

Testimony of Robin Elizabeth Pope, Attorney – March 17, 2025

Senate Bill 163 with -1 Amendments

Chair Prozanski and members of the Senate Committee on Judiciary:

My name is Robin Pope. I am an attorney in private practice. My practice is limited to Assisted Reproduction Technology (ART) law, also known as family formation law, including gestational surrogacy, gamete donation, parentage, and related matters. Over the past 35+ years I have represented intended parents, gestational surrogates, gamete donors, birth parents, adoptive parents, adoption agencies, and putative fathers. I am here to testify in support of SB 163 with the -1 Amendments.

My background includes: Oregon State Bar Member in good standing since 1981; Membership since 1997 in the Academy of Adoption and Assisted Reproduction Attorneys (including 4 years as a Board Trustee), a national association of attorneys who practice, or have otherwise distinguished themselves, in the field of family formation law; longtime membership in the Oregon State Bar Family Law Section, including the Standing Committee on Adoption and Assisted Reproductive Technology Law with several years as chair of that committee; many years of pro bono service to Oregon citizens as a Pro Tem Judge in Clackamas County Circuit Court (family law matters, including custody, paternity, child support) and Washington County Circuit Court (small claims court); service on three Oregon Law Commission Work Groups followed by the successful passage of pertinent legislation (paternity, parentage, and open adoption records); service on Oregon OHS Work Groups to review and revise Oregon Administrative Rules regarding adoptions and adoption agencies; work on law improvement at the Oregon Legislature in the areas of adoption and ART law; and longtime presenter at local and national CLEs regarding ART and adoption law.

I appreciate having the chance to appear in front of you to testify regarding SB 163 with the -1 Amendments and request that this statement be submitted for the record.

I have been a member of the Oregon Uniform Parentage Act (UPA) Workgroup, chaired by Lane Shetterly, since the Oregon UPA Work Group's inception in October 2022. Our purpose was to analyze the UPA 2017 and develop legislation to mesh the UPA 2017 with Oregon law. SB 163 with -1 amendments is the result of 2+ years of meetings, analysis, and collaboration by a diverse, experienced, and amazing group of folks.

While I support the entirety of SB 163 with -1 amendments, my area of legal expertise lies primarily with the provisions regarding Assisted Reproduction Technology (ART) law. My testimony will focus on the ART provisions of this bill.

Some background: Beginning in the early 1990s in Oregon, increasing numbers of intended parents have used a gestational surrogate to carry their intended and desired child. At times a gamete donor is also needed to create the embryo transferred to a woman to carry and deliver the resulting child. Since that time, surrogacy and gamete contracts have become an accepted practice in Oregon. Advances in medical technology and updates to Oregon law support this practice. For example, in 2017, the Oregon Legislature passed SB 512 with amendments (I worked on SB 512 with the Oregon DOJ and testified in its favor). Our law now defines assisted reproduction and provides limited protection for intended parents, gestational surrogates, and gamete donors. See ORS 109.065 and 109.239. ORS 109.065 was created to identify the numerous ways by which one may become a legal parent under Oregon law. SB 163 with -1 amendments expands and improves on this earlier legislative work and recognizes what is now medically and practically possible.

In particular, the ART provisions of SB 163 with -1 amendments will establish standards for the ART contracts entered into by willing participants, recognize the legal rights of the ART participants, and provide a clearly defined legal process to establish legal parentage for the intended parents, thus providing legal security to children and their intended parents. It also addresses and provides for a gamete donor registry.

We use Oregon's Declaratory Judgment statute to establish the legal parentage of the intended parents and disestablish any legal rights of the gestational surrogate (the woman who carries the pregnancy and delivers the child). Some 25 years ago, with the help of colleagues, I developed and implemented the legal process now commonly used to create parentage in ART cases.

Please note that the genetic and legal connections of a child born using ART differ significantly from a child who is born and placed for adoption by his or her birth mother. In gestational surrogacy, there is no genetic connection between the child and the gestational surrogate. It is the intended parents (or any donors of the gamete(s) used) who have that genetic connection to the child. This distinction matters.

Currently, Oregon law provides limited protection for intended parents, gestational surrogates, and gamete donors. SB 163 with -1 amendments includes pertinent provisions from the UPA 2017 and will provide much-needed legal protection and guidance for intended parents, gestational surrogates, gamete donors, attorneys, and judges.

You may be aware of the Oregon Supreme Court decision *In the Matter of the Parentage of S.D.S., a Minor Child, Cory Noel Sause, and Jordan Director Schnitzer*, issued on November 28, 2023. This case addressed the issue of legal parentage for an egg donor and found that the egg donor did not have any legal parental rights to the child conceived using the donor's eggs. The Court discussed ART in general, parentage law in Oregon, and more specifically recognized the use of ART by intended parents to create their families. The Court concluded that genetics alone do not confer parental rights. It also found that while it had never addressed an ART contract, the Oregon Court of Appeals has and held that surrogacy contracts and other ART contracts are generally enforceable under Oregon law.

Of significance, the Oregon Supreme Court recognized that Oregon statutes do not specifically address the enforceability of ART contracts. Citing the increasing use of ART in family formation, the Court expressed the need for enforcement of those contracts under Oregon law. Passage of SB 163 with -1 amendments will address this lack and codify protection for intended parents, gestational surrogates, and gamete donors, as well as provide legal standards for those contracts and for the establishment and recognition of legal parental rights.

Deciding to become a parent is a momentous decision. Deciding to provide gametes so someone else can become a parent is a significant decision. And deciding to be a gestational surrogate and carry and deliver someone else's child is a most incredible and generous decision. These folks all deserve legal protection under Oregon law. And last, but not least, the children born as a result of ART deserve the legal security provided by SB 163 with -1 amendments.

SB 163 with -1 amendments will provide the statutory framework for intended parents using ART to build their families and will legally protect the involved parties. I encourage you to support SB 163 with -1 Amendments and move it to the Senate floor with a do pass recommendation.

Thank you for taking the time to consider my input on these important issues.

Respectfully,



Robin Elizabeth Pope