

Coalition

AGAINST TRAFFICKING IN WOMEN

TESTIMONY BY
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TO THE
NYS SENATE FINANCE COMMITTEE AND
NYS ASSEMBLY WAYS AND MEANS COMMITTEE
JOINT HEARING ON THE EXECUTIVE BUDGET 2020-2021
WEDNESDAY, JANUARY 29, 2020
ALBANY, NEW YORK

Opposition to Governor’s proposal to legalize commercial reproductive surrogacy contracts, contained in Part L of bill numbers S.7506/A.9506 (Education, Labor and Family Assistance Article VII legislation)

Good evening. My name is Lynn Savarese. I am a graduate of Harvard Law School and practiced corporate law in New York for a number of years. While I’ve retired from the practice of law, I am here today on behalf of the Coalition Against Trafficking in Women and I am one of more than 100 women’s rights leaders who signed a letter to Governor Cuomo last year



urging him to oppose the legalization of commercial surrogacy in New York. Sadly, our letter fell on deaf ears. Since your last legislative session, I have traveled the country interviewing young women who have suffered serious physical harm as a result of serving as commercial surrogates. You will hear from some of them soon.

The Governor's proposal to legalize commercial surrogacy has numerous failings, only a few of which I have time today to discuss.

Lack of Protections for Surrogates

The greatest failing of the bill is its lack of protections for women who would serve as commercial surrogates. Nothing in the proposed bill prevents the targeting of vulnerable women in dire need of money who simply do not have the means or the information to properly evaluate the risks to their health that are inherent in the type of surrogacy contract sanctioned by the Governor's proposal. These contracts are negotiated without a semblance of equal bargaining power. On the one hand, you have a young woman--usually a mother of small children with no more than a high school education--in a precarious financial situation. She has little if any knowledge of the extreme physical demands and health risks involved in a surrogacy pregnancy, which are far more onerous and risky than those



associated with the traditional pregnancies she may already have experienced. The temptation commercial surrogacy dangles before such a woman is overwhelming -- she is likely to earn about \$30,000 -- often amounting to more than twice her annual income. On the other side of the contract, you have one or more wealthy individuals with vastly more financial resources. Spending \$150,000 or more to procure a surrogate child is not uncommon.

I understand that Governor Cuomo's proposal provides a Surrogates' "Bill of Rights," allegedly guaranteeing the strongest protections in the nation for commercial surrogates. But nothing could be further from the truth. The right to "independent counsel" promised by the bill is illusory. More often than not, surrogates end up with legal counsel referred to them by surrogacy agencies and commissioning parents. When a lawyer's livelihood depends on such referrals, serving the best interests of his surrogate client is not a first priority. In the coming days and weeks, my surrogate survivor colleagues will share with you their experiences of betrayal by their supposed "independent legal counsel."



Lack of Protection for Children

Another failing of the bill is its disregard for the wellbeing of surrogate children. Under New York law, parents seeking to adopt children must undergo rigorous screening and background checks to ensure their fitness as adoptive parents. By contrast, the Governor's proposal establishes no standards whatsoever for those who would procure children through commercial surrogacy. The bill requires no background check or screening of any kind. In fact, nothing in this bill prevents even a convicted pedophile or a child sex trafficker from entering into a contract to obtain surrogate children. And nothing in this bill prevents a wealthy individual coming to New York from abroad -- who could readily qualify with frequent visits as a "habitual legal resident" under the proposed bill -- from procuring a surrogate child, or, for that matter, two dozen surrogate children, and then taking them back to his home country. These are not hypotheticals, but actual cases, detailed in my written testimony.

Commodification of Women

New York State forbids the buying and selling of organs, and has rejected the argument that a person has the right, for example, to sell his kidney. You rejected that argument, even when it was shown that the

would-be kidney seller, in addition to receiving financial remuneration, might also derive personal satisfaction from saving the life of another, and even when the surgery involved is a low-risk procedure. Identical arguments are being advanced by the multi-billion dollar surrogacy industry. But, unlike a kidney selling agreement, a commercial surrogacy contract saves no lives and instead puts the lives of the surrogate mother and the children she bears at risk.

Health Dangers to Women

Women who agree to be commercial surrogates take on far greater risks than those faced in traditional pregnancies or other types of in vitro fertilization pregnancies. To ready her body for transfer of embryos, the surrogate must be injected daily for a month or more with massive amounts of hormones and other drugs, the most common of which—Lupron—is a known carcinogen. The use of donor eggs in surrogacy pregnancies dramatically increases health risks to surrogates. To increase the likelihood of a successful outcome and to fulfill the wishes of commissioning parents, multiple embryos are routinely implanted in a surrogate's womb. This significantly increases--still further--the dangers of the pregnancy, both to her and any surrogate children she bears. The surrogate mother is more than

three times more likely to develop hypertension and preeclampsia; more than two times more likely to develop high blood pressure and gestational diabetes, and has at least a 50% chance of having to deliver by C-section—increasing both the risk of hemorrhage and recovery time. The resulting multiple-birth children are more than four times as likely to be born prematurely with low birth weights, and to suffer other adverse and potentially lifelong health deficits. Multiple birth babies are about twice as likely as singlet babies to have birth defects, including spina bifida, cerebral palsy, and congenital heart defects, as well as vision and hearing deficits.

Exploitative Fertility Industry

Reproductive medicine is one of the fastest growing and most lucrative fields of medicine. But just like the tobacco industry, which failed for decades to research harms to smokers, fertility experts have refused to conduct research into the health risks to surrogate women and their offspring. Even if a would-be surrogate were advised of all “known risks,” her “informed consent” remains an impossibility, because the full extent of the risks she faces—although known to be heightened—is not fully understood. The commercial surrogacy industry, like the tobacco industry,

has both the means and motive to deny or minimize the health risks involved in commercial surrogacy, and to misrepresent what the practice entails.

Our country has one of the highest maternal mortality rates in the developed world, having doubled from 1991 to 2014, and is the only developed country whose maternal mortality rate is rising. Legalizing commercial surrogacy will only increase that rate, especially for African American women, who are already three to four times more likely to die in childbirth than white American women.

I know of four surrogate mothers in the United States who have died as a result of dangerous surrogacy pregnancies, leaving their own young children motherless. One died just two weeks ago.. We will never know the total number of such deaths, because the commercial surrogacy industry works hard to ensure that such information never sees the light of day. The legalization of this secretive industry would exponentially increase that risk.

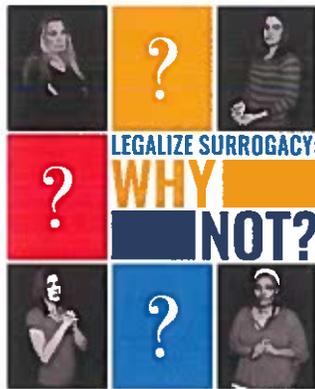
New York State is the progressive leader on so many vital public policy issues, thanks to this Governor and you in the Legislature. One of many examples of this progressive leadership occurred in the early 1990s when this state took a strong stance to protect women and children by outlawing

commercial surrogacy contracts. Undoing that legacy would be a giant step backwards.

I respectfully urge you to reject Governor Cuomo's misguided proposal.

Attachments

- 1. The Story of Brooke Brown: *A young woman dies from complications related to her third surrogacy pregnancy, leaving behind three young sons.***
- 2. The Story of David Farnell: *A convicted pedophile allowed to remain the father of his surrogate daughter.***
- 3. The Story of Mitsutoki Shigeta: *A single 28 year old Japanese man procures 20 surrogate babies, and wants 10 to 15 more per year.***
- 4. The Story of Dr. Jennifer Schneider: *The physician mother of a young egg donor shares the story of her daughter's death from a cancer that is rare in young people.***

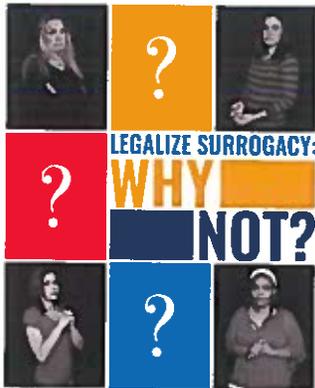


The Story of Brooke Brown

A young woman dies from complications related to her third surrogacy pregnancy, leaving behind three young sons.



On October 8, 2015, an American surrogate mother named Brooke Lee Brown died at St. Luke's Regional Medical Center in Boise, Idaho, eight days before her 35th birthday. Brooke died from complications related to her third surrogacy pregnancy. The wife of Peter Brown and the mother of three young sons, Daniel, Aron, and Ryan, Brooke, at the time of her death, was serving as a surrogate for a couple from Spain, where surrogacy has been prohibited on human rights grounds. She died of either a placental abruption or amniotic fluid embolisms directly caused by her surrogacy pregnancy. The twins she was about to deliver via a scheduled cesarean section reportedly lived for a short time on life support before dying as well. Brooke's three surrogacy pregnancies, resulting in the births of five surrogate children and undertaken within a short period of time, put her at a high risk of adverse pregnancy complications, a risk that was clearly minimized or ignored by the lawyer and agency that arranged for and profited from her surrogacy.



The Story of David Farnell

*A convicted pedophile
allowed to remain the father
of his surrogate daughter.*



In 2014, Australian David Farnell left behind his infant surrogate son in Thailand because the boy had Down Syndrome, returning home with only the boy's surrogate sister, Pipah. When ultrasound results seven months into the surrogate pregnancy had indicated that the surrogate mother was carrying twins and that one of the twins, a boy, had Down syndrome, Farnell insisted that she abort him, and said that he would keep only his twin sister. The surrogate mother refused, opting to raise the boy on her own.

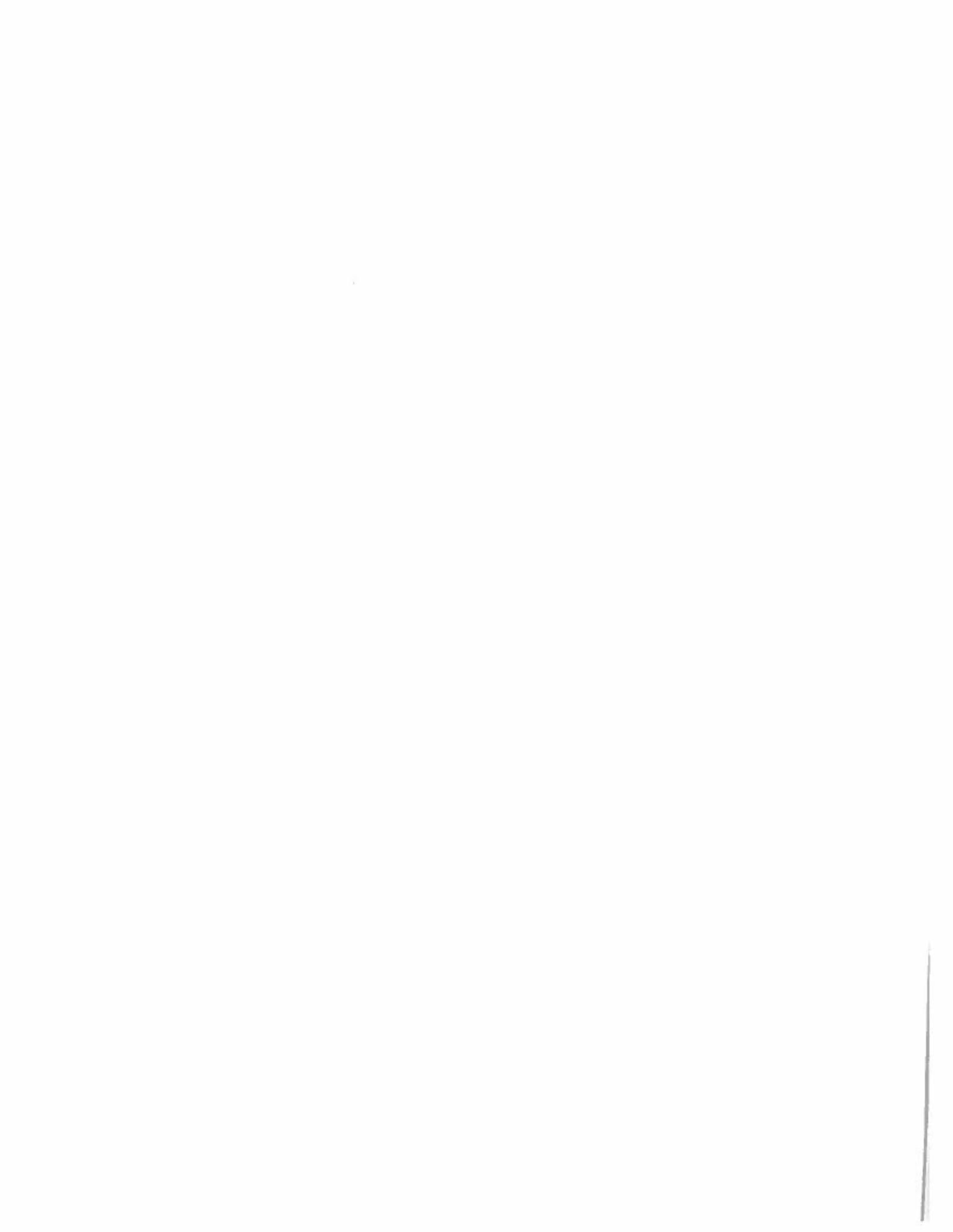
She tried to get Pipah back the following year after learning that Farnell was a convicted child sex offender. "I am very worried about my baby girl," she said. Farnell had been imprisoned in the late 1990s for sexually molesting two girls under the age of 10, and was sentenced to three years behind bars. While serving time for that crime, in 1998 he was charged with six counts of molesting a child under the age of 13. He was convicted and sentenced again. At the sentencing hearing, the

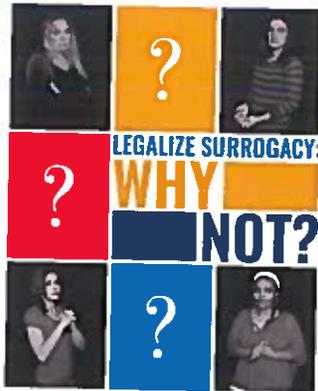


judge stated that Farnell had robbed these young girls of their childhoods. Farnell was released from an Australian prison in 1999.

The Family Court of Western Australia ruled that Pipah could continue to live with David Farnell and his wife in the western Australian city of Bunbury, but set conditions on his retention of custody, including that he was never to be left alone with Pipah. The judge stated that the case “serves to highlight the dilemmas that arise when the reproductive capacities of women are turned into saleable commodities, with all the usual fallout when contracts go wrong.”

In response to this case, Thailand authorities prohibited surrogate babies from leaving the country with their parents and subsequently prohibited any form of commercial surrogacy.





The Story of Mitsutoki Shigeta

A single 28 year old Japanese man procures 20 surrogate babies, and wants 10 to 15 more per year.



Mitsutoki Shigeta, 28, became the center of a “baby factory” scandal in 2014 after Thai police said DNA samples linked him to nine infants found under the care of 24-hour nannies in a Bangkok apartment. The children, estimated to be between two weeks and two years old at the time, were placed under the care of the Thai state, while another four—unrelated to the raid— were later also discovered to have been fathered by him. In addition to the children Shigeta fathered via surrogacy in Thailand, he has fathered at least three other children by surrogates in India, according to his lawyer. Shigeta is the eldest of the three sons of Japanese tycoon Yasumitsu Shigeta, the founder of a telecommunications and office automation firm, whose net worth is US\$4.2 billion.



According to the founder of the multinational fertility clinic that arranged for Shigeta to procure these children through surrogates, Shigeta "wanted 10 to 15 babies a year, and to continue the baby-making process until he's dead." She reported that Shigeta had at the same time commissioned three other surrogates from a different agency. "He wanted to win elections and thought he could use his big family for voting," she said.

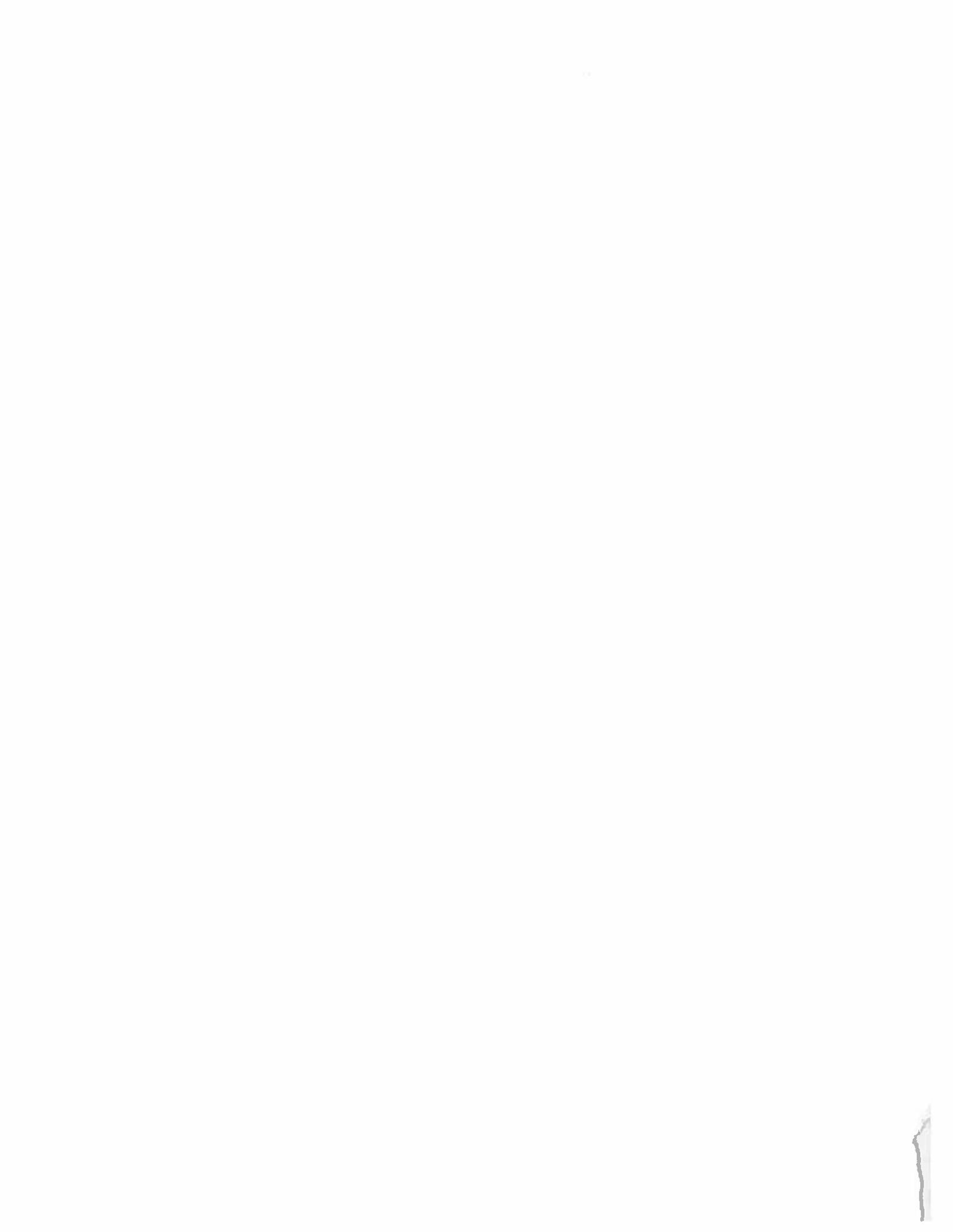
A resident of both Tokyo and Hong Kong, Shigeta was investigated for human trafficking and child exploitation after investigators learned that he had made 41 trips to Thailand between 2010 and 2014 and on many occasions had travelled to nearby Cambodia. The extraordinary discovery threw a spotlight on Thailand's commercial surrogacy industry, prompting Thai authorities to prohibit commercial surrogacy in Thailand in 2014.

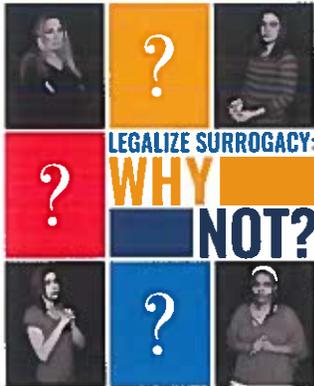
Shigeta fled Thailand in the wake of the scandal but later sued Thailand's Ministry of Social Development and Human Security for custody of the children. A Thai court granted him legal rights to the children, saying he had ample money to care for them, and had prepared nurses and nannies to look after them at a safe residence in Japan.

One of the Thai surrogates who carried a child for Shigeta, a 32-year-old woman named Ms. Wassana, said that she responded to an online ad seeking surrogate mothers and offering US\$10,000 to help a foreign couple that wanted a child but couldn't conceive. She herself met Shigeta twice, but he never spoke to her. "He never introduced himself. He only smiled and nodded. His lawyer did the talking. I thought that any parents who would spend so much money to get a baby must want him desperately," she said. "The agent told me it was for a foreign couple."

Ms. Wassana, who had a ninth grade education and sold Thai sweets from a food cart for \$6 a day a day, viewed her surrogacy pregnancy as a nine-month solution to her family's debt. Her late father's medical bills had drained the family's savings so that they couldn't pay rent for a year, and faced eviction.

During the pregnancy, Ms. Wassana developed preeclampsia and dangerously high blood pressure. She was rushed into the delivery room, underwent a cesarean section, and gave birth to a boy two months premature. Her family came to visit her in the hospital, but Shigeta did not. The infant boy was placed in an incubator and after six days, Ms. Wassana returned home. She did not know when the baby she gave birth to was released from the hospital to Shigeta's custody or whether doctor working for the surrogacy agency used her own eggs or those of another woman.





The Story of Dr. Jennifer Schneider

The physician mother of a young egg donor shares the story of her daughter's death from a cancer that is rare in young people.



"I was shocked to learn that no one had ever studied the potential long-term risks of egg donation, and especially the risks of the high-dose hormones given to healthy young women. Right now, young women agreeing to egg donation cannot give informed consent, because information about long-term health risks doesn't exist."

My name is Jennifer Schneider, and I'm an Internal Medicine physician. Although I live in Arizona now, I was born, raised, and educated in New York City.

In 2003, I lost my beloved daughter, Jessica Grace Wing, a composer, musician, and proud Brooklynite, to colon cancer when she was only 31 years old. Jessica was a non-smoking vegetarian and a tall, lean, beautiful, athletic and musically talented Stanford University honors student when she decided to donate her eggs to help pay for her education. She donated her eggs multiple times, never aware of the risk and unable to know the risk because no data is collected by the industry that profited from the donations of her eggs and those of so many other young college women.

I am submitting my testimony to this committee because legalizing commercial surrogacy will necessarily greatly increase the demand for egg donation. Legalizing commercial surrogacy in New York State doesn't only create health risks to women serving as surrogate mothers. Very often, surrogate mothers' pregnancies are achieved using donated eggs procured from egg donors, rather than the eggs of a commissioning mother. By increasing the demand for these donor eggs, surrogacy also increases risk to the health of college-age women from whom these eggs are typically procured--especially that large and growing pool of college-age women whose futures are mortgaged by educational debt.

Before expanding the market in human eggs, it's vitally important that we follow-up with current egg donors and collect their health data, so that real and meaningful informed consent will be possible. Until the health consequences are known and understood, it would be unconscionable to legalize a practice that will greatly increase the demand for donated eggs, and risk the lives and health of many more young women.

Because of what happened to my daughter, I am concerned about increasing the number of women who undergo egg donation. When Jessica phoned to tell me that she had decided to donate her eggs, she said, "Don't worry Mom. They told me there's a small risk of bleeding and infection, but otherwise they haven't found any problems." So she went through one egg donation cycle without problems, and because she was thereafter offered twice as much money for her eggs, she donated twice more in the next few months.

About seven years later, Jessica was diagnosed with colon cancer, a disease no one in my family had had. Two years later, after chemotherapy, surgery, and radiation, she died. Given that Jessica had been a health-conscious young woman with no family history of colon cancer or genes associated with this disease, I wondered if the extensive hormone treatments she had undergone might have stimulated growth of the cancer, and if other egg donors might also be at risk.

Unfortunately, as I soon discovered, it was impossible to know if there was any link between egg donation and cancer, because no one was keeping track of the medical or psychological fate of egg donors. Once donors walk out the door, they are lost to medical history. When considering whether to undergo a medical procedure, one may be told "there are no known long-term effects." But unless such effects have been systematically studied, that does not mean there are no long-term effects.

After Jessica's death, I published a paper in *Fertility and Sterility* in 2008, the official journal of the American Society for Reproductive Medicine, entitled, "*Fatal colon cancer in a young egg donor: A physician mother's call for follow-up and research on the long-term risks of ovarian stimulation.*" I wrote it because I was shocked to learn that *no one had ever studied the potential long-term risks of egg donation, and especially the risks of the high-dose*

hormones given to healthy young women.

Unlike infertile women who are considered *patients*, egg donors are treated as *vendors*. When they walk out of the IVF clinic, no one keeps track of them. My daughter's death was not reported. The long-term risks of egg donation are unknown. I began vigorously advocating for establishment of an egg donor registry that could benefit not only the thousands of healthy young women whose eggs help others get pregnant, but also the growing number of women who want to postpone pregnancy and choose to have their eggs frozen for future use.

In 2020, we know that egg donors are at greater risk of ovarian hyperstimulation syndrome—a response to taking the medicines used to make eggs grow which can result in blood clots, shortness of breath, abdominal pain, dehydration, vomiting, and sometimes death. We also now know that the hormones taken by egg donors increases the risk of several types of cancer. Jessica is not the only documented case of colon cancer in a young egg donor. There are also reports suggesting an increased long-term risk of infertility faced by egg donors after hormonal stimulation. But we don't begin to know *all of* the possible long-term risks for young women who go through this arduous procedure.

17 years after my daughter's death, there is still no one tracking the fate of egg donors. The Centers for Disease Control and Prevention collects information on in vitro fertilization, but not on those who donate their eggs either anonymously or to family members or friends unable to get pregnant with their own eggs. There are not even reliable data on the number of egg donors.

Earlier this year, in *Reproductive Biomedicine Online*, I and two co-authors reported on five cases of breast cancer among egg donors, four of whom were women in their 30s, and all five of whom had no apparent genetic risk for the disease. None of the women had been given any information about long-term risks of egg donation, again because no such "known" information exists.

We acknowledged that single cases do not definitively establish whether hormone stimulation of egg donors increases the risk of various cancers, but we also reiterated the need to create egg donor registries to facilitate long-term studies of egg donors.

With this long-term registry data, it would be easier to tell if donors are more susceptible to these illnesses, or if they tend to get them at a similar rate to the population at large. And that is what is needed in order to find out what these risks are, so women considering egg donation can make informed decisions.

Right now, young women agreeing to egg donation *cannot give informed consent* because information about long-term health risks doesn't exist. It didn't exist for Jessica and it doesn't exist for anyone now.

