

TESTIMONY OF JAY TIMMONS
Before the Courts of Justice Committee
of the Senate of Virginia
February 11, 2019

Good afternoon, Mr. Chairman and members of the Committee.

I am Jay Timmons, and I am President and Chief Executive Officer of the National Association of Manufacturers. I am not here in that capacity, but instead as a father in support of HB1979 – Jacob’s Law. I’m joined today by my husband, Rick Olson, and our 3 children: Catherine, who is 9 – we call her C.J., Elizabeth, who is 7 – we call her Ellie, and Jacob, who is 3½. All three children were born via surrogacy and Jacob was also the product of an embryo we rescued from potential destruction.

Some of you know me from my days as Chief of Staff for Governor George Allen when we worked together to advance Governor Allen’s agenda to promote Free Enterprise, Competitiveness, Individual Liberty and Equal Opportunity in the Commonwealth. At the core of each of those agenda items was a commitment to strengthen the family unit in our state.

Today, you have the opportunity to do exactly that again, by favorably reporting out HB1979 in the substitute form offered by its Chief Patron, Mr. Sullivan.

And, Governor Allen - who incidentally signed the underlying bill in 1994 - has asked that I relay to you that he also supports Jacob’s Law and wishes to associate himself with my testimony.

As some on this Committee know, Rick and I relied on a form of Assisted Reproductive Technology – gestational surrogacy – to build our family after initially pursuing foster care and adoption. Many couples in Virginia and throughout the country are doing the same. Our two daughters are biologically related to one of us and were born in California. In both pregnancies, we were granted our parental rights through a pre-birth order, which recognized our obligations, rights and responsibilities as Intended Parents.

After four pregnancy attempts in which we transferred all of the embryos that we had created, we had success twice, and we believed our family was complete. But God had other ideas for us, thankfully.

When C.J. was 3 and Ellie was 2, friends of ours – a husband and wife couple with four children of their own – approached us about expanding our family because they had decided their family was complete. All of their children were produced through ART as well, because she was unable to conceive.

Because we shared similar views on when life begins, they asked us to accept two embryos that had been frozen for over 13 years. They did not want to risk that the embryos might eventually be destroyed.



After much consideration, we accepted, and Jacob's journey began. Our California surrogate was unable to carry again, so we began to search anew, researching the laws and court actions of the 50 states.

Virginia was not an option, sadly, but 12 other states were. Our new gestational surrogate resided in Wisconsin, and case law for assignment of parental rights to Intended Parents by the courts was very clear there.

Our transfer resulted in a singleton – Jacob – who was due in mid-August of 2015. As we did in California, we petitioned the circuit court for our parental rights, and we were assigned a hearing in late June.

We appeared in person and Judge Sarah O'Brien conducted an evidentiary hearing and awarded us interim parental rights, noting that Wisconsin law required the child to be born before those rights became permanent. We simply needed to inform the Court when Jacob was born and the court would then issue a birth certificate with our names on it. She based her decision, as all other such cases are based, on the Wisconsin Supreme Court's Roseky Decision, which validated surrogacy and stated that surrogacy contracts are binding.

We left for home back in Virginia, ecstatic that our family of 4 would soon be 5.

Because Judge O'Brien was a reserve judge, sitting in a court where there was a vacancy, a permanent judge – Jim Troupis – was appointed.

In a nutshell, Judge Troupis immediately moved to invalidate the O'Brien ruling, and imposed a Guardian ad Litem on us. The judge questioned the validity of the State Supreme Court decision and challenged whether there was a legal pathway for us to obtain our parental rights over Jacob in our uncontested parental rights petition.

Instead of a 24-hour ministerial action by the Court to obtain those parental rights, that were, in reality, previously granted to us by Judge O'Brien, we endured over a year of legal chaos fighting with a Judge and a Guardian, who were clearly trying to score a political and policy victory, instead of applying the law and adhering to well established judicial precedent.

Objections and Motions. Deadlines and delays. A stream of lawyers. Endless, unnerving, sleepless nights. Continual nausea so acute we could barely eat. Just to manage all of the legal issues, Rick had to leave his job of 16 years at Capital One, while I tried to focus on doing mine.

Weeks of gut-wrenching agony turned into months, until Judge Troupis finally issued his decree. Nine full months after the first hearing in which Judge O'Brien had declared us to be Jacob's rightful parents – Troupis officially took those rights away from us. At the same time, he illegally terminated the surrogate's parental rights without her consent, deliberately leaving Jacob an orphan and a ward of the state.

And then he branded us "human traffickers."

A third judge finally vacated Troupis' vile ruling and restored the original O'Brien Order, after Troupis resigned in disgrace.

But over a year of emotional abuse had taken its toll: Declining health from the never ending stress...second and third mortgages to pay the legal bills of 13 lawyers – two of which

we were ordered by Troupis to pay even though they were trying to take away our child...the constant gnawing fear of losing Jacob and having to somehow tell his big sisters.

Members of the Committee, HB1979 does not solve every issue, to be sure. But it is a simple update of the statute that really shouldn't be that controversial. It doesn't need to be amended to make it something it isn't.

Now, let me quickly address a couple of points that have been raised by the opponents of this bill:

- That the bill creates a presumption for parenthood that is not tied to biology. Well, that is exactly what traditional adoption is, and so those opponents have made a crystal clear case that voting against this bill is also a vote against adoption, and they apparently believe the 5,000 kids in Virginia's foster system aren't worthy of a loving forever home.
- Opponents complain that single parents would be recognized. That's true. And there are nearly one-half a million children in Virginia being raised by single parents today. How could anyone with an ounce of compassion in their soul infer that a half-million families in the Commonwealth have less value than any other?
- Opponents are also critical of the gender neutrality language, and specifically say that children should not be raised in families like mine - by two Dads, or two Moms. But as we know, the Supreme Court addressed that in 2015 with the *Obergefell* decision and again in 2017 when the Court reversed the Arkansas Supreme Court in *Pavin v. Smith* when that state attempted to do to parents something similar to what Wisconsin did to us.

You've likely seen some of the other intellectually insulting rhetoric and incendiary urban myths that the opposition has been using, in an attempt to discredit this bill. It's the same palter that they have thrown around for years. And none of it has ever proven to be true. Sure, anyone can present a list of grievances from anonymous sources and fabricated names. Anyone can find outlandish stories about any group of individuals. But on this day, you have an actual family who is standing before you. We are a real family, who loves each other without qualification, and we are here testifying on the need to pass this bill.

So please, make no mistake about it. If the opponents had their way, our son would not even exist today. The embryo that was Jacob would not have been rescued by us and may well have been destroyed or used as scientific research. We are very passionate about this bill because this happened to our family. And we do not want it to happen to any other. Jacob's Law – HB1979 – is pro-family. It is pro-equality under the law. And it most definitely gives a chance for Life to those who might not have had it.

Now, that's where my testimony was supposed to end. But C.J., our budding author, edited my remarks to add this last sentence. She wrote, "Think about if this happened to your family."

Thank you for your consideration.

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