No. 17-129

IN THE

Supreme Court of the United States

M. C.,

Petitioner,

v.

C. M.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

MOTION FOR LEAVE TO FILE BRIEF FOR *AMICI CURIAE* AND BRIEF FOR 15 FEMINIST ACADEMICS AND ADVOCATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Although Petitioner M.C. has consented to the filing of the *Amici Curiae* Brief by the 15 individuals set forth in appendix A, Respondent C.M. has withheld consent. Therefore pursuant to Supreme Court Rule 37.2(b), the individuals set forth on appendix A. move for leave to file this *Amici Curiae* Brief in support of Petitioner in the above-captioned matter for the following reasons:

The movants are a group of feminist academics and advocates with a long history of not only protecting and advocating for the rights of women but also opposing the exploitation of women in all its forms. A brief biography of each individual appears in appendix A. As feminists and advocates for women the movants have a direct interest in the outcome of this case

This case presents significant issues as to the rights of women with regard to the children they bear and how those rights should be protected from an exploitive industry.

The movants taken as a whole have expertise in the areas of the science of reproductive technology, the psychological and medical factors bearing on surrogacy and how society and in particular the surrogacy industry exploits, in an harmful manner, the reproductive role of women. They also have knowledge of how the surrogacy industry denies women their rights and the impact that this denial of rights has on not only those women but also the children that they bear.

This expertise offers the Court valuable information and insights that will assist the Court in analyzing the claims that women are being exploited and denied their rights by the surrogacy industry abetted by, in this case, the California's surrogacy law.

THEREFORE, *Amici Curiae*, respectfully requests that this Court accept the attached *Amici Curiae* Brief in Support of Petitioner;

Respectfully submitted

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INTEREST OF THE *AMICI CURIAE*

Amici are a group of prominent feminist academics and advocates from the United States and abroad who have dedicated themselves to exposing the exploitation of, and violence against, women.

They have worked to expose the hidden epidemics of sexual harassment, intimate partner and stranger rape, incest, woman-battering, and human and sexual trafficking. They have educated the public and the legal profession and inspired the legislative and judicial arms of the government to take action in all these areas.

They have documented the practices that have treated women unfairly, unjustly, even heinously, in order to benefit from their unique resources and/or labor.

Their interest in this litigation arises from the fact that commercial surrogacy specifically exploits female-only biology since only women can become pregnant, remain pregnant for nine months, nourish and bond with a desired child-to-be, endure all the physical and emotional discomforts and risks (as well as pleasures) involved in pregnancy, go through labor, and give birth. Amici seek to highlight how this is all completely exploited and degraded in a surrogacy arrangement and the harms that this exploitation causes. Appendix A. lists them in full.

SUMMARY OF ARGUMENT

By its very definition, surrogacy is the commodification of women and their bodies as well as commodification of children. Surrogate services are advertised, surrogates

are recruited, and clinics, brokers and lawyers make huge profits. The commercialism of surrogacy raises the specter of a black market and baby selling, of a breeder industry of factory farmed women ala Margaret Atwood's *The Handmaid's Tale.* Surrogacy degrades a pregnancy to a service for sale and a baby to a product for purchase – an "entitlement" for those possessing the financial means to procure one.

It is illegal to sell a body part. To the extent to which surrogacy entails the sale of both a service and a "product" – a living being – it is not only illegal and unethical; it also exploits and harms the birthmother, whether she is genetically related or is the gestational birthmother to the child or children. One cannot legally sell an organ; one can only donate it. Thus, one should not be able to sell the "produce" of one's womb; namely, the creation of a child. This is baby selling and violates the Thirteenth Amendment to the U.S. Const. amend. XIII, which prohibits slavery or the sale of a human being for money. Surrogacy is reproductive trafficking and/or reproductive prostitution and can also be understood as reproductive slavery. As such, it embodies innumerable harms and abuses to both women and children.

In surrogacy, the rights of the children being produced are simply not considered. Transferring the responsibilities of parenthood from the birthing mother to a contract buyer denies the child any claim to its gestational surrogate mother and to its biological parents if the egg and/or sperm is/are not that of the buyers. The right of children to information regarding their genetic history and any siblings they may have who are the offspring of the biological parents is denied to surrogate

children. The child is commissioned by the buyer(s) as a commodity for purchase and subject to the specifications of said buyer.

Commercial surrogacy endangers the physical and emotional health of the woman it exploits and the children that it is selling.

ARGUMENT

SURROGACY COMMODIFIES AND EXPLOITS WOMEN AND CHILDREN

The surrogacy story works on two levels simultaneously. It accustoms us to the idea that women are objects in the marketplace at the same time that the arguments of surrogacy advocates deny this. Surrogacy advocates assert that we should see women as the owners of their bodies. Pregnancy is a “service” just like factory work or lawn mowing. To this end, they use exactly the same argumentation as prostitution proponents. But if pregnancy is a job, what then is the product? The product of surrogacy is absolutely tangible: it is a newborn baby. If pregnancy is the same as working in a factory, then the child is comparable to a car or a smartphone. The woman bears and gives birth to a child and then hands the product over. At the same time she gives up the child, she receives payment. It is germane to ask, why should this not be considered human trafficking? Gena Corea, *The Mother Machine; Reproductive Technologies from Artificial Insemination to Artificial Wombs* 275 (Harper and Collins 1985)

The practice of commercial surrogacy has expanded dramatically with every passing year. Aliette Carolan, *What Has Fueled the Huge Growth in Surrogacy in the Past Decade?* (May 5, 2014) http://www.Acarolanlaw.com/what-has-fueled-the-huge-growth-in-surrogacy-in-the-past-decade; Deborah L Cohen, *Surrogate Pregnancies on the Rise Despite Cost Hurdles*, Reuters (March 18, 2013) http://www.reuters.com/article/us-parent-surrogate-idUSBRE92H11Q20130318. The media is intoxicated by images of beaming smiles, euphoric new parents, and innocent infants. The reality of surrogacy, however, is ignored because of what it reveals. What is this reality? It is a predatory, profit-driven industry that preys on marginalized and impoverished women, creating a breeder class for wealthier people: the infertile, celebrities, gay men and single individuals. It is about women being subjected to life-threatening health risks to produce custom-made children. It is children being intentionally severed from genetic and biological sources of identity, with no concern for human rights. In essence, it is the ultimate manifestation of the commodification of all forms of life to create profit and fulfill the narcissistic desires of an entitled elite.

European Parliament and United Nations Condemnation of Surrogacy

In April, 2011 the European Parliament adopted a resolution on violence against women that condemned surrogacy "as an exploitation of the female body and her reproductive organs." It goes on to emphasize that "women and children are subject to the same forms of exploitation and both can be regarded as commodities on the international reproductive market, and that these new

reproductive arrangements, such as surrogacy, augment the trafficking of women and children and illegal adoption across national borders. *Resolution on Violence Against Women*, EUR.PARL.DOC (April 5, 2011),http://www.europarl.europa. eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0127+0+DOC+XML+V0//EN

The United Nations (UN) has warned about the growing trafficking of women that surrogacy creates. As far back as 2009, the United Nations Development Program (UNDP) warned that human trafficking for the purpose of surrogacy is increasing. Indian lawyer Anil Malhotra, an international law expert, writes that "exploitation, extortion, and ethical abuses in surrogacy trafficking are rampant, go undeterred, and surrogate mothers are used with impunity." Anil Malhotra, *Business of Babies*, The Tribune Chandigarh, India, December 14, 2008, http://www.tribuneindia.com/2008/20081214/spectrum/main2.htm

As with any other commercial transaction, the surrogacy broker defines the conditions of the sale. Many surrogacy brokers insist that the surrogate be married and the mother of at least one healthy child, be medically fit, psychologically compliant, abstain from sex, cigarettes, alcohol and any other drugs (other than those they compel) during the pregnancy, and must agree to give up her parental rights after the baby is born. Brokers prefer married women since their husbands are not the biological fathers of the surrogate children and so the women are much less likely to want to keep the baby.

Gestational surrogacy, in which the egg used to create the embryo is not the surrogate's, was established with

the development of Assisted Reproductive Technologies (ART) in order to strip the surrogate of parental rights. If a woman has already given birth to a healthy child, she is a proven breeder. The surrogacy and egg trafficking industries are similar to agribusiness' factory farming of animals. Good breeders are selected and they are controlled, monitored and pumped with hormones and numerous drugs. After they have performed their function, they are discarded.

Regulations vary both nationally and internationally and cater to the surrogacy broker and his or her financially privileged customers who benefit from the commodification of reproduction, and exploit low income and poor women for their reproductive capacities. Surrogacy and egg trafficking have become pervasive phenomena in which women's poverty and subordinate status in the United States and throughout the world, increase their exposure to gender-based exploitation and physical harms.

The profiteers who commercialize reproduction – brokers, lawyers, clinics and fertility doctors– respond to the accurate characterization of their actions as being exploitive of women by using Orwellian language. They prevaricate that they are engaging in altruism and falsely label egg sellers as donors and surrogates as womb renters or service providers in order to hide the true nature of their business.

It is no coincidence that surrogacy brokers and clinics are concentrated in states where there are large military bases. As with ads for eggs in college newspapers on campuses, military publications such as *Stars and Stripes* and *Army Times* are filled with surrogacy broker ads.

One could also point out that while the military heavily recruits from the working class and poor demographics, these people are doubly exploited for their reproductive capacities – in this instance by profit-driven private enterprise.

American military wives on low fixed incomes have turned to surrogacy in huge numbers to in most cases double their incomes. Although members of the military constitute less than 1% of the US population, nation-wide, military wives constitute 20% of surrogates. In states where there are vast military bases such as Texas, California and Florida, the percentage goes up to 50%. Journalists Habiba Nosheen and Hilke Schellmann spent two years investigating the use of military wives as surrogates. Interviewed on ABC News, Schellmann said "We found out that there is basically no regulation. This is the Wild West. There are no laws regulating this industry at all, and almost anything is possible." ABC News also interviewed Colleen, a surrogate military wife. Her husband makes $30,000 a year and is stationed in Iraq. "It truly was a way for me to earn some kind of income" Colleen told the reporter. Colleen says Tricare health insurance, provided to all members of the US military, did not question her surrogate pregnancy and she did not tell them. Astrid Rodrigues and Jon Meyersohn,(ABC News October 15, 2010),http://abcnews.go.com/GMA/Parenting/military-wives-surrogates-carrying-babies-love-money/story?id=11882687

Military wives are a primary target of the American fertility industry. These women represent an ideal supply source for the industry. They are low income (between $16,000 and $30,000 per year) and a proven breeding stock

as they tend to get married and have their own children at very young ages. The prospect of doubling their income by serving as a surrogate is a powerful incentive since most surrogates in the US are paid between $20-25,000. Perhaps the most enticing feature of military wives for the business is that they are assumed to be celibate if their husbands are stationed overseas; surrogates are instructed not to have sexual intercourse for the duration of the process (a gross violation of individual freedom and personal autonomy).Lorraine Ali, *The Curious Lives of Surrogates,* (Newsweek March 29, 2008),http://www.newsweek.com/curious-lives-surrogates-84469

There is reverse exploitation of the women who supply their eggs and those who serve as surrogates. In their quest for designer children, buyers target vulnerable uninformed young women, particularly at elite universities, for their genetically desirable eggs. Lured by appeals to their financial self-interest, many college students struggling to finance their education see ubiquitous ads in social media and campus newspapers for their eggs as a risk-free cash infusion. Offers ranging from $50,000 to $100,000 for "designer eggs" from women with exceptionally good looks (blonde and blue-eyed preferred), high SAT scores, athletic ability, musical talent, and attendance at an Ivy League university, can prove irresistible to uninformed women in need of a major income injection. From the high income buyer's perspective, why buy from Walmart when you can shop at Tiffany's? Absolutely no discussion is taking place about this blatant classism, racism, ableism, and elitism which underlie this selective breeding at a price, also known as eugenics.

Once the designer eggs are obtained from the desired gene pool, a body with a proven track record for successful reproductive performance is needed to gestate the resultant embryo. Unlike the women providing the designer eggs, no such concern is exhibited for the characteristics of the surrogate who need only be a good brood mare. High IQs, impeccable academic credentials, musical or athletic prowess are completely unnecessary; here the demand is for passive compliance and demonstrated reproductive capacity. Consequently, the race, ethnicity, intelligence, talents and physical appearance of the woman are irrelevant. David Jones, *The Designer Baby Factory: Eggs from Beautiful Eastern Europeans, Sperm from Wealthy Westerners, and Embryos Implanted in Desperate Women*, (The Daily Mail, May 4, 2012) http://www.dailymail.co.uk/news/article-2139708/The-designer-baby-factory-Eggs-beautiful-Eastern-Europeans-Sperm-wealthy-Westerners-And-embryos-implanted-desperate-women.html

Thus, the practice of surrogacy raises the specter of eugenics, resoundingly rejected globally after World War II in the wake of the Nazi Holocaust, and is a gross exploitation of healthy young women for genetically desired traits and economically marginalized women as a breeder stock for the wealthy.

COMMERCIAL SURROGACY IS PHYSICALLY AND EMOTIONALLY HARMFUL TO BOTH WOMEN AND THE CHILDREN THEY CARRY.

There are irrefutable physiological and psychological bonds between pregnant women and developing fetuses *regardless of genetic relationship* which dictate that

surrogate mothers are the *real* mothers of the children they produce. A pregnant woman is responsible for the life, growth, nurturance, development and health of the maturing fetus. If not for the surrogate, the embryo which becomes a child would not and could not exist, negating the deeply misogynist claim that surrogates are just "containers," "ovens," "gestational carriers" and "vessels." As the body secretes hormones during pregnancy, an organic evolutionary process of attachment commences. Many longitudinal and cross-sectional studies have documented increases in maternal feelings of attachment, particularly after 20 weeks of pregnancy. C.S Carter, *Neuroendocrine Perspectives on Social Attachment and Love*, 1998 Psychoneuroendocrinology, 23, 779-818.

A pregnant woman who creates the child is not the buyer. A pregnant woman is not a "surrogate" for someone else. She is a pregnant woman whose body causes a child to exist; being forced to deny this biological reality constitutes grievous harm.

The symbiotic relationship between a pregnant woman and fetus encompasses nutrition, sleeping and waking, sound, movement, language, hormones, and epigenetics. The pregnant woman's body is the sole source of nutrition for the fetus, a fact that has life-long consequences for human beings. Even flavors of the foods a pregnant woman eats are passed into the amniotic fluid. Studies have documented that mothers who consumed garlic, carrots or anise before an amniocentesis test gave birth to babies who preferred or at least tolerated such foods after they were born. J.A. Mannella, A. Johnson and G.K., Beauchamp, *Garlic Ingestion by Pregnant Women Alters the Odor of Amniotic Fluid*, 120 Chemical Senses,

207-209 (April 1995). The fetus' sleeping and waking patterns are synchronized with the mother's. J.Worth, C.I. Onyeije, A. Ferber, J.S. Pondo and M.Y. Divon, *The Association between Fetal and Maternal Sleep Patterns in Third Trimester Pregnancies*, 186 Am.J.of Obstetrics & Gynecology 924(May 2002). Newborns recognize their mother's voice and even her language. Pregnant women also sing to their babies and teach them language; some mothers accustom their fetuses to music – all of which newborns can recognize after birth. Pregnant women also experience hormonal changes which orient them towards their fetuses. R.Feldman, A.Weller, O. Zagoory-Sharon and A Levine, A., *Evidence for a Neuroendocrinological Foundation of Human Affiliation: Plasma Oxytocin Levels Across Pregnancy and the Postpartum Period Predict Mother-Infant Bonding*, 18 Psychological Science 965(2007). Called the "love and bonding" hormone, oxytocin, released during pregnancy, reduces the woman's blood pressure, blocks stress hormones, and aids in relaxation. It surges during labor and facilitates bonding between mothers and newborns .D. Maestripieri, *Biological Bases of Maternal Attachment*, 10 Current Directions in Psychological Science 79(2001).Epigenetics is how genes are expressed and are influenced by the environment. Epigenetics is distinguished from genetics which is the actual DNA sequence. Studies demonstrate that stress has a major effect on fetuses; when a pregnant woman is under stress it directly impacts the child resulting in lower IQ and impaired language abilities. D.P. LaPlante, et al., *Project Ice Storm: Maternal Stress Affects Cognitive and Linguistic Functioning in 5 ½ Year-Old Children,* 47 Journal of the American Academy of Child, Adolescent Psychiatry 1063(2008).

An entire field of study – fetal origins – has been established in which scientists are developing a radically new understanding of our prenatal experiences and how they exert lasting effects from infancy through adulthood, regardless of the genetic connection between the pregnant mother and the developing fetus or the lack thereof. The research reveals that pregnancy is a crucial staging ground for our health, ability, and well-being throughout life. As a matter of fact, both the pregnant woman and the fetus exchange their DNA through the permeable placenta.In her groundbreaking book *Origins: How the Nine Months Before Birth Shape the Rest of Our Lives* (Paul, Annie Murphy, 2010, Origins: How the Nine Months Before Birth Shape the Rest of Our Lives, New York: Free Press)author and journalist Annie Murphy Paul extensively documents scientific findings on how a single exposure to an environmental toxin may produce damage that is passed on to multiple generations; how conditions as varied as diabetes, heart disease, and mental illness may get their start in utero; why the womb is medicine's latest target for the promotion of lifelong health, from preventing cancer to reducing obesity. The fetus is not an inert being, but an active and dynamic creature, responding and adapting as it readies itself for life in the particular world it will inhabit. The pregnant woman is not merely a source of potential harm to her fetus, as she is so often reminded, but a source of influence on her future child that is far more powerful and positive than has ever been known. Pregnancy is not a nine-month wait for the big event of birth but a momentous period unto itself, a cradle of individual strength and wellness and a crucible of public health and social equality or inequality.

Commercial Surrogacy ignores the reality of the bond that forms between the mother and the child. This willful ignorance has negative consequences for both the mother and the child.

Commercial surrogacy subjects women to psychological abuse which may lead to Post Traumatic Stress Syndrome (PTSD). Drew Rosielle, MD, *The Trauma of Surrogacy*, Pallimed Hospice & Palliative Medicine (March 8, 2011),http://www.pallimed.org/2011/03/trauma-of-surrogacy.html. In fact, the actual loss is compounded by the demand that the birthmother "feel" nothing, to in fact deny what she is feeling, mimicking mental illness. For a surrogate to undergo pregnancy through IVF, carry to term, deliver and relinquish the child, she must exhibit a large degree of dissociation from her natural feelings, to deny what her body informs her, and to detach from her emotional and physical investment in the child. Phyllis Chesler, *Sacred Bond: The Legacy of Baby M* (Times Books, 1988); Claire Snowdon, *What Makes a Mother? Interviews with Women Involved in Egg Donation and Surrogacy, Birth,* Birth Issues in Perinatal care June 1994, at 77-84

These are neither simple nor natural tasks even after pre-selection psychological screening, extensive "counseling" (one could say brainwashing) during pregnancy and after relinquishment. All of this is contrary to the natural instincts of motherhood and to the best interests of children. This phenomenon is similar to biological birthmothers who suffer the loss of a newborn, infant, or child whom they are forced to relinquish in a custody battle and similar to teen birthmothers who, in the past, were forced by their parents to relinquish their "illegitimate" child.

Since the surrogate is treated as a "container" for the embryo, she is not expected to become attached to the child. Her feelings after the separation are seen as a passing affliction. In the US surrogacy industry, women are coached to be detached from the children they carry. Surrogacy agencies follow women during their entire pregnancies "to ensure that they understand whose child they are carrying and giving up," writes scholar Olga van den Akker. 2007, Psychosocial Aspects of Surrogate Motherhood, Human Reproduction Update, 13, 1: 53-62

In the US, it is standard procedure for surrogate mothers to attend support groups arranged by the agencies where they learn how to be pregnant without becoming attached to the developing child. They also function as training and groupthink camps where women learn which feelings are "acceptable" and which are not. A woman who expresses herself in an unacceptable way may be reported to the agency reminiscent of informants in dictatorships. Rosemarie Tong, *The Overdue Death of a Feminist Chameleon: Taking a Stand on Surrogacy Arrangements in The Ethics of Reproductive Technology,* (Kenneth D. Alpern ed, 1992)

Surrogates all over the world, regardless of whether they feel surrogacy is good or bad, describe the techniques of turning off their emotions. First and foremost, this has to do with creating a mental distance and can be done in various ways, using techniques such as ignoring, turning off, or transferring feelings to someone else. In Helena Ragone's study, skin color is a major factor used by surrogates to distance themselves from the child. Black and Mexican women therefore prefer to carry white and Asian children. Ragone writes: "My preliminary findings

suggest that the majority of gestational surrogates do not object to, and may actually find it desirable to be matched with a couple from a different racial background. One of the reasons for this preference is that racial/ethnic difference provides more 'distance' between them, a degree of separation the gestational surrogate is able to place between herself and the child." Helena Ragone, *Surrogate Motherhood: Conception in the Heart* (Westview Press 1994).

The most widely used form of thought control is to repeat: "It is not my child." Repeating that the child belongs to someone else is the industry's most common way of manipulating surrogates. Just as prostitutes dissociate their bodies from their selves, surrogates dissociate the developing child from themselves. In order to mentally construct the child as someone who belongs to someone else, the surrogate makes her body into the property of the buyer.

Surrogacy contracts require surrogates to not form a mother-child relationship despite the fact that this relationship is biologically inherent to all pregnancy throughout its duration. All such contracts treat women as if they are inanimate objects – machines – not whole persons who bond, love, have emotions or any sense of moral, ethical, and emotional commitment to the children they bear. Given the bond that develops in the womb and how stress affectsthe development of a child in the womb the artificial severing of that bond has the potential to harm not only the mother but also the child's emotional well-being.

In addition to the psychological havoc that commercial surrogacy can cause, it is also physically dangerous.

The short terms risks are the risks that all pregnant women face regardless of whether they are genetic or gestational (surrogate) birthmothers. Egg sellers face some but not all of these risks. These risks can include ovarian hyperstimulation syndrome (OHSS), ruptured cysts, ovarian torsion, bleeding, pelvic pain, infection, mood swings, premature menopause, kidney failure, stroke, and even death. OHSS affects women undergoing IVF who take injectable synthetic hormones to stimulate production of unnaturally massive numbers of eggs in the ovaries (women normally release one egg per month versus superovulation's forced production of dozens of eggs). OHSS can also result from taking oral fertility drugs such as Clomid and Serophene. It causes rapid weight gain, severe abdominal pain, vomiting, shortness of breath, cessation of urination, chest pains, severe abdominal bloating, diarrhea, fluid collection in the lungs, tissues and abdominal cavity, blood clots, dehydration, digestive system malfunction and can result in death. Mayo Clinic Staff, *Ovarian Hyperstimulation Syndrome*, (August 3, 2017), http://www.mayoclinic.org/diseases-conditions/ovarian-hyperstimulation-syndrome-ohss/symptoms-causes/dxc-20263586.

Egg sellers are preferred in surrogacy arrangements in order to legally and psychologically minimize the birthmother's legal claim to the child. Egg sellers risk future infertility and cancer, most commonly ovarian, breast, and endometrial. Furthermore, both surrogates and egg sellers are pumped with drugs such as Lupron which is *not* FDA-approved for fertility use. Lupron is a

drug that was developed for men with advanced stages of prostate cancer. Lupron produces the onset of menopause, potentially with incapacitating and long-lasting effects. There has been no interest on the part of either the pharmaceutical industry or the FDA to investigate the drug's safety or adverse effects. This, despite the fact that as far back as 1999, the FDA received adverse drug reports about Lupron from over 4,000 women. There have been no prospective or clinical studies on Lupron's safety for ART patients. Lynne Millican, *They Say Lupron Is Safe*, Hormones Matter (May 13, 2017), https://www.hormonesmatter.com/they-say-lupron-safe/

There are no regulations of surrogacy brokers or infertility clinics as they relate to surrogacy in California. The statute merely authorizes enforcement of surrogacy contracts It fact it enforces the contracts regardless of what abuses are heaped on the woman and regardless of whether enforcement is contrary to the children's best interests. There are no long term studies conducted on the health risks it produces, and no patient follow-up. A 2007 Institute of Medicine Report stated that "One of the most striking facts about in vitro fertilization (IVF) is just how little is known about the long term health outcomes for the women who undergo the procedure. Workshop Report, *Assessing the Medical Risks of Human Oocyte Donation for Stem Cell Research*, (2007) https://www.nap.edu/read/11832/chapter/2#4. Moreover, it is almost never stated that in the U.S., the *failure* rate of IVF is extremely high – 70% - according to the Centers for Disease Control & Prevention. Centers for Disease Control & Prevention, *National Center for Chronic Disease Prevention & Health Promotion, Division of Reproductive Health 2007 Report Assisted Reproductive Technology Success*

Rates: National Summary & Fertility Clinic Reports (CDC December 2009).

High rates of multiple births produced by the implantation of several embryos – there are no caps to the number that can be implanted in the US – and infection resulting from IVF, place both surrogates and babies at high risk for complications. When problems arise during the pregnancy, the wellbeing of the child is given precedence over the health of the woman – money talks. Care of the surrogate ends with the birth of the child even when the woman who bears the child suffers lasting effects. Anecdotal evidence has been mounting for years from testimonies of women who have been surrogates or sold their eggs, information from clinics, documentaries, whistleblowing health care professionals, feminists, academics and journalists.

Women renting their bodies as surrogates or selling their eggs cannot give informed consent since they are not supplied with complete information. They are not told that no long term studies have been conducted on the health risks involved. Many, if not most, are not aware that there is no regulation of surrogacy or egg selling in the United States. They are not told that there is no national registry to provide a centralized repository for records, patient follow-up, and long term studies. Many are naively unaware that the commercial fertility industry has every reason to minimize the health, emotional and psychological risks given the enormous profits generated.

The number of surrogacy disasters could fill a book but just a brief summary of a select few serve to illustrate the harms surrogacy inflicts on women and their children.

1. A surrogate, Brooke Lee Brown, age 34, died on October 8, 2015 while carrying twins for buyers from Spain. Brown of Burley, Idaho died from either placental abruption or amniotic fluid embolisms. She was a mother of 3 boys and had served as a surrogate multiple times. The twins also died. Mirah Riben, *American Surrogate Death: NOT the First,* Huffington Post (October 15, 2015), http://www.huffingtonpost.com/mirah-riben/american-surrogate-death-_b_8298930.html

2. A surrogate identified only as Nancy from Ontario, Canada came extremely close to death in October 2015. She developed high blood pressure then congestive heart failure before she was put in a medically induced coma to save her life and those of the triplets she was carrying. Nancy told Canada's *National Post* "Did I feel like an employee? Damn straight I did," said the mother of five, who asked that her full name be withheld because of ongoing legal action. "Like a piece of trash. They used me and just threw me away like I was nothing." Tom Blackwell, *This Ontario Mother Wanted to Help Another*, (October 15, 2015),http://nationalpost.com/g00/health/this-ontario-surrogate-wanted-to-help-another-mom-have-kids-it-was-a-decision-that-nearly-killed-her/wcm/24d8b74c-a7de-

3. Natasha Caltabiano, a 29 year-old surrogate from the UK, died on December 31, 2004 of abdominal aortic aneurysm. After giving birth to an eleven pound baby she died of a ruptured aorta

90 minutes later. She was a mother of two and engaged to be married. Her mother told the *Daily Mail* "Surrogacy caused Natasha's death. People must realize that childbirth isn't something you enter into lightly. It's still dangerous but that is something surrogate agencies don't go into." Daily Mail, *Surrogate Mother Dies After Giving Birth* (January 29,2005),http://www.dailymail.co.uk/news/article-335871/Surrogate-mum-dies-giving-birth.html

4. The first known surrogate death occurred on November 12, 1987 in Texas. Denise Mounce was 24 years-old and her death was reported in *The Record* as "the first surrogate death." Chesler, id. at 64.

5. In 2011, Carrie Matthews, a mother of four from Colorado, signed a surrogacy contract with a couple from Austria. The couple took the baby after Carrie gave birth and refused to pay her over $14,000 they promised to pay her upon delivery. Adding to the serious financial harm, the hospital where Carrie gave birth sent her a bill for $217,000. She also suffered grave physical harm, nearly dying after giving birth to twins. She developed pre-eclampsia and a syndrome which causes low platelets and elevated liver enzymes. The broker, Hilary Nelman, later pled guilty in a baby-selling ring that recruited surrogates then when they were in their second trimester of pregnancy, the fetuses were put on the market claiming that the buyers had backed out then sold the babies for $100,000 to $150,000 after

they were born. Mikaela Conley, *Surrogate Mom Stuck with a 200,000+ Medical Bill* (October 27,2011), http://abcnews.go.com/blogs/

6. health/2011/10/27/surrogate-mom-stuck-with-a-200000-medical-bill/

7. In 2013, an Australian couple, Wendy and David Farnell, contracted with a surrogate in Thailand. The surrogate, Pattaramon Chanuba, became pregnant with twins, a male and female. An ultrasound revealed that the male fetus had Down syndrome. He would also be born with a congenital heart condition. The Farnells took the healthy baby girl back to Australia with them but left the boy "Baby Gammy" with his surrogate mother in Thailand. It was subsequently revealed that David Farnell had previously been convicted of molesting two girls yet he was still allowed to keep the purchased female surrogate baby. Paige Taylor, *Gammy's Dad Sex Offender David Farnell Granted Custody*,(April 15, 2016), http://www.theaustralian.com.au/news/nation/gammys-dad-sex-offender-david-farnell-granted-custody/news-story/11bda4f050f12da08aade51f4c613b4b

8. In 2014, a surrogate became pregnant with twins in the UK and learned that the female fetus had Congenital Myotonic Dystrophy, a form of muscular dystrophy. The purchasing mother took the healthy baby boy but refused to accept his twin sister, telling the surrogate known as Jenny "She'd be a f-ing dribbling cabbage! Who

would want to adopt her? No one would want to adopt a disabled child." Jenny then took the baby girl named Amy. The surrogate's partner Mark had to retrain for another career and take a pay cut so he could spend more time at home taking care of the disabled child. Mark said "How could we possibly sign over to somebody showing a disregard of the child's health?" Jenny said "Amy is 100% our daughter." Inderdeep Bains, *I Don't Want a Dribbling Cabbage for a Daughter,* Daily Mail UK(August 26,2014),http://www.dailymail.co.uk/news/ article-2734374/Surrogate-mother-twins-gave-birth-disabled-girl-told-woman-intended-child-didnt-want-dribbling-cabbage.html

CONCLUSION

Courts must take into consideration the special vulnerability of women in a patriarchal world where inequality, injustice and subordinate status are pervasive. For millennia, women's human rights have been abused and ignored with impunity. As developments in biotechnology facilitate the commodification of women and the reproductive process we must remain vigilant about ways in which a woman's human rights to dignity, to health and to a relationship with the children she bears are deliberately violated by an unscrupulous profit-driven surrogacy industry. These are significant rights and their deprivation through surrogacy arrangements should be examined by this Court. For these reasons the petition of Certiorari should be granted.

Respectfully submitted

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APPENDIX

APPENDIX — *AMICI* FOR SURROGACY CASE

1. Dr. Francoise Baylis is Canada Research Chair in Bioethics & Philosophy at Dalhousie University Faculty of Medicine in Halifax, Nova Scotia. She has received the Order of Canada and the Order of Nova Scotia, is a Fellow of the Royal Society of Canada, and a Fellow of the Canadian Academy of Health Sciences. Her research is concentrated on women's health and Assisted Reproductive Technologies (ART).

2. Dr. Paula Boddington is a philosopher and currently a Senior Researcher in Ethics at the University of Oxford. Over her career, she has taught and researched medical ethics, ethical issues in genetics, and feminist philosophy. She is a volunteer befriender with the UK-based charity Parents Against Child Sexual Exploitation (PACE).

3. Dr. Phyllis Chesler is an Emerita Professor of Psychology and the distinguished author of sixteen books, including classic feminist works such as *Women and Madness* and *Sacred Bond: The Legacy of Baby M.* She is a co-founder of the Association for Women in Psychology and the National Women's Health Network.

4. Kajsa Ekis Ekman is a Swedish author, journalist and founder of Feminists Against Surrogacy. She is the author of *Being and Being Bought: Prostitution, Surrogacy and the Split Self.*

5. Clarissa Frankfurt, JD, is an international human rights attorney focused on feminist issues. She is based in Fribourg, Switzerland and has also practiced and studied law in Germany and the United States.

6. Dr. Maureen Hannah is a Professor of Psychology at Siena College and a licensed psychologist. She has published numerous books and articles addressing relationship dynamics, couples' therapy, and domestic violence.

7. Dr. Michelle Harrison is a physician, academic, and pioneer in women's health and women's rights. She protested the exploitation of women in Baby M and testified on behalf of surrogate Anna Johnson, with articles and Op-eds in the *Wall Street Journal* and others. Dr. Harrison founded a home and school for orphaned girls in India and advocates for their protection.

8. Merle Hoffman is a women's healthcare pioneer, writer and publisher. Two years before Roe v. Wade, Hoffman established one of the first legal abortion centers which is now one of the nation's largest healthcare facilities. She also founded Choices Women's Mental Health Center which specializes in the treatment of battered and abused marginalized women of color.

9. Dr. Donna Hughes is the Eleanor M. and Oscar M. Carlson Endowed Chair in Women's Studies

and a Professor of Gender & Women's Studies, Sociology and Anthropology at the University of Rhode Island. She specializes in research, teaching, and policy on human trafficking and other forms of exploitation and violence. She is Editor-in-Chief of *Dignity: A Journal on Sexual Exploitation and Violence.*

10. Dr. Sheila Jeffreys is a British feminist scholar and Professor of Political Science at the University of Melbourne in Australia. She is the author of ten books on the history and politics of sexuality.

11. Dr. Renate Klein is an Australian academic, writer, publisher and feminist health activist. Klein is the author and editor of fourteen books, many of which explore reproductive technologies and the medicalization of women.

12. Dr. Barbara Katz Rothman is a Professor of Sociology at the City University of New York (CUNY) where she serves on the Doctoral Faculties in Sociology, Women's Studies and Public Health. She teaches and writes in the area of bioethics with an emphasis on issues relating to pregnancy, motherhood, and the mother-child relationship.

13. Mary Lou Singleton, LM, FNP, is a midwife and family nurse practitioner whose medical practice, Rio Grande Midwifery, provides integrative primary health care to newborns, children, adolescents and adults.

14. Kathleen Sloan, MA, is an American feminist leader focused on the reproductive and sexual commodification of women and its violation of their human rights. She has been a leader of the feminist anti-surrogacy movement in the US for the last decade.

15. Dr. Bronwyn Winter is Associate Professor at the University of Sydney. The dominant themes of her research and teaching concern gender, sexuality, race, religion, and the state in relation to international discourses regarding human rights and violence in a "globalized" world.