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To: Minnesota Policy Leaders
From: Dorinda C. Bordlee, Senior Counsel, Bioethics Defense Fund
Date: February 16, 2015
Re: Issues that need consideration regarding gestational surrogacy

Members of the Committee:

Bioethics Defense Fund (BDF) is a non-partisan, public interest legal and educational organization. The BDF Legal Project on Reproductive Trafficking is a nationwide effort intended to provide consultation regarding the practice of gestational surrogacy.



BDFUND LEGAL PROJECT ON
**REPRODUCTIVE
TRAFFICKING**

BDF commends the Minnesota legislature for considering a bill to create a study commission so that the following questions of ethics, law and medical risks can be addressed with the ultimate goal of informing future legislation.

We submit this testimony not to support or oppose legislation, but to briefly present the following legal and policy issues raised by bills that seek to create recognized legal protections for surrogacy brokers:

1. Does the commodification of a woman's womb violate the intent of federal law prohibiting organ sales?
2. Would State-sanctioned gestational surrogacy subject Minnesota women to health dangers not contemplated by medical malpractice law?
3. Would proposed legislation to create legal protections for contracting parents have the unintended consequence of being the stimulus to a lucrative gestational surrogacy industry in Minnesota attracting brokers who would engage in practices that exploit financially vulnerable women?

4. Would proposed legislation to create legal protections for gestational surrogacy result in dangerous inequities of legal and medical protections for economically disadvantaged women who are often single mothers delaying full time work to raise their own small children, military wives, and other financially vulnerable women who are lured into risking their health without full and informed consent in order to meet personal or family financial obligations.
5. Many surrogacy brokers require the contracting parents to purchase life insurance “in the event of death of the surrogate,” and many brokers limit liability for the “loss of reproductive organs or capacity.” What are the insurance and liability implications to both brokers and contracting parents, and would the State of Minnesota be subject to liability in the event of death or serious health complications?
6. Would State-sanctioned financially-induced pregnancy protect broker contracts that include financially-induced abortion for unborn children diagnosed with fetal imperfections?
7. What are the legal and societal consequences of “abortion clauses” in surrogacy contract, such as the one used by a broker in Connecticut who used threats of legal action to coerce a surrogate mother to abort the baby despite the mother’s conscience objections? See CNN, “Surrogate offered \$10,000 to abort baby” (March 6, 2013).
8. What is the impact on the children who are sold in surrogacy contacts?
9. Do laws prohibiting the trafficking of human persons apply when women are coerced or financially induced to trade on their bodies?

This list is far from exhaustive, and is intended to illustrate the often hidden issues that profoundly impact the women and children who are the “objects” of surrogacy contracts. Bioethics Defense Fund attorneys are available on a pro-bono basis to provide policy assistance and consultation as this matter proceeds.