facts, because of their inability to conceive a CHILD.

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I have been told that I should forget the past because what is done is done, yet I ask you in THE BEST INTEREST OF THE CHILDREN, is it really that easy to forget the termination of a child then with a SURROGATE CONTRACT, take another's child.

Sirs, I keep my ancestry alive, I believe what we do today makes our tomorrow, yet if it weren't for yesterday how could tomorrow come? The past as well as the future is of equal importance to me. You are the decision makers of our future and you will have formed your opinions to make sound judgement in the laws you pass.

Take the idea of "ENFORCEABLE SURROGATE MOTHERHOOD", out of the market place! Remember the life of the newborn and the family unit.

Counseling wouldn't have made any of my children not experience any of the feelings they've had, nor act another way. Not seeing, nor hearing about our baby-by-agreement does matter. I've stopped RELINQUISHING my baby; our home is back to feeling safe. I no longer say I'm only a caretaker, I'm the mother of their sister whom was taken, just as I'm their mother

Charlote M Lee

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H. Jud. Com.
Att I*

Testimony of
KRIS JORDAN
In Opposition of
Senate Bill 671
March 15, 1990

My name is Kris Jordan. I strongly oppose Senate Bill 671. This Bill will not eliminate the use of surrogate mothers. This Bill will only serve to make the process much more dangerous and much less secure, not only for the adoptive couple and the surrogate, but for the prospective child which we all wish to protect. To impose criminal liability on persons making surrogate arrangements is in and of itself criminal. It should never be made criminal to bring life into this world when it is perfectly legal to terminate life.

The issue we are all concerned with is the possibility of exploitation of women and children. To allow surrogacy to continue with no restrictions perhaps does give license to that possibility. However, surrogacy can have a wonderful, positive effect on the world we live in, provided that we build in safeguards that will serve to protect all persons involved.

I believe that licensed child placement agencies can provide and administer those safeguards. I have been in contact with such an agency here in Topeka to pursue becoming a surrogate mother. The reason I chose this agency is that it provides the safe and supportive environment that is vital to any responsible surrogate arrangement. This agency does not make it easy to

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Attachment II

become a surrogate. They require not only extensive medical testing, but psychological and home study evaluations as well. They leave no stone unturned to assure that the potential surrogate has a full understanding of the process and has the right purpose in mind. During the interviews, it is as if they are trying to talk you out of it. Their desire is to have a totally voluntary choice that will be healthy and productive for the surrogate.

The adoptive couple goes through the same exhausting process. It is even more important that their background and references be checked thoroughly before a child is placed with them. The medical testing the husband goes through provides the surrogate with the assurance that she will not be exposed to any health risks. The agency also assures that exorbitant amounts of money are not used to attract women of lesser means who would not otherwise consider being a surrogate.

To better enable you to understand my position, I'd like to tell you a little about myself and why I personally would like to become a surrogate mother. I am 32 years old, married and the mother of a 7 year old son. I have a Bachelor of Science degree in Business Administration and am a first year law student at Washburn University.

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Att II

I attribute my decision to three principle factors: 1) being an adopted child, 2) the death of my first husband and 3) having 3 miscarriages myself.

My being adopted plays a role because it gives me first hand experience that adoptive parents provide a safe, stable, secure and loving environment for a child. People who adopt are special people who have a deep capacity for loving and giving. It has long been by desire to give another child the same opportunity that my parents gave me. My first husband and I explored the possibility of adopting a child ourselves before our son was born. We were given a rather bleak outlook on the possibility of making that dream come true. While some children are available for adoption, most have special needs that many couples are unable to provide.

I believe abortion has made a major contribution to the decrease in infants available for adoption. One fact I base this contention on is a statement my birth mother made to me when we met. She told me that had abortion been legal when she was pregnant with me, I would not exist. Obviously, to me, that thought is frightening. While I do concede that there are circumstances when abortion may be necessary, I don't believe it should be used as a method of birth control.

In becoming a surrogate mother I could help create a family, almost a reverse adoption, if you will. I would be able to do

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for another couple, what my birth mother did for my parents and for me. My gift would be out of choice, however, rather than necessity.

The death of my husband also has made a significant contribution toward making me the person I am today. I think most people have the idea that bad things only happen to other people. It is not until you are personally touched by tragedy that you learn to have true empathy and a deeper understanding of others.

I can still remember the feeling I had, that my life was out of control. I had such anger because I felt life wasn't fair and there was nothing I could do about it. Infertile couples suffer with many of these same feelings. I know how I would have felt if someone could have stepped in and said "you're right, life is not fair. This shouldn't be happening to you. I have the ability to help you and I am going to help you." I would like to be that someone for a couple.

I met and married my husband, Scott, 2 1/2 years ago. We have attempted to have a child 3 times, but all 3 attempts have ended in miscarriage. We have been tested and have determined our problem. We can undergo treatment, and if successful, we will be able to have a child. If, however, it is not successful, we may consider the surrogate program ourselves to enable us to

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parent my husbands' biological child. Even though having the miscarriages was painful, I did have the emotional buffer of knowing that I have my son.

To be perfectly honest, I do have, perhaps, a selfish interest in becoming a surrogate mother. I loved being pregnant with my son. I felt great and it was a wonderful experience. Regardless of whether my husband and I can have another child, I would like to physically bear another child. The surrogate process gives me the perfect opportunity to experience pregnancy again and to help someone else in the process.

Although some people claim money is the prime motivator in a surrogate arrangement, I don't believe this is true. While I'm sure the potential for abuse is present, restrictions enforced by licensed agencies eliminate that risk. The money I receive, if divided out over the hours involved with evaluation, insemination and pregnancy, will amount to less than \$1.00 per hour. The money I will receive is nothing more than expense money.

Let me address the question of compensation. Some say that if surrogacy were uncompensated no one would do it. Perhaps. Why should a woman risk her health, increase her own costs and risk the possibility of being out of work should complications arise, without being reasonably compensated for that time period? If a person should have to drop out of classes and lose tuition, why should she bear that cost alone?

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In summary, I reiterate, guidelines and requirements of licensing of agencies could make the surrogacy process a viable, workable safe option for childless couples. I urge you to refuse Senate Bill 671 as it stands.

I would like to leave you with one additional thought. I have met a couple that, barring anything unforeseen, will be my adoptive couple. I don't know of anyone more capable and deserving of a child to raise. They have spent the last seven years exhausting all other options. They want a child so badly that they are willing to risk the surrogacy option as it stands today.

The thought I carry with me and will carry with me for the rest of my life, will be the moment I lay our chosen child in its' mothers' arms and see the joy and adoration in her eyes. How could anything be more in the best interest of a child?

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