

Dear Senate Majority Leader Stewart-Cousins and Majority Senior Staff Counsel Katz,

We are New York State-based children's and women's rights advocates, medical and public health professionals, lawyers, and scholars who have worked on issues pertaining to reproduction for many years. I am among signatories who include gamete-conceived children, experts who have long fought trafficking of women and children and members of the LGBTQI+ community among many others. We write to express our deep concern regarding Bill S.5107 introduced by Senator Hoylman-Sigal. We are deeply troubled by the substance of the bill and the speed with which it appears to be moving through the approval process. We urge you to ensure a fair discussion, with the opportunity for expert testimony to be presented. Our concerns are shared by numerous other prominent advocates for children's and women's health and rights, who will be writing to you shortly.

The Child-Parent Security Act (CPSA) was passed as a line item in the 2020 state budget at the height of the COVID-19 emergency and thus was never fully discussed. Although the bill proposed currently, S.5107, may have been presented to the NYS Senate as a merely technical, "clean up" intervention, in fact **it introduces substantive changes that far worsen the positions of children born of surrogacy arrangements, persons providing gametes, and persons acting as surrogates.** At the time it was passed, the CPSA was hailed for providing protections for parents and surrogates; S.5107 actively seeks to undermine those protections.

Among our numerous concerns regarding S. 5107, we would like to highlight the following:

1. **Children's rights to know.** As the decades-long fight, recently won by New York State adoptees has demonstrated, knowledge of a person's biological parentage, and especially of the identity of one's birth mother, is a fundamental right, and lack of such knowledge can have profound psychological consequences. Instead of following the adoption paradigm, in which an original birth certificate is issued that includes the name of the birth mother and an amended birth certificate is subsequently issued, with the original sealed and accessible to the child when they reach the age of majority, S.5107 would allow for a birth certificate to be immediately issued with only the name(s) of the intended parent(s) on it. This means that an "original" birth certificate with the name of the birth mother would not exist and would preclude the adult child from learning this information. While this may correspond to intended parents' wishes, we know from the history of closed adoptions and from the experience of donor-conceived children that children's inability to know key information regarding their births can have lifelong devastating consequences for the children themselves.

2. **Residency requirements.** S.5107 would weaken the CPSA's residency requirements for intended parents and surrogates. The original law requires that **both** the person acting as a surrogate and at least one intended parent be residents of New York State. S.5107 reduces this requirement to **either** one or the other. This could facilitate the development of New York State as a destination for the reproductive tourism industry akin to California. Moreover, it would undermine regulation, heighten risks of exploitation and undercut the promises of the Surrogates' Bill of Rights, a uniquely progressive feature of the original CPSA. This is the wrong direction for New York State: we -- you -- must ensure that the provisions of the Surrogates' Bill of Rights

are enforceable and accessible, which New York State cannot do if the person acting as a surrogate resides elsewhere or if the intended parent(s) cannot be held accountable.

**3. Specific performance in surrogacy agreements.** S.5107 makes explicit provision for specific performance to be available to intended parents. As a highly coercive contract remedy, specific performance is applicable in very limited circumstances. Here, it violates the rights of the person acting as surrogate, and, if applied, could lead to a highly disturbing narrative of a child's origins. A dispute with a surrogate regarding the custody of a child ought to be adjudicated in relation to the best interests of the child.

**4. Surrogates' legal fees.** Under S.5107, a person acting as surrogate would never have their fees covered in the event of any litigated dispute with the intended parent(s). Once again, this weakens the Surrogates' Bill of Rights by limiting the surrogate's ability to claim those rights and gives rise to risk of abuse by the intended parent(s).

**5. Gamete providers are not parents.** S.5107 introduces the words "relinquished" and "relinquish," suggesting that gamete providers (or "donors") have parental rights that they must relinquish. This is unusual, and risks creating confusion. The original bill conformed with precedent relating to assisted reproduction in that donors who provide gametes under the supervision of a health care provider do not have parental rights, but this language has been struck. However, we do support removing anonymity for gamete providers, because children need to have access to identifying information at age 18.

**5. Requirements of surrogacy programs.** S.5107 loosens requirements of surrogacy programs, including eliminating their responsibility to ensure that they administer informed consent procedures that comply with relevant regulations of the New York State Department of Health, another landmark protection of surrogates' rights that was included in the original law.

We are committed to protecting the rights of children, persons acting as surrogates, and gamete providers, as well as intending parents. Their interests should be your concern, along with the interests of public health and of New York State. We urge you to ensure that there is a fair and open discussion of S.5107.

Sincerely,

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