



STATE OF MINNESOTA

Office of Governor Tim Pawlenty

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 16, 2008

The Honorable James Metzen
President of the Senate
75 Rev. Dr. Martin Luther King, Jr. Blvd.
322 State Capitol Building
St. Paul, Minnesota 555155-1606

Dear President Metzen:

I am vetoing and returning Chapter 329, Senate File 2965, the 2008 Surrogacy Gestational Bill.

Surrogate arrangements and contracts are currently occurring in Minnesota without specific statutory guidelines. This bill was controversial and there was bipartisan objection to the bill. Although I agree that certain legal parameters may be needed, this bill raises some significant ethical and public policy issues that have not been adequately addressed.

This bill expressly permits the hiring of women to serve as surrogate mothers. Compensation is not limited in any manner to the payment of expenses related to the pregnancy. We should encourage to the fullest extent possible surrogacy on the basis of donated services similar to how Minnesota addresses donation of bone marrow and organ donation.

This bill is written primarily to protect the interests of intended parents. It does not create strong protections for the surrogate mother. For example, the bill permits the intended parents to include contracts terms that place restrictive controls over the surrogate mother and grants the courts authority to enforce those terms through injunctive relief and the award of monetary damages.

The bill also does not provide sufficient control to remain with the surrogate mother through the pregnancy. For example, the bill allows the surrogate mother

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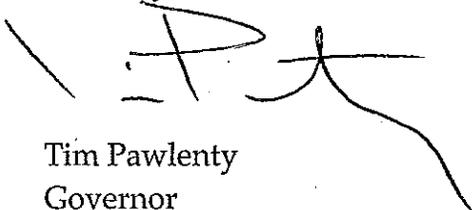
to choose her own physician, but only with consultation with the intended parents. The bill fails to clearly identify the right of the surrogate mother to make her own medical decisions during the pregnancy and permits contract provisions that obligate the surrogate mother to undergo any medical treatments recommended by the physician.

Moreover, the bill fails to specifically grant the surrogate mother the right to refuse a request by the intended parents to terminate the pregnancy. As currently drafted, it is not clear whether a surrogate mother could refuse a request that she terminate the pregnancy. Even if the surrogate mother invokes her constitutional rights to refuse medical treatment, that refusal would not necessarily protect her from an award of damages or other remedies for breach of contract.

The bill also allows enforcement of contracts that allow the intended parents to restrict the surrogate mother's activities. The only limit to this control is that the restrictions do not "unreasonably jeopardize the gestational carrier's own health." Given the remedies allowed in the bill for the intended parents to use the courts to enjoin the surrogate mother's actions and award damages, the threat of enforcement alone is coercive.

The bill also fails in any manner to recognize or protect the life and rights of the unborn child. The unborn child is treated throughout the bill as a chattel, the rights over which are set and enforced under the terms of a contract. Indeed, if a dispute arises under the contract or a breach occurs, the courts are prevented from applying the normal "best interests of the child" standard for resolving the dispute. Instead the courts are required to apply a contract standard to determine the "original intent" of the contracting parties.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Pawlenty', with a long horizontal stroke extending to the right.

Tim Pawlenty
Governor

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Cc: Senator Lawrence J. Pogemiller, Majority Leader
Senator David Senjem, Minority Leader
Senator Linda Higgins
Representative Margaret Anderson Kelliher, Speaker of the House
Representative Marty Seifert, Minority Leader
Representative Kathy Tingelstad
Mr. Patrick E. Flahaven, Secretary of the Senate
Mr. Al Mathiowetz, Chief Clerk of the House of Representatives
Mr. Mark Ritchie, Secretary of State