This *Is* Texas: Third-Party Reproduction in the Lone Star State

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Abstract

Using Centers for Disease Control and Prevention and interview data, the history and experience of commercial surrogacy in the state of Texas—one of the first in the United States (US) to permit third-party pregnancy and legislate for the surrogacy contract enforcement—is examined. Findings reveal a neoliberal pro-industry stance in a state with a strong Evangelical base has enabled legislative support for surrogacy and strongly shapes the experience of Texas reproductive work. While these state characteristics have enabled a robust surrogacy industry in Texas, the current precarity of abortion care in the US has the potential to disrupt the surrogacy industry in new ways.

Keywords: surrogacy; Texas; third-party pregnancy; assisted reproduction.

[A] INTRODUCTION

The United States (US) has a well-known, robust assisted reproduction industry which includes both traditional and gestational surrogacy arrangements. This market has developed with little national oversight, which is especially evident when examining surrogacy arrangements (Spar 2006). Any regulation of surrogacy in the US occurs not at the federal level as in many nation states, but at the state level with historic wide variation in legality, parental rights and enforceability of contracts across the country. This has resulted in well-known court cases and murky legal waters, as well as a maldistribution of precarity, access and cost across the country (Patton 2010; Jacobson 2018; Gonsenhauser 2023). This maldistribution mirrors that which is found in the international surrogacy market around the globe (König & Jacobson 2021).

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When I first began researching gestational surrogacy in the US in the early 2000s, I centred my inquiry on two states: California and Texas. When discussing my early work, I would frequently receive baffled questions about my selection of Texas. California? That was a well understood, as the state was known as the epicentre of assisted reproduction and the surrogacy industry in the US. People less familiar with Texas and the US surrogacy industry, however, were curious as to the relationship between Texas and the alternative family-formation route of third-party pregnancy. In the present article, I recall the historical journey of Texas, with its popular image of a deep-red Republican stronghold with a conservative populace, coming to be one of the first states in the US to not only regulate third-party pregnancy, but to be one of the few to legislate the enforcement of surrogacy contracts. I interrogate the curious history of surrogacy in the state of Texas and compare it to that of other states in the country. To contextualize the regulative history, I examine the local meanings ascribed to third-party reproduction through an analysis of interview and observation data collected from Texas surrogates and their family members, assisted reproductive technology (ART) clinicians, attorneys and surrogacy agency owners and workers. I ask, how does the state context of Texas, a state that has actively legislated against alternative family formation, such as same-sex marriage, shape the experiences of Texas surrogates? These questions are particularly timely today following the 2022 US Supreme Court decision, *Dobbs v Jackson Women's Health Organization*, which has triggered increased state regulation on abortion care and has impacted contraception and *in vitro* fertilization (IVF) access across the country, increasing precarity for reproductive healthcare.

The history of the surrogacy industry and regulation in the US

Unlike most of the industrialized world, the US historically has not (and currently does not) restrict third-party pregnancy. While three US federal agencies monitor and collect data on the medical procedures, laboratory testing, drugs and devices used in ART in the US (the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration and the Center for Medicare and Medicaid Services), they do not regulate or restrict surrogacy *per se* (Adamson 2002; Jacobson 2016). Virtually any ART procedure, including traditional and gestational surrogacy using donors/donor embryos, is currently *available* someplace in the US to any adult able to afford it. Though almost any current active procedure can be found in the US, that does not equate to it being available in any US clinic. There is wide variation across the country in terms of regulation,

restriction, enforcement and access to ART, especially surrogacy. Building on and reinforcing the variation in regulation is the fact that infertility services in the US cluster geographically, with California dominating the market and other states, as can be seen in Table 1 below, such as New Hampshire and Wyoming, having no fertility clinics. Similar to—and obviously related to—clinic maldistribution, is a maldistribution in terms of state "friendliness" to the surrogacy industry. Surrogacy in the US is a state-level legal issue, similar to other routes to family formation (such as adoption) and congruent with family law in the US. How various states became "surrogacy friendly" and others came to ban the arrangements is a curious and complicated history. The beginnings of commercial surrogacy in the US can be seen with attorneys acting as brokers between couples experiencing infertility and women willing to be artificially inseminated and turn over their parental rights, starting in the mid-1970s. This market was small with estimates of only one hundred or so arrangements by the early 1980s. Certain attorneys acted as brokers—most famously Noel Keane in Michigan. His activity in that state precipitated Michigan becoming one of the few states with outright bans on surrogacy (banning payments to surrogates and third parties and voiding paid contracts) (Markens 2007). Though the numbers remained small, public concern grew, especially following the closely watched *Baby M* case in 1986 and the *Johnson v Calvert* case in 1993. These concerns led to several attempts for national legislation on surrogacy, which were ultimately futile, and the issue remained—and continues to remain—a state-level one, even following the introduction of IVF and the ability to separate gestation from biological and social mothering, which resulted in the numbers of surrogacy arrangements beginning a dramatic climb.

Though efforts for national response were futile, some individual states began to respond following *Baby M* and *Johnson v Calvert*, and a patchwork of varying laws, bans and regulations began to develop around surrogacy in the US. Sreenivas and Campo-Engelstein (2010: 6) conceptualize these US state surrogacy laws at the time to be categorizable into three types: 1) state "laws that permit surrogacy contracts by outlining the criteria for the contracts to be lawful and enforceable"; 2) state laws "stating what is *not* legal with regards to surrogacy"; and 3) state "laws … that mention surrogacy in the context of other civil laws". The majority of states that had one (or more) of these surrogacy law types from the 1980s through the turn of the century were largely type two, restricting or prohibiting the practice, banning payments to surrogates, for example, or voiding paid contracts. Most states, however, had no formal position on the practice of surrogacy, which allowed the US surrogacy industry to grow but in

a legal context of relative uncertainty and instability (Hofman 2009). Surrogacy contracts were adjudicated at the local not at the state level, meaning there could be variations within states and even within local regions within states as to the practice.

Through the early aughts, the majority of states continued to have no legislation on surrogacy. In the last 15 years, however, the trend in state surrogacy legislation and policy in the US has been toward permission and away from prohibition (Rebouché 2019). It is important to note, however, that legal permissive statutes or restrictions do not map cleanly onto actual practice. In the absence of prohibitive laws that imposed criminal penalties for compensated contractual surrogacy, which were only ever in place in less than a handful of locations (such as in Michigan, New York, Nebraska, Washington and the District of Columbia), surrogacy arrangements continued across the country, legally untested (Berk 2024). In fact, Perkins and colleagues (2018: 4) found that though there was a much higher number of gestational surrogacy cycles in states "favourable to gestational surrogacy", "17.7% of all gestational cycles in the country" between 2010 and 2014 occurred in states that has "less favorable policy environments".

[B] METHODS

In the current article, I use two kinds of data to examine surrogacy in Texas. The first is annual data collected by the CDC on US fertility clinics. Since 1992, all fertility clinics in the US performing ART procedures are required by the Fertility Clinic Success Rate and Certification Act 1992 to submit annual data. Data sets from 1995 are publicly available on the CDC ART website (2023a). Using this data, I collated the number of fertility clinics in the state of Texas from 1995 to the most recent data available, which is currently 2020 (at the time of writing). I also collected the number of clinics that reported supporting surrogacy within their practice. I then compared this data to that from other states, especially California, the state with the largest number of clinics in the country, to garner a sense of surrogacy activity in Texas, how it varied over time, and how it compares to surrogacy in other states in the nation.

The second set of data used in the article is ethnographic data (interview and observational) collected from surrogates and surrogacy professionals (agency owners and workers, attorneys specializing in ART, clinic staff) based in Texas. Data were collected as part of several larger studies on gestational surrogacy and on ART in the US. I completed interviews with surrogates, intended parents, surrogates' family members, surrogacy

agency professionals, attorneys and clinic and medical professionals. The majority of data with surrogates, their family members and surrogacy agency professionals were collected from 2009-2013, with a small subset, including some follow-ups, collected from 2017-2020. Data with attorneys and clinic/medical professionals occurred during both time periods. Participants in both phases were recruited via contact with surrogacy agency directors, clinicians and attorneys followed by snowball sampling to surrogates, surrogates' family members and intended parents. In total, over the two phases of data collection, 109 people were interviewed with a number of people interviewed multiple times. I also spent time in surrogacy agencies and fertility clinics across five states. For this current article, I focus my analysis on 27 interviews (14 with Texas surrogates, 11 with Texas surrogacy professionals, and two with women who were both surrogates and surrogacy professionals) and observational data from surrogacy agencies, fertility clinics and professionals in Texas. The Texas surrogates in the study all self-identified as white non-Hispanic except for one woman who self-identified as Hispanic. At the time of the first interview, they ranged in age from 25 to 37 years. In terms of religious affiliation, one woman self-identified as Catholic/nondenominational, two as 'none' and 13 as Christian or a specific Protestant denomination (Baptist, Lutheran, Methodist). Pseudonyms are used throughout the article for study participants. My research was approved by the Institutional Review Board of The University of Texas at Arlington and followed all required procedures, including the obtainment of informed consent of all participants.

[C] FINDINGS

ART and surrogacy in Texas

According to the CDC, "the Federal Trade Commission intervened in a case of false advertising by a fertility clinic" which led to the Fertility Clinic Success Rate and Certification Act of 1992, "which mandated that CDC collect information yearly about ART cycles performed at clinics in the United States" (CDC 2023b). Comparing that data by state across years, one can see how ART and surrogacy developed in the state of Texas. In 1995, the first year for which data was published, there were 13 ART clinics in Texas that submitted information, with only four indicating that they allowed for surrogacy services within their practice.

Year	No of Texas clinics	% of Texas clinics allowing surrogacy	No of California clinics	% of California clinics Allowing surrogacy
1995	13	30 (N=4)	30	30 (N=24)
1996	17	29.4 (N=5)	33	66.6 (N=22)
1997	20	25 (N=5)	47	72.3 (N=34)
1998	23	47.8 (N=11)	51	80.3 (N=41)
1999	24	58.3 (N=14)	48	87.5 (N=42)
2000	24	54.1 (N=13)	56	87.5 (N=49)
2001	25	56 (N=14)	56	89.2 (N=50)
2002	29	89.6 (N=26)	57	91.2 (N=52)
2003	29	75.8 (N=22)	56	91 (N=51)
2004	30	83.3 (N=25)	55	85.4 (N=47)
2005	29	75.8 (N=22)	56	91 (N=51)
2006	29	86.2 (N=25)	63	92 (N=58)
2007	33	84.8 (N=28)	63	90.4 (N=57)
2008	35	88.5 (N=31)	59	91.5 (N=54)
2009	35	85.7 (N=30)	61	96.7 (N=59)
2010	34	88.2 (N=30)	62	95.1 (N=59)
2011	37	89.1 (N=33)	64	96.8 (N=62)
2012	41	85.3 (N=35)	68	97 (N=66)
2013	43	86 (N=37)	68	94 (N=64)
2014	42	90.4 (N=38)	65	100 (N=65)
2015	43	88.3 (N=38)	65	96.9 (N=63)
2016	43	88.3 (N=38)	68	98.5 (N=67)
2017	41	90.2 (N=37)	68	98.5 (N=67)
2018	42	85.7 (N=36)	71	98.5 (N=70)
2019	42	92.8 (N=39)	72	91.6 (N=66)
2020	42	90.4 (N=38)	72	100 (N=72)

Table 1: Numbers of clinics and percentage of clinics reporting surrogacy services in Texas and California. Source: author calculations from data available on the CDC ART website.

As can be seen in Table 1, the number of reporting clinics in both states grew steadily every year, reaching 42 in Texas and 72 in California for the most recent data available, which is for 2020. Table 1 also illuminates that, while surrogacy services grew more slowly in Texas than they did in California, by 1999 the majority of clinics in Texas reported surrogacy services being available in their practice and, by 2002, surrogacy was ubiquitous in the Lone Star State (as Texas is known). A couple of caveats: it is important to note that not all clinics report data, as is required by law. Additionally, not all those that report surrogacy as an available service actually perform surrogacy. They are only reporting that they allow for surrogacy services within their clinics. Also important to note is that there are wide variations in the size of fertility clinics in all states in the US. Size variations can be seen in the number of practitioners,

patient-clients, the number of various ART procedures performed and the percentages of those various procedures which result in live birth.

In addition to capturing the growth of clinics and surrogacy services within different states in the US, the CDC data allows for comparisons in the size of assisted reproduction care between states, making it clear that fertility care in the US tends to cluster geographically (Jacobson 2018). This can be seen quite dramatically when viewing the number of fertility clinics by state in Table 2.

The overwhelming majority of states in the country (N=24) have between one and five fertility clinics and two, New Hampshire and Wyoming, have no clinics. Only five states in the nation (Florida, Illinois, New York, Texas and California) have more than 20 clinics. Not surprisingly, the three states with the largest number of clinics, California (72), New York (45), and Texas (42), accounted for 31.4% of all ART procedures and 30.7% of all ART live births in the nation in 2020 (CDC 2023a).

As evidenced in Tables 1 and 2, Texas has been among the leaders in the number of ART procedures and clinics in the nation. In the most recent data available, Texas has the third largest number of clinics

Number of clinics	Number of corresponding states (by name)
0	2 states (New Hampshire, Wyoming)
1-5	24 states (Alabama, Alaska, Arkansas, Delaware, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, West Virginia) plus DC and Puerto Rico.
6-10	14 states (Colorado, Connecticut, Hawaii, Indiana, Georgia, Maryland, Massachusetts, Michigan, Missouri, Nevada, North Carolina, Ohio, Tennessee, Wisconsin)
11-15	4 states (Arizonia, Pennsylvania, Virginia, Washington)
16-20	1 state (New Jersey)
21-25	0
26-30	2 states (Florida and Illinois)
31-35	0
36-40	0
41-45	2 states (New York and Texas)
46-50	0
51-55	0
56-60	0
61-65	0
66-70	0
71-75	1 state (California)

Table 2: numbers of clinics located by state in 2020. Source: author calculations from data available on the CDC ART website.

(N=42) in the country, following California (N=72) and New York (N=45). Fertility services in Texas currently account for 7.8% of all annual ART procedures and 8.2% of all annual ART live births in the country. In the latest figures available, almost 9000 ART cycles in the US utilized a gestational surrogate, which represents a little more than 4% of all ART cycles. This is actually down slightly as, prior to the pandemic, it was more than 5%, which is more than double the amount from a decade ago (CDC 2023a). In an analysis of CDC data from 2010 to 2014, Perkins and colleagues (2018) found Texas having 844 births utilizing a gestational surrogate, second only to California with 2954 births.

The analysed CDC data evidences that surrogacy is big business in Texas—not as large an industry as it is in the state of California, but it plays an important role in third-party pregnancy in the nation. As can be seen in Tables 1 and 2, surrogacy became standardized in the state, with a large jump in 2002 to the majority of Texas clinics allowing for third-party reproduction. This jump in the early aughts tracks with legislative changes in the state.

Through the early aughts, Texas was among the 30 states with no statutes, policy, or legislation specifically addressing surrogacy. This changed in 2003 when Texas passed a subchapter to its Uniform Parentage Act Chapter of the Texas Family Code. Texas surrogacy legislation provides state legal procedures for intended parents to have their names on birth certificates and for contracts to be enforced. In order for those protections to be in place, however, surrogacy arrangements need to meet certain criteria. The statute only provides protection for gestational arrangements (not traditional surrogacy arrangements) which are filed in state court prior to the embryo transfer. Furthermore, the intended parents must be legally married. This legislation was passed prior to *Obergefell v Hodges*, the 2015 landmark US Supreme Court case which ruled that legal marriage was a fundamental right, extending to same-sex couples. That case overruled the then-in-place portion of the Texas Family Code which only recognized heterosexual marriage. Therefore, the original statute was determined under a context in which same-sex couples would not have had access to those protections.

Texas reproductive workers

The experiences of Texas surrogates in my study were similar to those of California surrogates along many metrics. The motivations to participate in surrogacy, the initial spark from which the idea of surrogacy entered their lives, the importance of a support system, their relationships with

intended parents, professionals and other surrogates were consistent across the two groups of women. These findings, which I outline in other publications (Jacobson 2016; 2021; 2022), articulate how US gestational surrogates are largely motivated by a desire to experience pregnancy and birth again, doing so within a context that helps others become parents without adding additional children to their own families. They emphasize the importance of a support system, primarily from spouses and other surrogates. These findings resonate with other studies on US gestational surrogates as well (Berend 2016; Ziff 2019). Most women in my research bristled at the idea of money being their primary motivator for surrogacy and, as I conceptualize in *Labor of Love* (Jacobson 2016), they join others in the surrogacy industry (agency owners/workers, clinicians, surrogates' family members) in engaging in obscuring their surrogate labour in order to make reproductive work more palatable by suppressing cultural anxieties around the commodification of reproductive labour that surrogacy in the US activates.

Surrogates in the US are not bound to their domicile state for their surrogacy journeys. They can contract with agencies in other states and the intended parents with whom they partner can be located in other states or nations. Some surrogates even plan and give birth across state lines (from their state of residence) in order to accommodate intended parent preference or to take advantage of more favourable state contexts. I have found all such situations in my data. However, most of the women I interviewed contracted with agencies located in the same state in which they resided. As such, the local context of surrogacy in Texas shaped Texas surrogates' experiences in several ways.

The first local contextualization of the experiences of Texas surrogates is the way that the requirements of the state for protected surrogacy arrangements limited women's choices as to local intended parents. While many surrogacy arrangements in the US are between surrogates and intended parents who are not local to one another, I did find a preference among many women for local intended parents with whom in-person interactions would be more plentiful, facilitating relationships. Many women also wanted intended parents who could attend at least some of their medical appointments.

The majority of the women I interviewed had completed surrogacy journeys after the change to the Texas surrogacy statute in 2003 but prior to *Obergefell v Hodges* in 2015. Therefore, these women were operating in a context where the state supported a streamlined process and enforcement capabilities only for gestational surrogacy arrangements

for heterosexually married couples. This limited potential matches. Kelly Russo, a white divorced mother of one and two-time surrogate with a master's degree who worked full-time outside of the home in a large metropolitan area in Texas, for example, let me know that she originally had wanted to match with a gay couple for her first surrogacy journey, sharing:

> I had originally thought it would be fun to do for, like, a same sex couple. Like, two men that obviously need a carrier. That was my original reason because I had gay friends who had talked about having kids. And I thought that would be something I would love to do. Unfortunately in Texas, it's not really—it's a little harder. You can't get both men on the birth certificate. So I called a few agencies just to see what their requirements were, what I needed to do and everything and all of them said in Texas that's probably not going to happen. So that's when I kind of shifted. At that point I had my heart set on doing it. I shifted to a heterosexual couple.

While Kelly's desire to work with a same-sex couple was squashed, it actually was not impossible to work with gay men in Texas at the time. It was challenging for same-sex intended parent couples in Texas in ways that it was not for heterosexually married couples who used their own gametes and thus fulfilled the requirements of the Texas surrogacy regulation. However, surrogates were partnered with gay men at the time. Texas regulation provided protection if the arrangements met certain criteria, including married intended parents (please recall that prior to 2015, the state of Texas only recognized heterosexual unions), but it did not outlaw surrogacy for same-sex couples. Those who did not meet the criteria were able to follow the common procedures that had been in place prior to the 2003 change in regulation. One of the Texas women I interviewed, for example, was matched with a gay Texas couple in the mid-aughts. Ann Beltran, a white married mother of four and three-time surrogate with a college degree who worked in management, let me know that her first intended parent couple was a local same-sex couple who, she told me, "I never thought I would have worked with" due to her religious beliefs. After meeting the men, however, "it was completely different. I really liked them a lot. They were a great couple." Though the embryo transfer was not successful, Ann remains in contact with the couple and shared with me the detailed story of their rematching with a California surrogate and the birth of their child.

Despite there being surrogates in Texas such as Ann who matched with local gay men, there was a common belief that it was rare. Kelly's first surrogacy journey, like those of many of the women I interviewed, was in the late aughts prior to the change in recognition of same-sex marriage in Texas that was brought about by the US Supreme Court case, *Obergefell*

v Hodges. At the time, it was well known among Texas surrogates that local intended parents partnered via Texas agencies would most likely be heterosexual couples. This common understanding can be seen in the comments of Amber Castillo, a married mother of two who runs a home day-care. Amber shared a story with me of meeting a woman locally at a party who was also pursuing surrogacy. The women told Amber that she was going to contract with an agency in California. Amber asked her, "Why do you want to do California so bad?" Amber reported:

> And she said she thought it would be really cool to help a gay couple have their own child. And I thought, "Oh okay, then you're definitely going to have to go to California to do that!" Because in the state of Texas the parents have to be married, and that's not an option here in Texas. So I just thought, "Well, if that's what you want to do, then you'll have to definitely go to California to do that!"

The fact that surrogacy regulation within the state of Texas did not support same-sex intended parent couples was not an issue for Amber. In fact, it aligned with the beliefs she and her husband shared about the ideal arrangement. Amber did not explicitly state that she would not work with a same-sex couple, but she did share that "we didn't want to do, like, an egg donor" (which would be mandatory for a gay male couple). She went on:

> We wanted it to truly be their baby because we felt like if it wasn't then maybe adoption could be an option for them because you're still not having your own kid together. Like if it's just the dads or just the moms, then it's like you could adopt and it would be the same deal. And so that was really important to us. That was one of those profile questions. And you have that option of who you'll select. So that was really big with us that it had to be their egg and their sperm, no matter what.

This sentiment—to assist intended parents via surrogacy who use both their own gametes in the creation of the embryos—was not uncommon among the women I interviewed. It also was not restricted to Texas surrogates, and neither was the position of avoiding same-sex couples. There were some women in my study who were explicit that they could not work with gay men. Molly Hughes, for example, a white married stay-at-home mother of two with a high school diploma and a two-time surrogate, let me know that due to her "personal beliefs" she "couldn't work with a gay couple". "I knew it was going to have to be a Christian, traditional family with or without kids", she told me, "didn't make any difference." Molly wanted intended parents who aligned with her religious beliefs as she thought "it would be kind of weird if [she was] praying to God for this baby and they're praying to Buddha". This was not a flippant remark. Molly was concerned that her religious objections to selective reduction

be shared by the intended parent couples with whom she matched. She needed that condition to be in place as she felt strongly that surrogates needed to follow the intentions of the intended parents. She elaborated on this idea, "it's your body but it's their child. And so you really need to be in the same place on [reduction]. Because in the long run I think you really have to do what they want to do. Anyway, that was very important to me." Additionally, Molly felt as though being matched with a "traditional" heterosexual couple who shared her religious beliefs would facilitate trust. Molly articulated the importance of trust when she shared:

> And then I also think it helps when I know that this baby I helped bring into the world I know is going to go off with a family that I trust. And I may not have any place saying that, but I feel within myself if I helped them have a baby that they're going to take care of that baby. And then the baby is going to be raised with good morals and a good family. So it just wasn't ever a question. It was just the way it was going to have to be!

All of the women I interviewed, regardless of state of residence, expressed a desire that the surro-babies they gestated and birthed were well cared for by their families. Some surrogates in both Texas and California aligned that desire with religious/moral convictions, such as Molly.

In addition to the way the Texas state requirements for surrogacy protection seemingly limited the options for intended parent matches, a second local contextualization of the experiences of Texas surrogates was the ways in which surrogacy is understood on the ground in Texas. Most of the women in my study—regardless of state of residence—shared experiences of interactions with either close friends and family or strangers in public in which people expressed their opinions about the practice. There were several strong reactions noted, from both Texas and California surrogates, coming from people who held negative beliefs. Jessica Klein, for example, a two-time white surrogate and mother of two, shared a story of being confronted by a stranger at a fast-food restaurant while pregnant with her "surro-twins". Her two children, Skyler and Clay, were with her at Chick-Fil-A. Jessica shared:

> So, we're in Chick-Fil-A and I'm huge pregnant and it had to have been July/August. We're due in September. And this woman started talking to me. And she was letting me know that she was a foster mother and she has all these kids with her. And that's wonderful that you do that. And she's adopting a lot of them and then tells me about it. So then Clay comes over and she goes, "Oh are you going to be a big brother?" That whole thing. And Clay goes, "No, I'm going to be a big friend." And the woman looks at me and I said, "I'm a surrogate. I'm actually carrying our friend's twins." She looked at me like, "Oh my gosh! I cannot believe." This look! I was in shock. And this was the

> first time in public by a stranger I had had this happen. And there's other moms around. And she just started going off on me about how people need to adopt. I'm part of this group that's just disgusting and we're out here spending all this money to make babies when there's all these children in the world we need to adopt. And I was so in awe and in shock that she was doing this, I could not think of any words to say. All of our kids are standing here and she's calling me cuss words. I'm just thinking, "I'm in Chick-Fil-A and she's doing this to me!" She grabbed all those kids and she left. She said, "You just make me SICK. I can't even be here anymore!"

Several other surrogates shared similar experiences of disturbing confrontations. However, most of the interactions they shared, even if they involved negative reactions, were much more benign. The majority of negative interactions were from people who held misconceptions about gestational surrogacy, most frequently the belief that surrogates were either artificially inseminated or that they had sexual relations with intended fathers in order to conceive. Tina Vargas, for example, a white two-time surrogate and stay-at-home mother to four children, laughingly explained these types of interactions to me, letting me know that:

> there's some people who, like the older people, like I said, who don't understand [gestational surrogacy] and feel like it's my child and I'm giving it up. And there's some who even feel like that I'm going and sleeping with this man to get pregnant. So it's funny when you explain, "No it was in a doctors office and it's very medical!"

Most surrogates—though not all—shared similar stories of having to educate others about surrogacy and, once they did so, receiving positive feedback. This was the case with Amber Castillo, who shared an interaction she had with several fellow congregants at church,

> And here's this little lady. This is after the delivery. I think it was two weeks ago. When I say a little old lady, she's got to be pushing 90 and she's little! She has a hunch in her back now. And we have to help her on and off the stage. There was a man who said, "You've lost some weight the quick way." And I said, "Yeah, I got rid of that weight pretty quick. It was nice and easy, but you can't use my method as a man!" So anyway, he was talking to me and I said, "I actually did a surrogacy." And he said, "Oh didn't realize that was you. I knew somebody was doing one in our church. I didn't know it was you." And that little lady said, "Now honey, you're going to have to tell me what this surrogacy is, I'm old." (with southern drawl accent) That's exactly how she was talking. And I said, "Well, they took her egg and his sperm and they implanted it into my uterus."And she says, "So you just kind of rented out your uterus for nine months!" I said, "That's a real good way to put it!" She said, 'Well, that's really nice! That was a great thing for you to do." I thought that was really noble of her at her age, she didn't understand it. She didn't even know what it was or that we could us now?

Amber's experience of explaining gestational surrogacy and receiving a positive response was by far the more common interaction noted by the Texas surrogates in my study. Erin Peters, a white, three-time surrogate and mother of two, captured a typical response when she shared:

> Luckily for me, I have not dealt with ridicule or people saying mean things or questioning me in a bad way. I've actually been lucky. All my family is SO supportive and they think it's awesome. They just are amazed. And most of the people I've met, they just are so curious. They're like, "Really? Wow!" And they have a lot of questions. But never really [has] anyone been negative.

By and large, Texas surrogates had positive interactions with others. Even Jessica Klein, who was verbally accosted at Chick-fil-A, let me know that in terms of most of her interactions with others about surrogacy, "It's always been good." Similar to Erin Peters quoted above, there was a particular quality to the positive interactions—an almost over-the-top support. This can be seen in the words of Gillian Dorsey, a white, two-time, married surrogate and stay-at-home mother to three, when she shared:

> Whenever I said anything about being a surrogate, I've gotten so much positive, "That's amazing! Wow! God bless you! You're a saint!" I just won a swing set. I won a $4,000 play structure off the internet. And everybody is like, "Oh you deserve that because you're a surrogate and because you're doing it again and you're a saint. That's karma because you're wonderful." I mean I've never had anybody say anything negative or anything towards me about it. So everything I've ever done with surrogacy has always been very positive. I don't know what I would do if somebody said something ugly to me. I'd probably just backhand them or something. "What are you talking about, you ignorant ass?" I've never had that. Everybody has always been really positive, so it's been nice. Every aspect of it has been positive. The doctors are always wonderful. Strangers on the street are wonderful. I get comments on my blog when I talk about surrogacy posts, about how wonderful that it. I mean I've never had anybody say anything negative. So that's nice. Makes me feel good that I'm being able to give back somehow to the cosmic universe! (laughing) Karma. Maybe I'll win another swing set!

While not all surrogates were called saints, the majority of Texas surrogates experienced strong support from family and friends and had positive interactions about surrogacy with others in their lives, including with strangers. Gestational surrogacy needed to be explained to many of these people, but once covered, the overwhelming majority of women in my study reported feeling supported and encouraged for their role in third-party pregnancy.

[D] DISCUSSION

As my analysis of CDC data demonstrates, there is historic wide variation in geographic access and state support for surrogacy across the US. The state of Texas became an early and robust supporter of both ART and surrogacy in the country. Joining the small handful of states that could be seen as "surrogacy friendly" through extending legal parental rights to intended parents, in 2003 Texas introduced surrogacy legislation that supported and allowed for the enforcement of gestational contracts by heterosexually married couples. During data collection for my project on surrogacy, I heard from a surrogacy professional in Texas that the surrogacy legislation was crafted in such a way that it would not raise conservative alarm bells, allowing for smooth passage. This conservative-alignment can be seen in the way the specifics of the Bill did not challenge the conservative ideas on the family that were popular at the time. With these conditions in place, surrogacy has not thus far been much of a political issue in the state, garnering little media or activist attention (Bandelli 2021).

In the present article, I found the landscape of surrogacy experiences during the aughts and 2010s shaped in two important ways. The first involves same-sex intended parents. Unlike California and other states, prior to *Obergefell v Hodges* the state of Texas itself explicitly supported only a particular type of family formation via surrogacy (again, not outlawing others but also not explicitly supporting them). In Texas (prior to *Obergefell v Hodges*) many women felt as though they could be guaranteed a heterosexual couple if they contracted through a Texas agency and matched with Texas intended parents.

A desire for compatibility and similar moral positioning is common within third-party pregnancy in the US agencies, and clinics in the US engage in an often detailed and extended matching processes between intended parents and potential surrogates in order to find a "good fit". Elsewhere, I argue this helps to smooth relations in order to hedge against potential issues arising in a legally precarious landscape for surrogacy (Jacobson 2016). For some Texas surrogates, such as Amber Castillo and Molly Hughes noted above, "fit" with intended parents aligned with religiously informed personal convictions against support for same-sex couples. For others, like Kelly Russo, this meant an acquiescing to being matched with a heterosexual couple in lieu of the same-sex couple originally desired. These matches in Texas which conformed to the state statute of gestational arrangements with heterosexually married couples did not challenge or offend conservative Evangelical sensibilities about the family

at the time. For, unlike Catholicism, there was not an active position against assisted reproduction, including surrogacy, within Evangelical/Protestant religious communities. This is reflected in the second local contextualization of the experiences of Texas surrogates: the ways in which surrogacy was understood on the ground in Texas. Most of the women in my study—regardless of state of residence—shared experiences of interactions with either close friends and family or strangers in public in which people expressed their opinions about the practice. While my interview data reveal that within the large state of Texas there is a range of experiences and moral palatability for surrogacy, the dominance of those Evangelical/Protestant sensibilities within the communities in which surrogates lived enabled positive support.

[E] CONCLUSION

The development of surrogacy legislation and a robust surrogacy industry in Texas can be understood within a particular local context. Industry—all kinds of industry—develop in Texas as the state is well known as being industry-friendly due to its lack of individual and corporate income tax, its large and diverse workforce, and a relatively thriving economy. Texas often appears in the top five on various US business rankings, such as CNBC's "America's Top States for Business" (CNBC.com 2024) and, according to the US Department of Commerce's Bureau of Economic Analysis (2024), the gross domestic product of Texas is second only to California. Much like other industries in the state, the revenue-rich "baby business" finds a welcoming environment in Texas (Spar 2006). It is also important to contextualize size in Texas. Texas is a large state, both in terms of land mass and population. It is the second largest state geographically (268,596 square miles, which is 7.07% of the US total area and larger than France) and in terms of population (2023 estimate is 30,503,301, which is 9.11% of the total US population) (US Census 2023; US Economic Development Administration 2024). The size of the state also helps to contextualize the size of the ART industry and the surrogacy market.

Another contextualization factor facilitating surrogacy in Texas is the historically strong Evangelical Christian base in the state and the historic lack of controversy among Evangelicals around ART-use by heterosexually married couples during the time that the surrogacy industry was establishing and growing in the state. While 14% of the adult US population identifies as Evangelical Protestant (Public Religion Research Institute 2021), in 2014, 31% of Texans identified as such, while all Protestants made up 50% of the Texas population (Pew Research

Center 2014). And while there have been both Evangelical/Protestant objections and Texas state legislation regarding other reproductive, family and healthcare issues such as abortion and gender-affirming healthcare, there is not a history of ART raising such opposition (Mohamed 2018; Czarnecki 2022). This is unlike Catholicism, which has a strong history of ethical objections to ART generally and surrogacy specifically, including Pope Francis's recent call for a global ban on surrogacy (Pope Francis 2024). In contrast, Protestant religions in the US have historically had "liberal attitudes toward infertility treatments" (Schenker 2005). A neoliberal pro-industry stance in the state of Texas facilitated ART industry growth, and a lack of cultural contention around surrogacy within a context of a strong Evangelical/Protestant base enabled community level support for surrogacy, as can be seen in my interview data with Texas surrogates.

Historic Evangelical Protestant tacit support for assisted reproduction, however, appears to be shifting, with anti-abortion sentiment extending in definitive ways to ART. While personhood for embryos initiatives have been around for decades, since the *Dobbs* decision both the traction of those proposals and the potential consequences of them has intensified. This shift can be seen in the 2024 Alabama Supreme Court ruling that embryos created through IVF should be considered children (*LePage v Center for Reproductive, PC* 2024). This led to several Alabama fertility clinics pausing ART services due to concerns about potential criminal liability. The strong public outcry—signalling support for those experiencing infertility and desiring to bring children into their lives through ART—led to an Alabama State Bill protecting patients-clients and IVF providers from criminal liability (Alabama Legislature 2024). Another example of the expanding reach of Evangelical anti-abortion activism to ART was the recent passage by the Southern Baptist Convention of a resolution that encourages congregants to "consider the ethical implications of assisted reproductive technologies" and to "only utilize infertility treatments and reproductive technologies in ways consistent with the dignity of the human embryo" (Southern Baptist Convention 2024).

The current precarity of abortion care in the US since *Dobbs*, coupled with historic variations in access to ART, has the potential to disrupt the ART industry in the US in new ways as seen in the Alabama case mentioned above. A disruption to the surrogacy industry might be most acute in Texas—a state with relatively "friendly" surrogacy legislation, many clinics providing services, and historic and current strong anti-abortion legislation. It will be interesting to see, however, how the context of the relatively robust ART industry in the Lone Star State, grounded

in a strong neoliberal support for industry and an Evangelical base traditionally supportive of assisted reproduction, shapes that potential disruption.

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