

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

April 15, 1991 Hearing Room 357 3:00 p.m. Tapes 89 - 93
MEMBERS PRESENT: Rep. Kelly Clark, Chair Rep. Judy Bauman
... Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Tom
Mason Rep. Del Parks Rep. Ron Sunseri STAFF PRESENT: Holly Robinson,
Committee Counsel Jeff Steve, Committee Assistant MEASURES HEARD: HB
3481 - Artificial Insemination (PH) HB 3482 - Surrogacy (PH)

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 89, SIDE A

004 CHAIR CLARK: Opens Subcommittee on Family Justice at 3:06 p.m.

HB 3481- ARTIFICIAL INSEMINATION - PUBLIC HEARING

Witnesses:

Mark Johnson, Surrogate Foundation Katherine Brown, Women's Rights Coalition Stevie Remington, American Civil Liberties Union Jim Carlson, Oregon Medical Association Kenneth Burry, M.D. Bob Castagna, Oregon Catholic Conference Ginni Snodgrass, ALARM Vicki Walker, National Coalition Against Surrogacy

018 HOLLY ROBINSON: Summarizes HB 3481. Allows a donor in an artificial insemination to retain all the rights, obligations and interests of a father if a written agreement has been signed. Repeals provision requiring that artificial insemination be performed by doctor or person under supervision of doctor. llouse Committee on Judiaa~ April 15, 1991 - Page 2

031 MARK JOHNSON, ATTORNEY: EXHIBIT A and B. 042 KATE BROWN, OREGON STATE BAR: EXHIBIT C Reads from Exhibit C.

125 CHAIR CLARK: What was the reasoning that there be a physician involved? 128 BROWN: At the time, the legislative history reveals that the intent of the statute was to focus on anonymous donors in a medical setting. Therefore, a physician would be performing the procedure.
162 ROBINSON: Ms. Brown is right that the art)ficial semination statute was amended in 1977. Believes there are internal inconsistencies in that there are exclusions for the huSB and and his consent is not required if the semen does not belong to the huSB and. 207 BROWN: The statute has gone through a lot of changes since it was enacted in 1977.
221 REP. BAUMAN: If the huSB and of the mother did not sign the agreement will he be presumed to be the biological father of the child?
230 JOHNSON: Believes not. Normally the huSB and would be sterile and the conclusive presumption would not apply. 236 CHAIR CLARK: What if the donor wants to assert some rights and responsibilities and the woman does not so there is no agreement. Does this run against McIntyre v. Crouch mentioned in your testimony?

249 BROWN: That is what McIntyre said. 252 CHAIR CLARK: If the woman says, "no" during the preconception agreement then the donor is out of luck. 261 BROWN: If there is no agreement prior to conception then the donor will have no rights. 267 CHAIR CLARK: Does that satisfy McIntyre

v. Crouch? 268 BROWN: The CommiKee believed that it would. 286 REP.
BELL: On lines 10-15, page 1, if there is an agreement the rights of the
parents are protected but what about the rights of the child?
296 BROWN: Suggests that by obligating the father to the child that
the child would also have the same rights. 306 JOHNSON: HB 3481 as
drafted does not make the semen donor the father of the child by
operation of law. Rather it gives the donor standing to assert parental
rights. 326 REP. PARKS: Do you intend that the semen donor would have
any child support obligations? ,

These minutes contain materials which paraphrase and/or summarize
statomods mado during this seNion. Only text enclosed in quotation marks
report a speaker's exact words. For complete contents of the
procoodiags, please refer to tho tapes. House Committee on Judiciary
April 15, 1991 - Page 3

332 BROWN: The original intent of HB 3481 was that the donor would
not have to pay child support. 343 REP. PARKS: If you are a semen
donor do you have a financial obligation? 347 BROWN: Under current
legislation no. If HB 3481 passes and the donor takes steps to ensure
that he will have rights and obligations as a father then yes he would.
354 REP. PARKS: Concerned about the single mother situation where the
semen donor could conceivably create a responsibility for the state.
366 BROWN: Unless the donor has asserted any rights then the state
could not come in. 392 REP. BELL: Is there anywhere in the law, where
it does discuss the single mother situation? 400ROBINSON: No. Points
out that most donors are anonymous. TAPE 90, SIDE A 012 REP. SUNSERI:
Could the donor be responsible for child support even thought the woman
may be married? 016 BROWN: If he took the procedural steps to secure
rights then yes. 020 CHAIR CLARK: The huSB and of the mother would also
have to sign for that situation to exist. 023 REP. MANNIX: Wonders why
the Washington statute concerning this area was not used. See Exhibit C
page 2. 041 BROWN: Wanted to preserve the consistency in language with
Oregon law. 043 REP. MANNIX: Suggests that the Washington statute is
better written.

048 BROWN: The Committee can accept that. 064 CHAIR CLARK: Is there a
health concern about having non-physicians perform art)fiacial
insemination?

068 BROWN: Parties will continue to perform art)fiacial insemination
whether or not a physician is involved.

086 STEVIE REMINGTON, AMERICAN CIVIL LIBERTIES UNION: Goes on record as
supporting HB 3481. 090 JIM CARLSON, OREGON MEDICAL ASSOCIATION:
EXHIBIT D

103 KENNETH BURRY, M.D.: Speaks about the process of art)fiacial
insemination. The process House Committee on Judic~a~ Apnl IS, 1991 -
Page 4 can be performed by most everyone. - 127 CHAIR CLARK: What can
go wrong in the artificial insemination process?

130 BURRY: Infection can occur and this can lead to sterility. The
greater issue concerns diseases like AIDS. There is an elaborate
screening process. 152 CHAIR CLARK: What does "family pedigree" mean?
153 BURRY: That is an inquiry into genetic background up to two
generations. 158 CHAIR CLARK: To Jim Carlson: What is your preference?
160 CARLSON: Would urge the Committee in Section 3 to leave the word
"physician" in instead of inserting the word "person." Urge deleting
Section 4 in its entirety. 169 REP. PARKS: Where is this procedure done

and what is the average cost? 172 BURRY: Most physicians in the community can perform this operation. The cost of the procedure to the physician varies. Physician costs are generally about \$50. The cost of a specimen range from \$85 to \$135. The tests are expenses. The cost is per insemination. Often it will take more than one insemination. 203 REP. PARKS: How many of the donors are anonymous?

206 BURRY: The majority are anonymous donors. 212 REP. PARKS: Are there people who do this for a living? 213 BURRY: Most of them are students. 215 REP. BAUMAN: Sees two issues. Mechanical technology and quality. The mechanical aspects are found in the physicians office and then there are other aspects that may be accomplished within the privacy of a person's home. 268 BURRY: There are very important interests here. To achieve a reasonable pregnancy rate the semen must be placed high in the uterine cavity and is something that cannot be done without a speculum and other devices. 284 REP. BAUMAN: Do we want to protect the home situation where the physician is not present. 298 CARLSON: Our concerns are more on the issue of disease transmission. This is better taken care of in the physician's office. 328 REP. BAUMAN: Wants to make sure that the purpose of HB 3481 is not confused with HIV and AIDS transmission. 333 BURRY: Donors are screened for HIV and AIDS and persons found to have such diseases have

These minutes contain materials which paraphrase and/or summarize datements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete conterds of the proceed lg9, please refer to the tapes. . . House Committee ~ Judiaa~ April 15, 1991 - Page S

been eliminated from donor programs.

343 REP. BAUMAN: Rather than make this a criminal activity and discourage people from going to a clinic and purchase this process the choice should be made available.

350 BURRY: That can be done now. 357 RF P. BAUMAN: But the procedure it appears can be a Class C felony.

358 CARLSON: If you look at provisions in ORS 677.360 it allows for the insemination to be performed under the supervision of a physician which can be broadly construed to be working in consultation with a physician. 362 BURRY: There are ways that women can perform insemination. The issue is one of quality since the pregnancy rate is higher when a physician performs it. 387REP. MANNIX: Understands that in terms of the physician's perspective the concern is with the health of the mother, the health of the child to be born and quality of the process. There is a consumer protection issue as well with respect to pregnancy rates.

TAPE 89, SIDE B 013 BOB CASTAGNA, OREGON CATHOLIC CONFERENCE: This is not the first time this issue has come up. The Catholic Conference regrets the infertility of a couple however cannot support the use of artificial means to ensure pregnancy. 042 REP. MANNIX: Does this apply to a married couple who wants to use art)ificial insemination to have a child?

045 CASTAGNA: The Church does not endorse in vitro fertilization. Life begins at conception. 057 REP. BAUMAN: Is it your function here that the Committee adopt the teachings of the church?

068 CASTAGNA: Not here to convince the Committee to adopt the moral teachings of the Catholic church per se. Here to explain. -Ties HB 3481 and HB 3482. Attorney General's opinion #8202 addresses the issue of surrogacy. HB 3481 was introduced to address some of the concerns of the Attorney General's opinion. Does not believe that HB 3482 would be enforceable unless HB 3481 were adopted. The whole surrogacy-contract is no more than the selling of children. Concerned with the exploitative aspects of this legislation. 130CHAIR CLARK: Would you approve passage of HB 3481 if HB 3482 did not exist? 133CASTAGNA: Opposes passage of both HB 3481 and HB 3482.

139 REP. BAUMAN: Understands that the statutory framework for establishing the rights of the paternal father in the life of the child is unconstitutional and HB 3481 was introduced to correct that. IIouse ~ ~ Judiaa~ April 15, 1991 - I! - e ~

162 CASTAGNA: Sees that pre-insemination contracts entered into would lead to exploitation of women. It is bad public policy to allow these types of contracts to exist.

173 REP. BAUMAN: Has no intention of subjugating women by supporting HB 348 1. There are many womens groups that support HB 3481. Calls attention to SB 1130. There are a number of states that have ruled such surrogacy contracts illegal. 255GINNI SNODGRASS, ADOPTION LINKS AND REUNION MATTERS, INC. (ALARM): ALARM sees HB 3481 as a precursor to HB 3482 which ALARM opposes. 279 REP. BAUMAN: You would be against all artificial insemination? 282 SNODGRASS: Yes. 290 VICKIWALKER, NATIONAL COALITION AGAINST SURROGACY: Opposes HB 3481. Not in favor of artificial insemination. 304 SNODGRASS: Raises the concern that is coming about which is ova donation. 323 REP. PARKS: You said the children are angry with this. What are they angry about? 327 SNODGRASS: Being totally separated from anyone to whom they are genetically related. 330CHAIR CLARK: To the extent that adoptees struggle with these questions you believe that surrogate babies will have greater struggles. 335 SNODGRASS: Yes. 356 REP. BAUMAN: Do you oppose adoption? 360SNODGRASS: Not opposed to adoption, but many changes could be made to make the system better. 367 REP. BAUMAN: Understands that the struggles would be greater in an adoptive setting where the child is separated from both biological parents where in surrogacy one of the parents is present. 381 SNODGRASS: Artificial insemination and surrogacy is the deliberate creation of a child without regard to that child's need to have full knowledge about themselves.

TAPE 90, SIDE B

008 CHAIR CLARK: Recesses Committee for 5 minutes at 4:30 p.m. 009 CHAIR CLARK: Reconvenes Committee at 4:42 p.m.

HB 3482 - PUBLIC HEARING

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact word.. For complete content. of the proceedi Ig8, please refer to the tapes. .

April 15, 1991

Witnesses:

Representative Judy Bauman, District 14 Mark Johnson, Surrogate

Foundation Norma Thorsen, Surrogate Foundation Michael and Georgia Getty Lori Windsor Tammy Chatfield Cassie Fotheringham Brenda Bloom Vicki Walker, National Coalition Against Surrogacy Ginni Snodgrass, National Coalition Against Surrogacy 019 HOLLY ROBINSON: Summarizes HB 3482.

Establishes procedures for the execution of surrogacy agreements; including: a pre-petition on home study, court-approved agreements, specific provisions of a surrogacy agreement, and specific remedies.

031 REPRESENTATIVE JUDY BAUMAN, DISTRICT 14: Discusses issues surrounding HB 3482. The issue with surrogacy right now is that there are no clear guidelines for contracts. Does not understand restricting infertile couples to the remedy of adoption. Surrogacy is and should be a viable option as long as there are clear guidelines established to ensure the welfare of the child and the rights and obligations of the individuals involved. Should allow for a period of time for the woman to revoke the contract. Should not allow for a period of time for the father to revoke his part of the contract to adopt the child.

113 REP. EDMUNSON: Do you include termination of the pregnancy? 116 REP. BAUMAN: Yes. As far as her decisions with regard to her health.

127 CHAIR CLARK: Health broadly defined. 129 REP. BAUMAN: There are no ways around the issues. This is going on whether the Committee recognizes it or not.

233 CHAIR CLARK: What is the trend in other states with respect to surrogacy agreements? 241 REP. BAUMAN: Has that information. 278

REP. EDMUNSON: Is a co-sponsor of the bill. Raises the issue whether surrogacy should be allowed at all. 293 REP. BAUMAN: That is an option. Discusses the issue of the need for concerted debate in this area.

352 CHAIR CLARK: Recesses Committee until 6:00 p.m. at 5:07 p.m.

353 CHAIR CLARK: Reconvenes Subcommittee on Family Justice at 6:00 p.m.

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tape. House Committee on Judiciary April 15, 1991

366 MARK JOHNSON, SURROGATE FOUNDATION: EXHIBIT E Reads from Exhibit E.

TAPE 91, SIDE A

020 JOHNSON: Continues to summarize Exhibit E.

040 CHAIR CLARK: If the surrogate mother is in an automobile accident and miscarriages is compensation still due? 045 JOHNSON: Yes. The court would not need to affirmatively find that the pregnancy was terminated before child birth and the termination was the voluntary act of the surrogate and was not medically necessary before the court could order the payment of damages. Refers to Section 6 of HB 3482.

084 REP. PARKS: Suggests that HB 3482 be specific concerning damages.

088 JOHNSON: Section 9, subsection 6, page 4 it says that. Once the contract is complete then the parties go to the court for approval.

128 NORMA THORSEN, SURROGATE FOUNDATION: EXHIBIT F(1) - F(4) Reads from Exhibit F(1). 194 ROBINSON: What is the rationale behind the court being able to void contracts concerning custodial rights based upon a criminal conviction when you can't do that under HB 3482 for other types of parenting situations?

208 JOHNSON: There is a higher standard here then in other parenting situations. 224 ROBINSON: HB 3482 uses the phrase "intended parent" to mean either an individual or individuals. Understands the assumption that the interests of the individuals have the same interests at the beginning of the contract as at the end of the contract. What if the intended parents separate and each of them wants the child?

237 JOHNSON: Has not been discussed. Assumes that traditional custody proceedings would prevail. 247 REP. PARKS: On page 5, line 23 it talks about the surrogate and specific performance. 255 JOHNSON: That is one of 2 requirement. 267 MICHAEL and GEORGIA GETTY, SELF: EXHIBIT G Reads from Exhibit G 303 CHAIR CLARK: How did you go about finding a surrogate? 305GEORGIA GETTY: Through Norma Thorsen. Their child has always known about his surrogate mother. 410REP. BAUMAN: Is there a support network that you are involved with for other families in

These minutes contain materials which paraphrase and/or summarize SB tomonts nude during this session. Only text enclosed in quotation marks report ... speaker's exact words. For complete contents of the proceedinge, please refer to the tapes. your situation?

420 GEORGIA GETTY: Yes.

TAPE 92, SIDE A

005 MICHAEL GETTY: Many people do not understand surrogacy. Surrogacy should not be illegal. It should not be illegal to create life.

095 LORI WINDSOR, SURROGATE MOTHER: EXHIBIT H Reads from Exhibit H. 130 REP. PARKS: What is the average compensation?

132 WINDSOR: It depends on the contract. She will receive \$12,000.

137 REP. PARKS: Have you carried a child more than once?

138 WINDSOR: First and last time. 143 TAMMY CHATFIELD, SURROGATE MOTHER: EXHIBIT I Reads from Exhibit I.

196 CASSIE FOTHERINGHAM, MOTHER: Surrogacy is not for everyone, but it was for her. 219 REP. BAUMAN: Based on this testimony wonders if this legislation is necessary. Do you have any concerns about regulating this practice? 240 FOTHERINGHAM: There is a great concern in entering into this and it would be good to know that the state was behind the persons involved in this.

321 REP. BELL: To Ms. Chatfield. What about adoption as an alternative to surrogacy?

328 FOTHERINGHAM: Each mother has to look inside themselves to decide whether they can or are willing to adopt.

357 REP. BELL: Is there a contingency if the surrogate baby is born deformed?

365 THORSEN: All the contracts speak to that.

379 BRENDA BLOOM, SURROGATE MOTHER: EXHIBIT J Reads from Exhibit J.

TAPE 91, SIDE B

038 REP. BAUMAN: Concerned about the economics of surrogacy. Is there a

demeaning quality about going through pregnancy in exchange for compensation?

055 BLOOM: Not necessarily. There are some fertility companies that are into this for business. Others, like Surrogate Foundation, provide for a healthy and supportive atmosphere. -

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. 125 VICKI L. WALKER, NATIONAL COALITION AGAINST SURROGACY OREGON CHAPTER: EXHIBIT K Reads from Exhibit K.

252 CHAIR CLARK: Would it be any different if the compensation portion were removed?

264 WALKER: No. The relationships are still established.

273 REP. PARKS: Understands that what HB 3482 attempts to do is regulate the practice of surrogacy by statute instead of leaving it to the market place to regulate. Is that not a beneficial thing?

287 WALKER: It is idealistic. Does not want surrogacy to take place.

349 GINNI SNODGRASS, ALARM: Surrogacy is very wrong. There is not enough concern about the child in this matter. Surrogacy is baby selling whether or not compensation is involved. 450 REP. MANNIX: What if an unmarried adult wanted to contract for a surrogate child would HB 3482 allow that? 456 SNODGRASS: Yes.

TAPE 92, SIDE B

032 CHAIR CLARK: Based on your logic should the state outlaw divorce because the social consequences to the child are severe?

046 SNODGRASS: The child in your example was not created for the purposes of benefiting the parents.

048 CHAIR CLARK: What about a man who fathers a child and the mother leaves leaving him with child support payments. He is tricked into getting the woman pregnant. Should there be a law against that?

057 SNODGRASS: Does not know. Thinks there should be more safeguards for men's rights. 077 REP. MANNIX: Have there been any studies done in the last few years looking at the cultural norms of the family vis a vis the parent and child and how the laws have impacted that? Thinks that there has occurred a lot of change in the social norms and this is important in dealing with this situation. 110 SNODGRASS: There have been changes in the social norms, but with respect to surrogacy it is not good. 164 STEVIE REMINGTON, AMERICAN CIVIL LIBERTIES UNION: EXHIBIT L reads from Exhibit L. 316 KATE BROWN, WOMEN'S RIGHTS COALITION: EXHIBIT M. Reads from Exhibit M.

. . . These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. - House Committee on Judiciary April 15, 1991

395 DWIGHT and BARBARA GREER, PARENTS OF SURROGATE CHILD: Fails to understand how a father can purchase his own child. Does not feel that paying compensation is purchasing. There are many instances where

