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My name is Carmina Y. D'Aversa. I am an attorney who presently co-chairs the Surrogate Motherhood Committee of the PBA Family Law Section. I also chaired the Section's Surrogate Motherhood Task Force. My interest in the surrogacy issue began in law school where I wrote an article entitled "The Right of Abortion in Surrogate Motherhood Arrangements." This article is currently published in the Northern Illinois University Law Review. Today, I am testifying in my individual capacity, and not as a representative of the Pennsylvania Bar Association.

I have reviewed House Bill No. 745 and find it lacking in many respects. First, I note that the bill makes use of the Commonwealth's policy against babyselling as a means to outlaw commercial surrogacy. This approach is faulty in part because it fails to acknowledge the distinction between surrogates who serve as gestational carriers and those surrogates who are genetically related to the babies which they carry. When a woman carries an embryo which is not genetically related to her, any financial compensation she receives as a result of engaging in the surrogacy process cannot be considered payment for a child. As a gestational carrier, she is not the mother of the child, but instead serves as a vessel to carry the embryo to term. Any compensation to the surrogate, therefore, is compensation for services rendered to a party or parties who cannot conceive a child in the customary manner.

Moreover, denial of compensation to a gestational carrier is patently unfair in light of the specific services rendered. These services obviously entail complete bodily commitment and potential risk to physical and mental health. If we pay skydivers, police officers and other individuals for

engaging in risky activities, there is no reason why a gestational carrier should not be compensated. In addition, the General Assembly need not prohibit compensation to a gestational carrier to protect societal values of personal autonomy and bodily integrity. Instead, these values can be protected by legislation that requires voluntary and informed consent by women engaged in the surrogacy process. By requiring (1) psychological and medical counseling for the surrogate; (2) independent legal counsel for the surrogate; and (3) a court determination that the surrogate has the capacity to enter into a surrogacy agreement and her decision is voluntary and informed, the Commonwealth can be assured that a woman's dignity as an adult individual is maintained.

Finally, I find House Bill No. 745 ignores the advances of medical technology, and ignores the welfare of children born as the result of the use of this technology. Despite criminal penalties or other prohibitions that may be imposed by the Pennsylvania legislature, the world of reproductive technology will continue to advance, and couples will continue to seek and, in fact, use these new alternatives. Given these circumstances, it is essential that the General Assembly enact legislation that regulates the use of reproductive technologies and specifies the rights and responsibilities of the parties engaged in the process. In this way, (1) parties will not be faced with the uncertainty of adjudications, and will know in advance their rights and responsibilities; and (2) a child born in fulfillment of a surrogacy agreement will be ensured "a permanent home and settled rights to inheritance." Simply prohibiting compensation will not achieve these objectives.

I recommend a regulatory statute that incorporates, at the bare minimum,

the following provisions:

- (1) Except where the intended parent provides the ovum, the woman who gives birth to the child is the mother;
- (2) The intended parent who provides the sperm is the father of the child;
- (3) A donor who is not an intended parent is not the parent of the child;
- (4) A surrogate agreement is not binding and enforceable until approved by a court of competent jurisdiction;
- (5) A surrogate agreement shall specify that:
 - (a) The surrogate agrees to be artificially inseminated with the sperm of the intended parent or the sperm of a donor or agrees to be implanted with an embryo created from any combination of sperm and ovum from the intended parents or donors; carry the child to term and relinquish the child to the intended parents upon birth.
 - (b) If the surrogate provides the ovum, she shall consent to the termination of her parental rights and responsibilities and relinquish custody of the child immediately after the child's birth. The surrogate may not withdraw her consent after birth of the child.
 - (c) Regardless of the child's physical or mental state, the couple shall be required to take custody and responsibility of the child immediately upon birth. This provision shall not prevent the intended parents from exercising the option of placing the child for adoption.

I strongly recommend court approval of the surrogacy agreement. The court, can, therefore, make a determination of each party's capacity to enter into the agreement; determine whether the surrogate has voluntarily entered into the agreement; and determine whether each party understands his respective rights and responsibilities. In addition, the court can assess the "fitness" of the intended parents as parents and verify whether each party has been counseled regarding the potential risks of engaging in the surrogacy process.

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I stress that these recommendations are what may be minimally required to achieve the objectives I discussed earlier. Other regulatory mechanisms may be implemented, making House Bill No. 745 unnecessary at least when the surrogate is a gestational carrier.