

Dear distinguished Committee Members,

You are on the verge of doing something quite remarkable...miraculous really. In a world that repeatedly numbs us with news of senseless violence, crime, and war, you are exploring whether to acknowledge the love of people who in their hearts so deeply want to build a family that they are willing to go to tremendous expense, time, and effort (and often travel) and to work with a team of doctors, lawyers, psychologists, and the courts just to have a child. They say it takes a village to raise a child, and in this context, it quite literally does.

If Ireland is to allow surrogacy, then sensible regulations and requirements for the safety of ALL the participants and the resulting children, will be very important of course. But at the very core of the matter, your work here is about family, love, and children.

I'm here today to offer what I can to support you in your comparative examination of surrogacy regulations in other jurisdictions, in this case the United States, where surrogacy in some form has been allowed, increasingly so, since the 1980s.

I imagine you have a lot of interesting questions for me, and to answer your questions today I'll be drawing up on my experience.

First and foremost, I'll be drawing up on my experience as a father through assisted reproduction. I have two boys through surrogacy, and without this experience I would not be an assisted reproduction attorney.

I'll be drawing up on my experience: As an attorney licensed for almost 30 years now, having practiced assisted reproduction law exclusively since 2006. My law firm, International Fertility Law Group, with origins back to 1992, has handled over 30,000 assisted reproduction matters (in which over 16,000 of these I've been directly involved).

I am personally licensed in California, New York, and Illinois, although my law firm handles assisted reproduction matters nationwide. We've had cases in practically every state in the U.S., a point which will become relevant later in my testimony as we explore the myriad of ways in which the States regulate surrogacy in the U.S. We currently have 16 employees, including several attorneys and paralegals, we have worked with intended parents from 97 countries around the world, and we are still growing; a point I make to illustrate for you that the desire to engage in family building through surrogacy has been steadily growing every year since it first became possible. There are many reasons for this, but among them are that adoptions are on the decline, and many would say the foster care system in the U.S is massively broken, while technological advances in assisted reproductive medicine have led to increased success rates and safety, and assisted reproduction laws in the U.S. have matured and evolved to better protect all participants in the process.

I'll be drawing up on my experience: as an advocate.

I am the immediate past Chair of the American Bar Association Family Law Section's Assisted Reproduction Law Committee, where, during my tenure as Chair, I helped pass the ABA-approved Model Act Governing Assisted Reproductive Technologies, the ABA Model Act Governing ART Providers, ABA-approved guidelines for international surrogacy and parentage, and ABA-approved Guidelines for the Transmission of U.S. citizenship to children born abroad via ART to U.S.-citizen intended parents. I

remain active the Family Law Section and ART Committee today, and through the ABA I have produced continuing legal education and training for assisted reproduction lawyers and family lawyers on a state, national and international level for over 14 years.

I have served on the National Board of the American Fertility Association, and I am active member of the American Academy of Adoption and ART Attorneys (AAAA), the Academy of California Adoption-ART Lawyers (ACAL), California Bar Association (CBA) and its Family Law Section, and the American Society for Reproductive Medicine (ASRM) Legal Professionals Group, among others. In addition to co-authoring an ABA book on developing an ART Law Practice, I have been published in numerous professional journals, including the ABA's SciTech Lawyer, the ABA Family Law Advocate, the ABA Family Law Quarterly, the International Family Law Journal, the American Journal of Family Law, the Australian Family Law Journal, and the California Bar Association Family Law News.

I've also presented at numerous legal and family-building conferences around the U.S. and the world, including the International Academy of Family Law Surrogacy Symposium in 2015, the Cambridge University International Surrogacy Forum in 2019, Yale University School of Law and California Western School of Law, the California Bar Association, and the New York State Bar Association; and I've also served as a fertility law expert in numerous television, radio and print media, including CNN, CNBC, NBC, ABC, The Washington Post, The New York Times, and National Public Radio, among many others.

Before I conclude, I'd like to provide a brief overview of surrogacy law in the U.S.

In the U.S., surrogacy is not regulated at the federal level. Family law is a matter for the states to regulate. At present about 1/3 of the states have relatively comprehensive legislation addressing surrogacy.

We also have the Uniform Parentage Act (UPA), which is promulgated by the Uniform Law Commission and is updated every few years as needed. The most recent version of the UPA addresses surrogacy more comprehensively than ever before and tracks with the American Bar Association Model Act Governing ART passed during my tenure as Chair. The individual states are not required, but are allowed, to adopt the UPA and the ABA Model Acts and/or to borrow from them. Different states have adopted different versions of the UPA over the years, and there are states which have never adopted a version of the UPA or borrowed from the ABA Model Act. As a result, there is a bit of a patchwork of surrogacy laws where these states are concerned.

There are some states with only judicial law (case law) addressing surrogacy, some with only statutory treatment, and some with both case law and statutory law. There are also states with nothing on the books, where surrogacy is (in effect) allowed because it is not prohibited. There are a few states which restrict surrogacy to altruistic surrogacy and some which allow access to surrogacy only to U.S. citizens or residents (Wyoming, New York, Rhode Island), but by and large most states allow rather than prohibit surrogacy.

Court orders of parentage are required in all but two states (Virginia and Illinois have administrative parentage procedures but also allow court orders where needed, such as for international intended parents). All states allow a court order of parentage.

Most states allow parentage orders to be entered pre-birth, some of these allow or require an additional post-birth order, and a handful of states allow only a post-birth order of parentage.

The states that allow surrogacy (whether by regulation, case law or a combination) tend to follow a pattern of requirements for the participants, establishing basic requirements for surrogacy agreements, and allow the courts to establish the paperwork and procedures required for granting parental orders.

The states that allow surrogacy are increasingly establishing basic and sensible requirements for the intending parents and the surrogate. Examples are that the surrogate be over 21, have children of her own, not be on public welfare, pass a criminal background check, obtain psychological counseling and undergo psychological evaluation, obtain medical counseling and medical clearance, and obtain independent legal advice (all at the expense of the intended parents).

Examples of intended parent eligibility requirements are that the intended parents be over 21, be psychologically cleared, obtain medical counseling and evaluation, and receive independent legal advice.

Most of the recent legislative treatment of surrogacy explicitly codifies best practices which, among other things:

- Requires that the surrogate make all health and welfare decisions affecting her body, her life, and her health and that she selects her obstetrician and delivery hospital.

- Requires that the surrogate have health insurance (which should be reviewed and approved for the surrogacy), life insurance for the duration of the arrangement, and sometimes set the parameters for how long these coverages should be in place.

- Requires the escrow accounts be set up for security of the funds needed for the process, including the payment of any uncovered medical bills, and sometimes set the parameters for how long these accounts should be in place.

While it may seem that the U.S. has a complicated matrix of surrogacy laws across the states, there is a general pattern to most of it – supporting procreative freedom while protecting the integrity of the process and the safety of the participants, most of whom are also receiving counseling, advice and treatment from licensed professionals (doctors, lawyers, psychologists and licensed insurance experts) so that all parties are proceeding with fully informed consent before embarking on one of the most amazing journeys - helping build families through an extraordinary amount of purpose, an extraordinary amount of love, and an extraordinary amount of life-affirming teamwork.

Anything I can personally do to help make this possible (and safe) in Ireland and other places in the world, is truly an honor. I sincerely thank you for the invitation to be here today. I will now conclude my opening remarks and humbly attempt to assist you with your questions.