



THEM BEFORE US
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Dear Majority Chair McNeill, Minority Chair Klunk, and Members of the Committee,

Them Before Us is an organization committed to defending children's rights. We are writing with serious concerns about HB 350 and its implications for children.

This bill establishes a legal framework for the practice of commercial surrogacy, including commercial genetic surrogacy. This has dangerous implications that fly in the face of standards that have been developed for the sake of protecting children's interests. Adoption law best practices prohibit direct payments to birth parents in exchange for their parental rights, and the Hague Convention, of which the U.S. is a member, rightly condemns such actions as baby-selling.¹ Commercial genetic surrogacy violates this principle, allowing women to accept money in exchange for children whom they have not only gestated but to whom they are genetic parents. Commercial surrogacy, as outlined in this bill, does not provide children with the protections that adoptees have, including the right not to be exchanged for money, as well as the vetting and background check requirements built into the adoption process.

Additionally, surrogacy laws are vulnerable to exploitation. In the infamous case of a baby-selling ring broken up by the FBI in 2011,² one state's surrogacy laws created the opportunity to exploit surrogates and sell the children they carried. More than one legal commentator has noted that this would not have been possible without the state's surrogacy laws allowing for unrelated adults to be named parents on a child's birth certificate without going through an adoption process.³

As this case demonstrates, the only substantive difference between a surrogacy contract and illegal baby selling is the timing of the contract. If a woman were to agree to accept money for the child she gave birth to, she would be guilty of baby-selling. However, under this bill, if the contract is signed before the surrogate mother becomes pregnant, accepting money for her infant would be deemed "family building."

The language of this bill also allows the possibility of proceeding with a genetic surrogacy contract that was not validated until after assisted reproduction had taken place,⁴ as well as the possibility of a genetic surrogacy contract, including payment, proceeding even if it is determined that the pregnancy was not a result of assisted reproduction.⁵ These provisions create opportunities for exploitation.

Every case of surrogacy—gestational or genetic, commercial or altruistic—forces an infant to go through the trauma of maternal separation for the sake of the contracts and agreements entered into by adults.

¹ "Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption"
<https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

² "Surrogacy Scam Played on Victims' Emotions." Federal Bureau of Investigation, 13 Sept. 2011,
www.fbi.gov/news/stories/surrogacy-scam-played-on-victims-emotions.

³ Lily Johnson, JD: "This baby selling ring was the doing of bad actors, but it would not have been possible if it were not for the laws allowing commercial surrogacy..." (*Commercial Surrogacy Is the Sale of Children? An Argument That Commercial Surrogacy Does Not Violate International Treaties*, <https://digitalcommons.law.uw.edu/wilj/vol28/iss3/9>) David Smolin, Professor of Constitutional Law at Samford University noted that this was possible because California was willing to place unrelated adults' names on birth certificates without going through the adoption process. (*Surrogacy as the Sale of Children: Applying Lessons Learned from Adoption to the Regulation of the Surrogacy Industry's Global Marketing of Children*, <https://digitalcommons.pepperdine.edu/plr/vol43/iss2/2>)

⁴ See section 9824 (b).

⁵ See Section 9823 (c) which states that *unless the contract states otherwise* a genetic surrogate is not entitled to nonexpense-related compensation if the child was not conceived by assisted reproduction. "Unless the contract states otherwise" creates the possibility of a court allowing compensation for genetic surrogacy when the child was conceived via intercourse.



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Research shows that even temporary maternal separation⁶ is a significant stressor for neonates and that it can permanently alter brain function and cognition.⁷ Where adoption seeks to mend the wounds of a child who has lost their biological parents due to tragedy or circumstances, surrogacy intentionally creates a child who will be forced to experience maternal separation in order to meet the requirements of a contract.

Children of surrogacy have experienced distress later in life as they process the fact that the mother who gave birth to them exchanged them for money. Olivia, a child of commercial genetic surrogacy, put it this way: “I lived it as an abandonment. I feel as if I was abandoned by my birth mother.... There’s nothing worse than for a child to feel that at one moment in my life I was literally sold for a check.”⁸ Brian, another child of surrogacy, echoed this sentiment, saying, “Babies are not commodities. Babies are human beings. How do you think this makes us feel to know that there was money exchanged for us?”⁹ We urge you to consider the voices of those who have been impacted by this practice.

Finally, this bill ratifies intent-based parentage. Under this framework, a genetically unrelated adult can gain parental rights over a child without passing a background check. Again, this would never be permitted in the case of adoption. What makes this even more alarming is the fact that Pennsylvania’s Supreme Court recently determined a custody case on the basis of parental intent, choosing intentionally not to rule using the best interest of the child standard.¹⁰ We are not in any way commenting on the fitness of the adults in that case. But it is necessary to acknowledge that this is a concerning precedent which, combined with the lack of adoption-level protections for children conceived via gamete donation and surrogacy, could lead to an unsafe adult gaining custody of a child.¹¹ HB 350 further cements that precedent and fails to take the opportunity to rectify it through any screening or background check requirements when there is no genetic relationship between the intended parent and the child.

In conclusion, this bill is dangerous to children and would create exploitable vulnerabilities in Pennsylvania law. As a children’s rights organization, we urge you to vote no on this bill. Thank you for your consideration.

⁶ Morgan, Barak E., et al. “Should neonates sleep alone?” *Biological Psychiatry*, vol. 70, no. 9, 2011, pp. 817–825, <https://doi.org/10.1016/j.biopsych.2011.06.018>.

⁷ “Even Brief Maternal Deprivation Early in Life Alters Adult Brain Function and Cognition: Rat Study.” *ScienceDaily*, ScienceDaily, 3 May 2018, www.sciencedaily.com/releases/2018/05/180503142724.htm.

⁸ “Olivia’s Story | We’re trading with humans, we’re selling humans, we’re buying uteruses.” <https://thembeforeus.com/olivia-were-trading-with-humans-were-selling-humans-were-buying-uteruses-it-should-be-abolished-world-wide/>

⁹ “Brian C’s Story | It looks to me like I was bought and sold.” <https://thembeforeus.com/brian-c/>

¹⁰ <https://law.justia.com/cases/pennsylvania/supreme-court/2025/9-eap-2024.html>

¹¹ For recorded instances of intended parents gaining or attempting to gain access to children with the intention of abusing them through intent-based parentage arrangements, see <https://thefederalist.com/2024/01/22/meet-5-accused-pedophiles-who-bought-kids-through-surrogacy/>. See also Kat Quire’s personal story and her efforts to advance SB 1990 in Illinois: https://www.instagram.com/kat_quire/reel/DGWnDTyOIZS/.