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The Honorable Bobby Jindal
Governor, State of Louisiana
P.O. Box 94004
Baton Rouge, Louisiana 70804-9004

Re: Request for Veto of La. SB 162, providing for “gestational surrogacy” contracts

Dear Governor Jindal:

As experts in constitutional law and policy in the life issues, **Bioethics Defense Fund (BDF)** attorneys collaborate with leading physicians, scientists and researchers to develop and defend life-affirming policies regarding a host of bioethics issues.

We write today on behalf of both BDF and the **Louisiana Right to Life Federation (LRTL)**, the parent organization to 15 affiliate Right to Life chapters across the state. Representing thousands of members, the Louisiana Right to Life Federation works through education and legislation to protect and restore the right to life in Louisiana, and is led by executive director Benjamin Clapper and the LRTL Center for Medical Ethics director Ryan Verret.



We respectfully request your veto of La. SB 162 (2013) on the grounds that the following concerns were not addressed in any meaningful way during legislative committee hearings or floor debates:

- State-sanctioned financially induced pregnancy necessarily encompasses state-sanctioned financially induced abortion;
- State-sanctioned gestational surrogacy regulations will give legal cover to surrogacy brokers who will commodify Louisiana women as products in catalogs who are paid to undergo dangerous medical procedures;
- A veto of SB 162 will not impact the status quo regarding the ready access that Louisiana citizens already have to artificial reproductive technologies and gestational surrogates.

Introduction

Louisiana Right to Life and Bioethics Defense Fund are proud that under your leadership, Louisiana has led the nation in laws that protect the dignity of every human life and the interests of women in vulnerable pregnancies. We recognize the struggle and pain that couples endure when they are unable to have a child by natural means, and we do not question the intention of couples considering gestational surrogacy. However, an important distinction must be made between the good intentions of couples who desire biologically related children, and the actual

practices of gestational surrogacy brokers who take advantage of citizens in states that have passed legislation similar to La. SB 162.

BDF's study and experience regarding the actual impact of similar legislation enacted in other states supports our conclusion that if signed into law, **SB 162 will inevitably have the unintended consequence of being the stimulus to a lucrative gestational surrogacy industry in Louisiana, whose brokers engage in practices that are profoundly contrary to Louisiana's pro-life values** concerning the dignity of women, children and families.

SB 162 Sanctions Financially Induced Pregnancy and Abortion

The advocates for La. SB 162 frequently led legislators and the public to believe through their committee testimony and floor debate that the bill disallows financial compensation to the surrogate mother. However, this claim ignores the language on **page 8, lines 12-13**. That provision allows the intended parents to provide the gestational carrier not only with reimbursement for actual medical expenses, but also for **“reasonable living expenses.”**

The proponents' failure to fully inform legislators of the implications of this provision recognizes that financially induced contract pregnancy is an unethical commodification of women's bodies. However, they cannot sever the reality that the bill's allowance of “reasonable living expenses” is in fact compensation that serves to lure surrogates to commodify their bodies at the profit of surrogacy brokers.

It is a common industry practice to pay a high surrogacy fee to women under the guise of “reasonable living expenses.” For example, the Florida-based DreamABaby.com website provides a *Gestational Surrogacy Price List (2013)* which mirrors the pricing structure of most surrogate brokers. (See Price List attached). The “price list” specifies that the gestational surrogate will **receive \$10,000 to \$30,000 for “reasonable living expenses.”** This fee is in addition to reimbursement for doctor visits, medical tests and required home studies.¹

Because La. SB 162 sets up a regulatory scheme of state-sanctioned financially induced pregnancy, it necessarily encompasses state-sanctioned financially induced abortion. Under the constitutionalized regime of *Roe v. Wade* and its progeny, the gestational carrier in Louisiana can “choose” to abort the pregnancy for any reason, including a financially incentivized request (or subtle yet coercive demand) from the surrogate broker on behalf of the intended parents.

Indeed, La. SB 162 recognizes this, expressly stating that “an enforceable gestational surrogacy contract” must “acknowledge that the gestational carrier has sole authority with respect to medical decision-making during the term of the pregnancy consistent with the rights of a pregnant woman carrying her own child.” See SB 162, **page 4 lines 31-34 to page 5 line 1**. This language unintentionally enables financial inducement to abortion, as long as the gestational carrier has the sole authority to make the final decision.

While financially incentivized abortion may seem to be a far-fetched hypothetical, this scenario was an actual case that BDF was recently consulted on concerning a gestational surrogacy contract in Connecticut. The case involved an unborn baby diagnosed with several potential

¹ See

<http://www.dreamababy.com/downloads/Conventional%20Surrogacy%20Price%20List.pdf>
(last visited June 4, 2013).

birth defects. The intended parents, citing the “abortion clause” in the surrogacy contract, demanded that the surrogate abort the baby. See CNN, “Surrogate offered \$10,000 to abort baby” (March 6, 2013).

Due to our nation’s abortion jurisprudence allowing abortion on demand, it would not be unlawful for the intended parents to offer the gestational carrier additional “living expenses” in or outside of a contract in return for her consent to abort the pregnancy of a child that may have special needs – thus crossing the line into prenatal eugenics.

Again, this practice is common to the gestational broker industry. The *Gestational Surrogacy Price List (2013)* available on DreamABaby.com outlines the industry standard of notifying intended parents of possible unspecified additional expenses in the event of “**termination of a genetically abnormal pregnancy**” or “**selective-reduction of a multi-fetal pregnancy.**” This is consistent with standard gestational surrogacy contracts.

SB 162 commodifies Louisiana women and subjects them to health dangers

As pointed out by Pulitzer Prize-winning columnist Kathleen Parker in her column *Surrogacy Exposed*, *Washington Post* (May 24, 2013), the Louisiana surrogacy bill garnered national attention and has forged interesting alliances based on the common concern for the commodification of women:

Feminists, traditionalists, Catholics, evangelicals, ethicists and atheists alike have united to combat what many convincingly view as the exploitation and commodification of women and the violation of human rights even as perfect babies and happy families are formed.

Latest to the arena is Louisiana, where a pro-surrogacy bill creating a regulatory structure for surrogate parenting passed both legislative houses with few dissenting votes and now faces a possible veto by Gov. Bobby Jindal (R). A thumbs-down from Jindal would constitute an act of principled courage

The Parker piece highlights the high rate of military wives targeted by surrogacy brokers because of their vulnerable and often isolated condition. And the women displayed like products in the catalogs found on surrogacy broker websites reveal that many are single moms who are financially vulnerable.



www.AffordableSurrogacy.com/33.html

Attracted by the seemingly natural process of pregnancy, SB 162 would subject women of Louisiana to the dangers of undergoing multiple injections of synthetic hormones and other drugs, along with the dangers of surgery for the transfer of another couple’s human embryo. The far from natural procedures necessary to prepare a woman’s body to serve as a surrogate can have devastating short and long-term health consequences.

Surrogates are pumped with high doses of drugs such as Lupron which is not FDA approved for fertility use; estrogen which is linked to breast and uterine cancers, heart attack, stroke and

blood clots; progesterone; antibiotics; and steroids which are linked to high blood pressure, glaucoma, cataracts, peptic ulceration, and an impaired immune system.

While La. SB 162 provides a regulatory scheme for the protection of the parental rights of intended parents, the bill does nothing to protect the rights or interests of the women serving as gestational carriers. Our Louisiana women targeted by surrogacy broker ads and large sums of “reasonable living expenses” will often not be aware of the consequences related to the hormone injections, the multiple miscarriages, or the injuries and complications related to the surgical embryo transfer or later procedures involving childbirth or abortion.

Our law contemplates medical malpractice and liability when a mother undergoes the documented risks of pregnancy to build a family of her own. But contract pregnancy to build the family of unrelated third parties gives rise to issues of risk and liability that this bill simply provides no framework to address.

Veto of SB 162 will not prevent access to IVF or surrogate contracts

It is important to note that the veto of La. SB 162 would not prohibit the bill’s author or any other Louisiana citizen from availing themselves either of *in vitro* fertilization or of contract or altruistic surrogacy – practices that raise a host of ethical issues as evidenced by the diversity of religious and moral traditions that have stated opposition to this bill.

In fact, without the aid or existence of this legislation, the bill’s author and several Louisiana citizens that he brought forward to testify were able, in the words of the author, to “use a surrogate” to achieve the birth of their children who were conceived via *in vitro* fertilization and then carried in the womb of a gestational surrogate. We emphasize that these children are entitled to the same love and intrinsic human dignity due to every member of the human family, and that our opposition to this legislation speaks only to the surrogacy broker industry that it will spur and its practices of commodifying women and children.

In short, your veto of SB 162 would maintain the status quo while preventing the codified profit incentives that would encourage surrogacy brokers to enter our state to target Louisiana women under the cover of a well-intentioned though flawed regulatory system that has been proven in other states to carry devastating unintended consequences.

For the sake of Louisiana women, children and families, we urge your veto of the commercial pregnancy scheme embodied in La. SB 162.

Sincerely,



Dorinda C. Bordlee