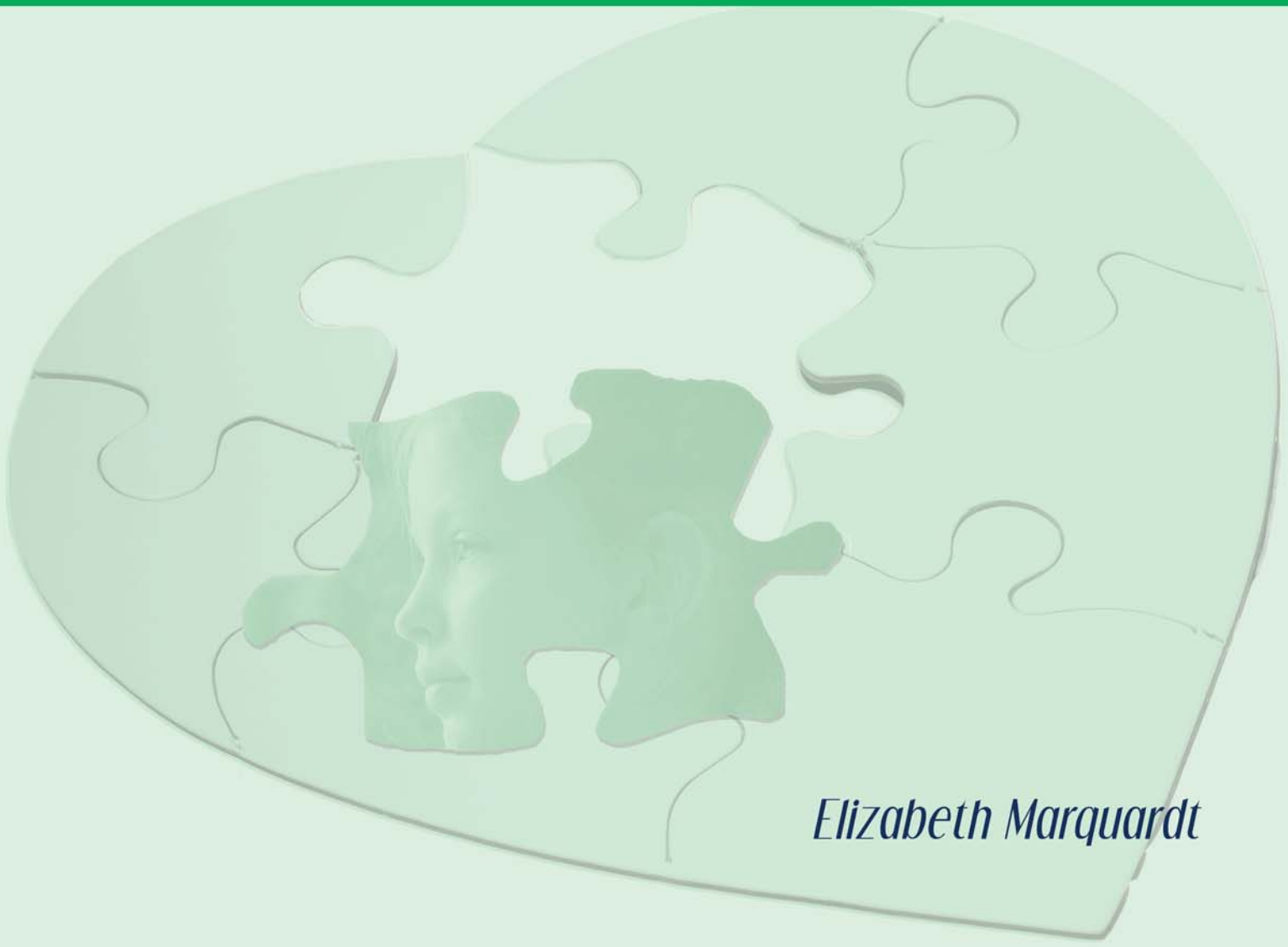
A Michigan Family Forum Publication

Redefining Parenthood

Adult Rights Versus Children's Needs



Elizabeth Marquardt

Dear Friend:

At Michigan Family Forum, we strive to provide policymakers with the latest research and information concerning the family. One way that we accomplish this is by hosting legislative "issues luncheons" which allow state legislators to hear from nationally recognized experts in the field of family policy.

We were delighted to have author and researcher Elizabeth Marquardt as our speaker on March 21, 2007 in Lansing. Her presentation, which focused on the emerging movement toward the redefinition of parenthood, was compelling and well received by lawmakers and key legislative staff. The global "revolution in parenthood," Ms. Marquardt contended, is happening very rapidly, and with surprisingly little public debate.

We felt that this topic was so important and timely that we wanted to share it with others who could not attend. In this spirit, we have published the following report which summarizes many of the points made during the luncheon. I trust that you will find this information useful as we consider the future of parenthood in Michigan.

Thanks for taking the time to consider the essential role that marriage and parenting play in sustaining a healthy culture. Please let us know if we can be of future service to you and your family.

Sincerely,

Brad Snavely

Brad Snavely
Executive Director
Michigan Family Forum

Elizabeth Marquardt

Elizabeth Marquardt is director of the Center for Marriage and Families at the Institute for American Values in New York City. She is the author of Between Two Worlds: The Inner Lives of Children of Divorce. Marquardt is also principal investigator of an internationally-released report titled The Revolution in Parenthood: The Emerging Global Clash Between Adult Rights and Children's Needs, upon which this publication is based. Marquardt holds an M.Div. and an M.A. in international relations from the University of Chicago and a B.A. in history and women's studies from Wake Forest University.

The Definition of Parenthood

Many changes in marriage, reproduction, and family life in recent years have had one feature in common: They have pushed the boundaries on who is called a child's parent. Courts and the culture have at various times determined all kinds of people to be parent figures in children's lives, including step-parents, parents' unmarried partner, sperm donors, surrogate mothers, and even extended family members or close family friends.

This broadening of the term "parent" first arose amid the steep rise in single-parent childbearing and as a result of the divorce revolution. But more recently the redefinition of parenthood is taking new forms as cultural attitudes continue shifting; as reproductive technologies advance, access expands, and science continues pushing the boundaries on baby-making; as increasing numbers of same-sex couples are openly raising children, with many of them also advocating for marriage rights; as new players enter the marriage debate, including advocates of group marriage; and as the law struggles to catch up, often creating as many problems as it resolves.

Rather than striving to link the man and woman who conceive, bear, and raise a child into one unit called the child's "parents," today's trend toward redefinition separates genetic, gestational, and social parenthood into increasingly fragmented activities and separate legal terms. In nations throughout the West and beyond, expert commissions, courts, legal scholars, and medical groups are leading the way in redefining parenthood, almost entirely without awareness of or influence from other disciplines and the broader public. While the state has a vital role to play in finding parents for needy children through adoption, today in many nations the state is creating powerful new uncertainties and vulnerabilities as it seeks to redefine parenthood for far broader categories of children.

Around the world in law, culture, and medicine, the two-person, mother-father model of parenthood is being fundamentally challenged. The needs of children – those born and those yet to be born – are now being threatened by policies and practices that are transforming and fragmenting the meaning of parenthood.

What are some examples? Among many recent examples are these:

In Canada, with virtually no debate, the controversial law that brought about same-sex marriage quietly included the provision to erase the term "natural parent" across the board in federal law, replacing it with the term "legal parent." With that law, the locus of power in defining who a child's parents are shifts precipitously from civil society to the state, with the consequences as yet unknown.

In Spain, after the recent legalization of same-sex marriage the legislature changed the birth certificates for all children in that nation to read "Progenitor A" and "Progenitor B" instead of "mother" and "father." With that change, the words "mother" and "father" were struck from the first document issued to every newborn by the state. Similar proposals have been made in other jurisdictions that have legalized same-sex marriage. For example, in the state of Massachusetts the public health department proposed changing birth certificates for all children in the state to read "Parent A" and "Parent B" rather than "mother" and "father." And in a radical breakthrough, a court in Ontario last fall – for the first time ever in the West – allowed a child to have three legal parents.

In the United States, courts often must determine who the legal parents are among the many adults who might be involved in planning, conceiving, birthing, and raising a child. In a growing practice, judges in several states have seized upon the idea of "psychological" parenthood to award legal parent status to adults who are not related to children by blood, adoption, or marriage. At times they have done so even over the objection of the child's biological parent.

At the same time in the United States, successes in the same-sex marriage debate have encouraged group marriage advocates who wish to break open the two-person understanding of marriage and parenthood.

Meanwhile, scientists around the world are experimenting with the DNA in eggs and sperm in nearly unimaginable ways, raising the specter of children born with one or three genetic parents, or two same-sex parents. Headlines recently announced research at leading universities in Britain and New Zealand that could enable same-sex couples or single people to procreate. Japanese scientists have already created a mouse with two genetic mothers and no father. In Britain, scientists were granted permission to create embryos with three genetic parents. Stem cell research has introduced the very real possibility that a cloned child could be born – and the man who pioneered IVF treatment has already said in public that cloning should be offered to childless couples who have exhausted other options. The list goes on.

Nearly all of these steps, and many more, are being taken in the name of adult rights to form families they choose. But what about the children?

Without doubt, there is an emerging global clash between adult rights and children's needs in the new meaning of parenthood. Within the din are voices of the first generation of young adults conceived with use of donor sperm. Their concerns, and the large body of social science evidence showing that children, on average, do best when raised by their own married mother and father, suggest that in the global rush to redefine parenthood, we need to call a time-out.

Emerging Voices from Children

Children raised without their own married mother and father often have perspectives about their lives that are radically different from how the legal scholars, courts, and would-be parents expected they would feel. For example, studies on the inner lives of children of divorce are showing an enormous downside for children that was never considered in the heady, early days of the no-fault divorce revolution.

To be perfectly clear, the question is *not* whether children love the parents who raise them. Children almost universally and unquestioningly love their parents, whether their parents are married, divorced, single, gay or straight. Rather, the question is how children feel and how they make sense of their identities when their mother or father (or both) is absent from their daily lives.

The first generation of donor-conceived children who are now coming of age form a remarkable case generation were conceived by married heterosexual couples using donor sperm. Anecdotally, many are now speaking out about the powerful impact on children's identity when adults purposefully conceive a child with the clear intention of separating that child from a biological parent. These young people often say they were denied the birthright of being raised by or at least knowing about their biological fathers. They say that this intentional denial profoundly shapes their quest to understand who they are.

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Donor-conceived teenagers and adults are forming organizations, are frequently quoted in news articles, and are using the Internet to try to contact their sperm donors and find half-siblings conceived with the same sperm. While the numbers arguably are small, they are growing, and the stories these young people tell raise questions not only about their own experience but about the prospects for the next generation of children born of still more complex reproductive technologies.

Donor-conceived young people point out that the informed consent of the most vulnerable party – the child – is not obtained in reproductive technology procedures that intentionally separate children from one or both of their biological parents. They ask how the state can aid and defend a practice that denies them their birthright to know and be raised by their own parents and that forcibly conceals half of their genetic heritage. Some call themselves "lopsided" or "half adopted." At least one uses the term "kinship slave." Some born of lesbian or gay parents call themselves "queer spawn," although others in the same situation find the term offensive. No studies have been done on these young people's long-term emotional experience. Clearly, rigorous long-term studies need to be done. For now, we should listen to their compelling voices.

Narelle Grech, an Australian donor-conceived woman in her early twenties, asks, "How can you create a child with the full knowledge that he or she will not be able to know about their history and themselves?" She wonders what social message the practice of donor conception gives young men: "Will they think it's OK to get a woman or girl pregnant and that it would be OK to walk away from her, because after all, biology doesn't matter?"

A fellow Australian, Joanna Rose, asks why everyone "flips out" when the wrong baby is taken home from the hospital, yet assumes that donor-conceived children are just fine. She argues: "Our need to know and be known by our genetic relatives is as strong and relevant as anyone else's." She writes, movingly, "I believe that the pain of infertility should not be appeased at the expense of the next generation."

A 14-year-old girl in Pennsylvania wrote to Dear Abby after finding out she was conceived with donor sperm. In just a few sentences she identified some of the enormous identity issues that confront donor conceived young people and that are now a challenge to our society. She wrote: "It scares me to think I may have brothers or sisters out there, and that he [the sperm donor] may not care that I exist." This young teenager, struggling alone with feelings of abandonment, grief, and confusion, poignantly challenged the current legal and social position on this issue: "I don't understand why it's legal to just donate when a child may be born."

Increasing Slippage in Meaning of Fatherhood and Motherhood

The redefinition of parenthood is shaping our culture and our legal system in ways that contribute to further deep uncertainties in the meanings of fatherhood and motherhood.

Evidence of this new uncertainty is found in rulings, proposals, and stories from around the world. In Australia, sperm donors now have the right to contact their over-18 progeny. But who are these men? Are they sperm donors, or are they fathers who have rights to know their children?

In New Zealand, the law commission proposed that sperm and egg donors be allowed to "opt-in" to legal parenthood if they wish. Who are these people? Are they donors? Are they legal parents? If these biological parents can opt in and out of responsibility to children, as it pleases them, what is the rationale for not allowing other biological parents to do the same thing?

Last summer in Britain a new website was started – www.parentsincluded.com. The website is intended for lesbian and single women who wish to bear a child using donor sperm and want "both parents" to play a role in the child's life. Potential sperm donors who wish to have some kind of relationship with the resulting child are invited to sign up. If the desires of a lesbian or single woman and a sperm donor to share a child raising arrangement match up, bingo! They can set up a broken family for their child before the child is even conceived. In another example, last summer in the U.S. a classified ad ran on a West Hollywood news website that read: "I am a single mom who wants to have another baby, but does not wish to use anonymous donor sperm. If you would like to be a father with visitation rights, send a picture and introductory letter to Kelly W…"

Even the meaning of the term "sperm donor" is in flux. In some arenas sperm donors are being equated

with fathers. In other situations "sperm donor" has become a term of opprobrium, hurled by women at the ex-boyfriends who are the fathers of their children. The term apparently signals that the man is meaningless to them (and, they most likely hope, to their children). It is a cutting put-down, equating a man they almost certainly once cared for with nothing more than a minimal and fairly crude biological product.

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Yet, by far the most striking and potentially far-reaching development signaling slippage in the meaning of motherhood and fatherhood – a development already being witnessed in numerous courts – is the increasing recognition of "psychological" parenthood or "de facto" parental status. In the United States at least ten states, including Washington, California, Maine, Massachusetts, New Jersey, and Wisconsin, now allow someone with no biological or adoptive relationship to a child (and no marital relationship to a child's parent) to be assigned parental rights and responsibilities as a psychological or de facto parent. To determine retrospectively whether an adult was a "parent" in a child's life the courts examine indications such as whether the adult lived in the same household as the child, was encouraged to act as a parent by the child's existing parent, had acted like a parent without expecting financial compensation, and had spent enough time with the child to have bonded with him or her. In many of these cases the petitions are brought by ex-partners who charge that the child's existing parent is denying their rights to the child. In other cases the child's existing parent charges that the ex-partner is now shirking parental responsibilities. These cases typically concern same sex partners, but they also have serious, as yet unknown implications for the many heterosexuals who are or have been a child's step-parent, or who have been a live-in partner.

Advocates of assigning legal rights and responsibilities to "psychological" parents argue they have the best interests of the child in mind. The law, they say, should not allow biological or adoptive parents to deny their child a relationship with someone who the child has come to see as a mother or father, nor should it allow someone who has acted as a parent to evade those duties after the adults' relationship ends.

In contrast to the sometimes vague, gradual ways that parents can introduce new partners into their child's life, even asking the child to call that person "mom" or "dad," and the sudden ways in which these same parents can at times change their minds if the relationship goes sour, the clearly defined (and in the best interests of the child, appropriately onerous) process of adoption is the law's best way of protecting children's interests and their relationships with both parents should their parents break up. As a legal process, adoption is proactive, rigorous, and clear. The child, the child's other parent, their community and the state know precisely when the adult in question is the child's parent and when he or she is not. Once that adult becomes an adoptive parent an array of laws and norms clearly define his or her appropriate role in the child's life. Adoptive parents cannot pass in and out of children's lives. Their status is understood to be permanent and the legal and social consequences for trying to forsake that status are clear. For all these reasons, adoption is in general a far better way to protect children than routinely asking judges to determine whether an adult in the past met certain subjective criteria to qualify as a parent, especially when the judge acts over the objections of the child's existing biological or adoptive parent.

In the brave new world of redefined parenthood, sperm donors might or might not be fathers. Mother's girlfriends, and even ex-girlfriends, can be mothers (or fathers!). Despite their biological or gestational relationship to the child, egg donors and surrogates are usually *not* considered mothers, but they can be. Absent fathers, when they anger their ex-girlfriends, can be reduced rhetorically to mere sperm donors. But generally unlike sperm donors, the state holds them accountable for child support for years to come.

What does "father" mean? What does "mother" mean? Who decides? How do children feel about these decisions?

New Trends in Marriage Law

Whatever one's feeling about the legalization of same-sex marriage, and however emphatically most advocates of same-sex marriage say they do not support group marriage, recent events make clear that successes in the same-sex marriage movement have emboldened others who wish to borrow the language of civil rights to break open the two-person understanding of marriage and, with it, parenthood. These efforts are emerging from at least two surprising directions.

Polyamorists are perhaps the newest, most unfamiliar players on the scene. Polyamory (meaning "many loves") is different from polygamy (meaning "many marriages"). Polyamory involves relationships of three or more people, any two of whom might or might not be married to one another. Polyamorous people variously consider themselves straight, gay, bisexual, or just plain "poly," while polygamists are generally heterosexual. Polyamorists distinguish themselves from the "swingers" of the 1970s, saying that their own relationships emphasize healthy communication or what they call "ethical non-monogamy."

Polyamorous unions have been around for a while – probably for a long while – but they and their supporters are now seeking increasing visibility and acceptance. Indeed it seems one can hardly pick up a newspaper without reading about them. A recent *Chicago Sun-Times* article mentioned the "Heartland Polyamory Conference" to be held this summer in Indiana (a similar Midwestern polyamory conference was held two years ago near the Wisconsin Dells). A *Chicago Tribune* article not long ago featured John and Sue, a married couple, and Fred, Peggy, and Bill who share their bed – the reporter termed them an "energetic bunch" of polyamorists.

Yet support for polyamory is not just found among the fringe types; notably, the topic is emerging at the cutting edge of family law and advocacy. In a recent report on family law, Dan Cere of McGill University cites examples including a University of Chicago Law School professor, Elizabeth Emens, who last year published a substantial legal defense of polyamory in a New York University law review; a major report, "Beyond Conjugality," issued by the influential Law Commission of Canada which queried whether legally recognized relationships should be "limited to two people," and in *An Introduction to Family Law,* published by Oxford University Press, a British law professor who notes quizzically, "The abhorrence of bigamy appears to stem…from the traditional view of marriage as the exclusive locus for a sexual relationship and from a reluctance to contemplate such a relationship involving multiple partners."

Meanwhile, the Alternatives to Marriage Project, whose leaders are featured often by mainstream news organizations in stories on cohabitation and same-sex marriage, includes polyamory among its "hot topics" for advocacy. Among religious organizations the Unitarian Universalists for Polyamorous Awareness hope to make theirs the first to recognize and bless polyamorous relationships.

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Advocates for polyamory often explicitly mimic the language used by supporters of gay, lesbian, and bisexual people. They say they must keep their many loves "in the closet." That they cannot risk revealing their personal lives for fear of losing their jobs or custody of their children. That to reveal their inner "poly" nature is "coming out of the closet." That being poly is just who they are.

No one can predict the legal future of polyamory. But in a startling development, and coming from a very different direction, another cultural assault on the two-person understanding of marriage and parenthood is resurging – polygamy.

The debut of HBO's new television series, *Big Love*, which features a fictional, in some ways likeable polygamous family in Utah, propelled polygamy to the front pages and put the idea of legalized polygamy "in play" in some surprising quarters. An article in the March 2006 issue of *Newsweek*, headlined "Polygamists Unite!" quotes an activist saying, "Polygamy is the next civil rights battle." He argues, "If Heather can have two mommies, she should also be able to have two mommies and a daddy." That weekend on the *Today* show hosts Lester Holt and Campbell Brown gave a sympathetic interview to a polygamous family and the *New York Times* devoted much attention to the subject that month.

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It is not just *Big Love* that has put polygamy "in play" in the West. In a development that shocked many Canadians, two recent government studies released by the Justice Department recommended the decriminalization of polygamy, with one report arguing the move was justified by the need to attract more skilled Muslim immigrants. And in Canada and the U.S., a significant number of today's legal scholars are arguing, as columnist Stanley Kurtz summarized, that "the abuses of polygamy flourish amidst the isolation, stigma, and secrecy spawned by criminalization."[1] Polygamy per se is not the problem, only "bad" polygamy.

Still, why would any society make the formal move toward legal recognition of polyamorous or polygamous unions? One likely justification might arise from proposals to recognize as third parents those who donate sperm or eggs for the conception of a baby, such as the New Zealand Law Commission and Victoria Law Reform Commission proposed last year. In Canada, a judge has already recognized three legal parents for a child.

When children are recognized to have three (or more) legal parents, the argument for recognizing some form of group marriage will almost certainly go something like this: "Why should children with three parents be denied the same legal and social protections that children with only two parents have?"

If we get to that place, pity the children. Already we see the havoc wreaked on children's lives when *two* parents break up and fight over their best interests. Imagine when three or more adults who have equal claims on a child end their relationship. In the future, how many homes will we require children to grow up traveling between in order to satisfy the parenting needs of these many adults? Three? Four? More?

Conclusion

At this moment, with virtually no public discussion, the relationship that is most core and vital to children's very survival – that of parenthood – is being fundamentally redrawn through new laws, proposals, and practices affecting marriage, reproduction, and family life, with the state playing an increasingly active role in defining parenthood for broader categories of children.

This much is clear: When society changes marriage it changes parenthood. The divorce revolution and the rise in single-parent childbearing weakened ties of fathers to their children and introduced a host of players at times called "parents." The use of assisted reproductive technologies by married heterosexual couples – and later by singles and same-sex couples – raised still more uncertainties about the meaning of motherhood and fatherhood and exposed children to new losses the adults never fathomed. The legalization of same-sex marriage, while sometimes seen as a small change affecting just a few people, raises the startling prospect of fundamentally breaking the legal institution of marriage from any ties to biological parenthood. Meanwhile, successes in the same-sex

marriage debate have encouraged others who wish to fully and completely to break open the two-person understanding of marriage and parenthood.

Here is where we are. In law and culture, the two-natural-parent, mother-father model is falling away, replaced with the idea that children are fine with any one or more adults being called their parents, so long as the appointed parents are nice people. This change is happening incrementally, largely led by self-appointed experts and advocates in a few fields. But it does not have to be this way. Those of us who are concerned can and should take up and lead a debate about the lives of children and the future of parenthood.

As we launch this conversation, a guiding principle could be this: When there is a clash between adult rights and children's needs, the interests of the more vulnerable party – in this case, the children – should take precedence. A great deal of evidence supports the idea that children, on average, do best when raised by their own, married mother and father, with adoption as an important, pro-child back up plan. With regard to some newly visible family forms, such as families headed by gay or lesbian parents or those created using donor sperm, eggs, or surrogacy, we have more to learn more about the lasting, inner experience of the children.

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To provide time and space for this conversation and for more research, this report also calls for a moratorium or a "time out" lasting five years. Until we better understand and prioritize the needs of children, the legislature and courts should not make changes that broadly undermine the normative importance of mothers and fathers in the lives of children, nor should they support intentionally denying unborn children knowledge of and a relationship with their own mother and father. Rather, they should concentrate their energies on rigorous inquiry and active debate about the needs of children and the role of mothers and fathers in their lives.

The well-being of the world's children calls us to act – not years from now but right now. For their sake, for those born and those yet to be born, we must be willing to launch a sometimes-uncomfortable but urgent debate about the well-being of children born in an age that is rapidly redefining the meaning of parenthood. Nothing is inevitable. The time to act is now.

This report is based on a more in-depth publication released last fall by the Commission on Parenthood's Future, titled The Revolution in Parenthood: The Emerging Global Clash Between Adult Rights and Children's Needs (New York City, Institute for American Values: September 2006). The Commission is an independent, nonpartisan group of scholars and leaders who have come together to investigate the status of parenthood as a legal, ethical, social, and scientific category in contemporary societies and to make recommendations for the future. The full report with citations can be found online at www.americanvalues.org.

About Michigan Family Forum

Our Core Values

- The family is the fundamental institution in a civil society.
- Healthy, lifelong marriages are beneficial to adults and offer the best environment in which to raise children and care for elders.
- The involvement of responsible fathers is essential to the economic, emotional, and social health of children.
- Children need the protection of stable families and a healthy understanding of human sexuality.
- Elders deserve to have security and care provided by loving family members in a comfortable home environment.

Other Resources Available

- Family Health Indicators: A Survey of Michigan Counties
- Forum Online
  Free weekly electronic newsletter
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- What Every Child Needs: The Unique Contributions of Fathers and Mothers
- Sex Education: Rights and Responsibilities in Michigan Law
- Infant Adoption in Michigan: Reviving a vanishing phenomenon
- Policy Briefs
  Research briefs on marriage, out-of-wedlock sexual activity and fatherhood
- Michigan Guide to Abstinence Resources
- Michigan Adoption Resource Guide
- Promoting Fatherhood in Michigan: A resource guide for civic, business, and non-profit leaders

All resources are available by contacting us or visiting our website:
WWW.MICHIGANFAMILY.ORG

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