March 12, 2018

Dear Representative Wills and Senator Benson,

We are writing on behalf of RESOLVE: The National Infertility Association, representing the 7.3 million American men and women – and the nearly 114,000 Minnesota citizens – who face infertility. We at RESOLVE are greatly concerned about SF 2740/HF 2994, which would outlaw compensated gestational surrogacy and impose major obstacles for those who need a gestational carrier to build their family.

1) The legislation specifies that surrogacy contracts are void if compensation is provided to the gestational carrier surrogate. We are unaware of any other medical procedure in Minnesota in which prices or compensation for private sector services are set by the government. It is odd to suggest that Minnesota government would intervene in the private negotiations of adults for a service to be provided. This restriction would end gestational surrogacy in Minnesota and deprive Minnesotans the opportunity to have a child. RESOLVE opposes any restrictions on compensation.

2) SF 2740/HF 2994 also requires that infertile couples seeking to have a child should be subjected to criminal background checks. Fertile couples are not required to be investigated by the State before having procreative sex. It is most bizarre that Minnesotans with a diagnosed medical condition would have government employees that are not medical professionals licensed by the Board of Medical Practice in their home to assess whether a recognized medical treatment is appropriate for them. No state in the country investigates couples seeking to have children. If it is in the interest of the State to investigate infertile couples seeking to become parents, then it is surely equally in the interest of the State to investigate fertile couples seeking to become parents. RESOLVE opposes any requirement that infertile patients be singled out for government investigations.

3) The bill restricts surrogacy contracts to persons that have resided in Minnesota for at least one year. Thanks to the Mayo Clinic, Minnesota is an international destination for patients seeking medical care. No patients coming to Minnesota for medical care are currently subject to a one-year residency standard for obvious reasons. Likewise, requiring two years of marriage is unnecessary and discriminatory. RESOLVE opposes rationing recognized medical treatments in Minnesota to certain classes of people and believes any patient seeking medical treatment for infertility should be allowed to receive that treatment without government restrictions.
4) SF 2740/HF 2994 requires a single embryo transfer. This mandate interferes with the
doctor/patient relationship and has government officials with no medical training dictating
medical policy and procedures. Only physicians licensed to practice medicine in Minnesota
should determine the number of embryos to transfer that takes into account the medical history
of their patients. **RESOLVE opposes a government requirement that dictates the number of
embryos to transfer.**

5) The bill also requires that one of the intended parents must be genetically related to the child.
Surrogacy occurs when a couple is infertile, and oftentimes it is both the male and female who
have medical conditions rendering them infertile. In those cases, donor egg and donor sperm,
or donor embryo, may be needed to achieve pregnancy, with the donated egg donated from
someone other than the gestational carrier. **Requiring that one of the intended parents be
genetically related discriminates against couples with both male and female factor infertility,**
and **RESOLVE opposes this discriminatory requirement.**

6) SF 2740/HF 2994 also mandates that the gestational carrier surrogate cannot have more than
$10,000 in debt other than home mortgage and car loans. There are other types of legitimate
debt, including student loans, which may exceed that amount and should not disqualify a
potential surrogate. Mental health professionals already evaluate the gestational carrier and
partner to ensure that compensation is not the primary motivation. **RESOLVE opposes an
arbitrary limit on debt that would unnecessarily restrict the eligibility of gestational carrier
candidates.**

7) The bill also requires health care professionals to report data on the use of gestational surrogacy
to the Minnesota Department of Health. Extensive reporting already occurs directly to the CDC
as required by law, and this additional reporting would add extra costs and burden to health
care professionals. It also requires collecting data on the health of children born via surrogacy.
Any such data collection should match what is currently required to be collected on all children
born in the State, rather than singling out children whose parents needed medical help to have a
child. **RESOLVE opposes additional, discriminatory data collection requirements for families
using gestational surrogacy.**

8) The proposed legislation requires that surrogacy agencies engaged in various administrative
services related to surrogacy arrangements and contracts must be formed as non-profit
corporations. Other agencies serving infertile Minnesota families, such as infertility clinics,
mental health clinics, law firms and hospitals, are allowed to choose whether to incorporate as a
non-profit or for-profit corporation. For example, hospitals in Minnesota may incorporate as
non-profit or for-profit corporations. Both serve patients and must meet state licensure
standards, but it is left to them to determine how to legally structure their business. The same
should apply to surrogacy agencies. It is also far from clear that a surrogacy agency could even
qualify under IRS regulations to be a Ch. 317A nonprofit. **RESOLVE does not believe the
government should be dictating what corporate structures are most appropriate to serve
clients. Instead, it should be fostering a regulatory environment that serves the needs of
infertile Minnesotans and their offspring.**
The restrictions described above would, in effect, end gestational surrogacy, making Minnesota the first state in a generation to restrict surrogacy. In fact, states with restrictive surrogacy laws are now overturning these laws. In 2017, Washington, D.C. lifted its ban on compensated gestational surrogacy, and just this month, Washington State passed the Uniform Parentage Act, allowing compensated gestational surrogacy. And New York’s Task Force on Life and The Law recently issued its report after several years of stakeholder input recommending the approval and regulation of compensated surrogacy in New York.

The use of gestational carrier surrogacy arrangements is becoming more common and the response of states has been to propose smart legislation that offers more protections for all parties. RESOLVE supports regulation that gestational carrier surrogacy arrangements meet national standards that provide that the carrier not be the genetic mother of the child she is carrying, independent legal representation of all parties is provided, mental health evaluations of all parties is provided and the gestational surrogacy candidate is medically capable of carrying a child to term. These are the consensus points reached by the Legislative Commission on Surrogacy and included in the Gestational Carrier Act, SF 707 / HF 2593, introduced last year and which RESOLVE supports.

RESOLVE’s mission is to support people building families. The Minnesota Medical Association (MMA), the Minnesota section of the American Congress of Obstetricians and Gynecologists (ACOG), and the American Society for Reproductive Medicine (ASRM) all support gestational surrogacy as a safe family building option. SF 2740/HF 2994 poses great risks to those of us who need medical help to have children and we oppose this legislation.

Sincerely,

Julie Berman, Minnesota Resident and Board Chair, RESOLVE: The National Infertility Association

Barbara Collura, President/CEO, RESOLVE: The National Infertility Association