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Committee of Ministers of the Council of Europe

Palais de l'Europe

Avenue de l'Europe

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FRANCE

Via facsimile transmission

333-884-127-81

Re.: **DRAFT RECOMMENDATION ON THE RIGHTS AND LEGAL STATUS
OF CHILDREN AND PARENTAL RESPONSIBILITIES: A Law and
Policy Critique by the Alliance of Romania's Families**

Dear Mr. Chairman:

The Alliance of Romania's Families ("Alliance") is a nongovernmental, nonprofit, civic organization which promotes the interests of the natural family, marriage, and the welfare of children, both born and unborn. We represent a constituency of over 650.000 adult Romanian citizens. We monitor legislation and policy, domestically and internationally, and lobby in favor of policies and legislation which benefit the family, children, parents, and marriage. The Alliance espouses the natural family as consisting of the union between a man and a woman, and promotes the view, contained in Article 16(a) of the Universal Declaration of Human Rights, that the natural family is the foundation of society and is entitled to protection by the society and the state.

We respectfully submit this Memorandum. We have examined in great detail the **Draft Recommendation on the rights and legal status of children and parental responsibilities** ("Draft"), as well as the **Explanatory Memorandum** appended to it. Both documents concern us. The reasons are discussed below and prompt us to respectfully request the Committee of Ministers of the Council of Europe to reject it. In essence, the Draft seeks to legitimize in the Council of Europe practices and social ideologies which we deem unhealthy and inimical, first and foremost to the best interests of the child, as well as to the family and its legitimate ends.

The Draft identifies "the best interests of the child" as its main foundational principle. ("The best interests of the child are a primary consideration in all matters concerning children and should be a basic concern in particular for holders of parental responsibilities.") We concur and welcome this. However, the social ideologies to which the Drafts gives life, intentionally or not, are prima

facie injurious to the best interests of the child and set themselves against the stated objective of the Draft to promote and protect them.

We respectfully request that our Memorandum be filed among the official papers of the Committee of Ministers and that a copy be tendered to the representative of each member state. We hope they will find it helpful and constructive in upcoming debates on the Draft.

I.

Children and Sexual Orientation

Article 1 of the Draft promotes nondiscrimination against children based on “sexual orientation and gender identity.” This norm is not in the best interest of the child and, therefore, we reject it. It is an ideological construct not based in fact. Sexuality is acquired at birth and gender identity is an immutable biological endowment. All human beings are born sexually healthy as heterosexual human beings. Their sexual identity is biologically determined as either male or female, is not subject to change, and it expresses itself naturally. Deviations from these norms are known to occur under the influence of external factors and sexual norms other than heterosexuality may be adopted at various stages in life. However, they are not inherent in human nature and do not manifest themselves in children. We believe that generating in children a sexual interest in persons of the same sex is unhealthy.

We further perceive the insertion of “sexual orientation and gender identity” in the Draft as an attempt to legitimize a new sexual ideology throughout Europe. We also object to the use of the term “gender” in the Draft in the place of “sex,” “gender,” too, being an ideological construct reflective of the new sexual ideology according to which “the innate biological sex of male or female” is not immutable, but a fluid state which society is required to accommodate. To argue that children possess or exhibit the “sexual orientation” or “gender identity” variations of adults is alarming. This norm should, therefore, be eliminated from the Draft.

In proposing the inclusion of “sexual orientation and gender identity” as grounds for nondiscrimination, the Draft is also incompatible with and has the potential of overriding the 1989 Convention on the Rights of the Child (“Convention”) which prohibits discrimination based on only “race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” “Sexual orientation and gender identity” are not among these prohibitive grounds. Nor are, for that matter, “sexual orientation” and “gender identity” mentioned in the European Convention of Human Rights. By including them in the Draft, the Alliance is concerned that the Committee of Ministers is, in fact, paving the way for the future revising of the European Convention to include “sexual orientation and gender identity” as additional characteristics protected by it. The Alliance expresses its opposition to such attempts.

The Alliance’s position that children are born sexually healthy is based, among others, on the work and conclusions of one of the most prominent sociologists and therapists on the subject of human sexuality, professor Michael Bailey, author of the influential The Man Who Would be

Queen – the Science of Gender-Bending and Transsexualism (2003). (<http://www.narth.com/docs/queen.html>) Among his conclusions, we note his finding that “homosexuality may represent a developmental error,” and that children are born inherently normal in their sexuality. According to Professor Bailey, the incidence of abnormality in children’s sexuality is one in 400.000, but can be corrected through early therapy.

We additionally cite to the latest study on the fluidity of sexual orientation, of which we are aware, which was published in the November 2011 issue of the British publication Journal of Sex & Marital Therapy. It was effected by two prominent US psychologists on the ability of persons with same-sex attraction or those who live in same-sex relationships to revert to a healthy and fulfilling heterosexual life style. The study focused on 61 subjects whom the authors evaluated over a period of 6 to 7 years. 23% of them were able to successfully revert to their prior sexuality, and 30% successfully embraced and carried out a chaste lifestyle. (<http://www.tandf.co.uk/journals/authors/usmtauth.as>)

In conclusion, we respectfully request that “sexual orientation and gender identity” be removed from Article 1 of the Draft.

II.

Marriage and the Family

The Draft is careful to note that it does not seek to impose on member states structures and living arrangements which parallel the natural family. This is salutary. Nevertheless, the very inclusion of alternate structures in a proposed European wide instrument, binding on all member states, may inevitably have the undesirable and unintended effect of legitimizing them. It may inevitably create a subsidiary “regime” which will demand full equivalence with traditional societal structures which have ensured stability and the orderly succession of human generations for millennia. These parallel structures include same-sex marriage, civil partnerships (both between persons of the same or opposite sex), and cohabitation.

The natural family, constituted on the basis of the union in marriage between a man and a woman, is the foundation of society, as stated in Article 16 of the Universal Declaration of Human Rights: “(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. ... (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Nothing has changed since 1948 when the Declaration was adopted and the natural family has continued to successfully provide social stability to subsequent generations. Thus, we see no justification for the Council of Europe to change it now.

However, this is not the first time the Alliance expresses opposition to state sanctioned living arrangements which undermine the natural family. On prior occasions, we have done so both in the Council of Europe and the European Parliament. We first expressed it in a Memorandum filed in the European Agency for Fundamental Rights on September 19, 2008; in a Memorandum

filed in the Employment, Social Policy, Health and Consumer Affairs Council of the European Union on May 30, 2009; and in a Memorandum submitted to the Parliamentary Assembly of the Council of Europe on April 7, 2010.

In those memoranda we explained in great detail the rationale for the Alliance's opposition to same-sex marriage and civil partnerships. Essentially, these parallel structures lack social utility, debase and trivialize the institution of marriage generally, and have been proven injurious to the welfare of children. We rely on the same argumentation again and reemphasize our opposition to same-sex marriage and civil partnerships in the context of the current debate concerning the rights of the child and parental responsibilities in the Council of Europe. We and our constituency reject any attempts to legitimize in the Council of Europe these and other alternate structures which claim to be equal to or the equivalent of the natural family and marriage.

Since the Alliance filed its memoranda in prior years, the European Court of Human Rights explicitly ruled that there is no right to same-sex marriage under the European Convention of Human Rights. See, *Schalk and Kopf v. Austria* No. 30141/04 (June 24, 2010).

In the last five years the citizens of Romania have also been consistent in opposing the institution of same sex marriage in Romania. In 2006 the Alliance ran a petition drive in support of a constitutional amendment defining marriage in Romania as the union between a man and a woman. In less than 6 months over 650.000 citizens with the right to vote signed the petition. In 2009 the Alliance ran another petition, this time specifically addressed to the Council of Europe, expressing its opposition to attempts to impose same sex marriage in the member states through Council resolutions. Our online campaign gathered in excess of 10.000 signatures in addition to 10.000 signatures gathered manually. The signatures were tendered to the Council of Europe.

(http://www.petitiononline.ro/petitie/petitie_catre_adunarea_parlamentara_a_consiliului_europei_petition_to_the_parliamentary_assembly_of_the_council_of_europe-p20670044.html) Finally, the Alliance issued a declaration of Christian conscience, known as the **Timisoara Declaration**, which outlines the fundamental values and institutions its signers wish to promote domestically and internationally. (http://www.alianta-familiiilor.ro/decl_timisoara.php) To date the Declaration has been signed by nearly 8.000 individuals and the list of signatories continues to grow. On point, the Declaration affirms that “(d) The family based on the marriage between one man and one woman is a fundamental institution of society and is created by God. It is an expression of the natural complementarity between man and woman, of mutual love and respect.” It also emphasizes that “(a) Every child has the right to be born and raised in a family comprised of a man and a woman.”)

Moreover, on October 1, 2011 the new Romanian Civil Code entered into force which expressly prohibits same sex marriage, same sex partnerships, or the recognition of same-sex marriages or partnerships contracted outside of Romania. It also defines marriage as the union between “a man and a woman.” The Civil Code's prohibition of same sex marriage reflects the rejection by the overwhelming majority of the country's population of any attempts to institutionalize in their country societal structures which undermine the natural family. Thus, Romania as a whole, not

only the Alliance, has spoken rather firmly and without ambiguity on the issue of same sex marriage.

The Republic of Moldova likewise rejects and prohibits same-sex marriage. Article 48 of its Constitution defines marriage as the “union between a man and a woman.” In addition, its citizens have also, on several occasions, initiated petitions against same-sex marriage or its recognition in Moldova and have obtained in excess of 100.000 signatures.

Furthermore, as is well known, Hungary also revised its Constitution in April 2011 declaring marriage as the union of one man and one woman.

Finally, same sex marriage offends the best interests of the child. Recent research undertaken in the Netherlands, as well as in those few states of the United States which have legalized same-sex marriage, reflects worrisome trends. The rate of marriage in both countries is down and the rate of children born out of wedlock is skyrocketing. (We recommend on this subject Naomi Cahn and June Carbone, Red Families v. Blue Families – Legal Polarization and the Creation of Culture (2010), especially pages 206-209) This contrasts sharply with the 1980s when the family on both sides of the Atlantic was more stable and was held in high esteem. Same sex marriage has debased the family institution. Currently, a growing number of voices question not only the viability of the marriage institution in contemporary society but also the rationale for its very existence. Some even suggest it should be abolished. Of the various movements and networks which seek the abolition of marriage and the family we mention BeyondMarriage.com (www.beyondmarriage.com) which in 2006 published “Beyond Same-Sex Marriage: A New Strategic Vision for All Our Families & Relationships.” BeyondMarriage.com has thousands of adherents, among them scholars, sociologists, jurists, academicians, politicians, religious leaders. Unfortunately, in our view the Draft gives legitimacy to this chorus of antifamily and antimarriage voices.

The impact of same-sex marriage on the dissolution of the marriage institution has been noted as early as July 2004 when five Dutch scholars published an open letter cautioning that, while “definite scientific evidence” does not exist, “there are good reasons to believe the decline in Dutch marriage may be connected to the successful public campaign for the opening of marriage to same-sex couples in The Netherlands.” They reported that “until the late 1980s, marriage was a flourishing institution in The Netherlands. ... It seems, however, that legal and social experiments in the 1990s have had an adverse effect on the reputation of man’s most important institution. Over the past fifteen years, the number of marriages has declined substantially, both in absolute and relative terms ... This same period also witnessed a spectacular rise in the number of illegitimate births – in 1989 one in ten children were born out of wedlock (11 percent), by 2003 that number had risen to almost one in three (31 percent). ... It seems the Dutch increasingly regard marriage as no longer relevant to their own lives or that of their offspring.” (Cited in 150 Congressional Record S7928, July 12, 2004). (<http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi>) If in 1992 68% of Dutch men and women stated that “marriage mattered to them,” by 2003 the percentage declined to 45%. Experts attribute this drastic decline to the introduction in The Netherlands in 1997 of registered

partnerships, when for the first time in Dutch society cohabitation was given legal recognition and effect. (See, Stanley Kurtz, *The Sharp Increase in Non-Marital Birth in the Netherlands*, 2006) (<http://old.nationalreview.com/kurtz/kurtz200602230800.asp>)

One commentator has made the same observation about the decline of marriage in the United States: “Is it mere coincidence that this resurgence in illegitimacy [of children] happened during the first five years in which gay marriage has become ... the most prominent marriage issue in America – and the one marriage idea endorsed by the tastemakers of the young in particular?” (Naomi Cahn and June Carbone, Red Families v. Blue Families – Legal Polarization and the Creation of Culture (2010), at 206)

The 2004 congressional hearings in the United States also concluded that same sex marriage has caused a decline of the family in Europe. (“In Europe, many parents have stopped marrying altogether because they no longer view marriage as having anything to do with parenthood or children. The legalization of same-sex marriage has been instrumental in working this change in perspective, leading most to think of marriage as simply the expression of mutual affection between two consenting adults. As a result, couples are marrying later and later after children are born, or simply foregoing marriage altogether. Rates of parental cohabitation have skyrocketed, and the family dissolution has become endemic.”) Id. (<http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi>)

Accordingly, we urge rejection of the Draft and reiterate that family structures other than the natural family are not in the best interests of the child and undermine the natural family and marriage.

III.

Cohabitation

The Alliance expresses similar concerns about cohabitation, another alternate lifestyle included in the Draft. Cohabitation does not promote the best interests of the child either, and, along with same-sex marriage and civil partnerships, is one of the child’s welfare worst offenders. It has additionally proven inimical to stable family relationships and society.

Countless studies have been released in only the recent past which unanimously conclude that cohabitation is bad for both the cohabiting parents and their children. In April 2010 the UK Institute for Fiscal Studies issued a report titled “Cohabitation, marriage and the child outcomes.” <http://www.ifs.org.uk/comms/comm114.pdf> It describes the rise in cohabitation in the United Kingdom and the growing number of children born there to cohabiting couples. As of 2008 as many as 30% of all children born in England and Wales were registered to unmarried parents living at the same address. The study was based upon the data obtained by the Millennium Cohort Study, a longitudinal study which sampled almost 19,000 children born in 2000 and showed how their lives evolved through the first five (5) years of life.

The results of the study are alarming. Cohabiting couples are more likely to experience separation before their first child reaches the age of 3, 26% of them dissolving their relationship by that time. In contrast, only 7% of married couples part ways prior to their first child reaching the same age. Additionally, on the average, children born to cohabiting couples weigh less and are more prone to be born premature than children born to married couples. Cohabiting mothers also are less healthy and smoke more in comparison with married mothers. Doubtlessly, this undermines the welfare of the child, both physical and psychological. As the children of cohabiting couples grow, they display inhibited development. On average, children born to married parents display better social and emotional development than children born to cohabiting couples. In time, the discrepancies between their respective level of emotional and social development also become more pronounced. These discrepancies persist for children born to cohabiting couples even after taking into account the disparity in education and income between cohabiting and married couples. Thus, the adverse consequences of cohabitation, found everywhere, sustain the view that cohabitation is not in the best interest of the child and, thus, the Draft should not extend it any legitimacy.

The findings of the UK study confirmed for the UK what a similar study found in the United States. Last year, Rutgers University published a similar study by prominent sociologists David Popenoe and Barbara Dafoe Whitehead, "Should We Live Together? What Young Adults Need to Know about Cohabitation before Marriage," outlining the same adverse impact cohabitation has on both adults and children. <http://www.virginia.edu/marriageproject/pdfs/swlt2.pdf> The Rutgers study was published by the University's National Marriage Project which has periodically, since 1999, published expert materials on the dangers of cohabitation and its adverse impact on children.

Finally, given the pitfalls of cohabitation, we are particularly taken aback by the Draft's Article 25(2) which evokes the right of a child to enter into a "registered partnership." Legislating for children, even accidentally, what is unhealthy for them, should not be among the ends of the Draft.

IV.

Assisted Reproduction and Procreation

The Draft additionally normalizes current trends in assisted reproduction and human procreation with which we disagree. They, too, undermine the best interests of the child, in particularly grotesque and undignifying ways, and are injurious to society generally. We focus on the following trends.

Surrogate Motherhood

Surrogate motherhood does not serve the best interests of the child, but the whims of adults. Stated differently, it suits the preferences of adults at the expense of children, the society's most feeble and fragile beings. Here, as with all other medically and technologically assisted forms of

reproduction, the best interests of the child are not aligned with the interests of adults, but are in conflict. A child conceived through surrogacy does not know his biological mother, an otherwise fundamental right of children, and it deprives him of the additional right to be raised by his biological parents. The Convention on the Rights of the Child seeks to protect children from the pitfalls of surrogacy by granting them this very right, to know and be raised by their biological parents. Article 7 affirms the right of the child “to know and be cared for by his or her parents.” It can legitimately be inferred that the reference to “parents” in Article 7 means the biological parents of the child. For every child is conceived, regardless of procedure, and directly or indirectly, by a man and a woman. Thus, at birth, every child has a mother and a father. Surrogacy deprives the child of this right, for the child ends up not knowing and not having a relationship with his biological mother, i.e. the woman that conceived him and carried him to term. Surrogacy also extinguishes a child’s additional right, enumerated in the Convention’s Article 9, to “not be separated from his or her parents against their will.” Surrogacy simultaneously separates the child from her natural mother and inhibits a relationship between the child and the mother who conceived her. Children are known to yearn to know their biological parents but surrogacy undermines their ability to do so.

Surrogacy further violates the right of the child to only two parents and no more. Though the Convention does not explicitly state that a child may only have “two parents,” it generally refers, throughout the Convention, to “**both** parents” of the child. (See Articles 9.3, 9.4, 10.2, and 18.1) The term “both” identifies a numerically limited and precise set of parents and conveys that they can only be of the opposite sex, namely a father and a mother.

Surrogate motherhood is not only bad for children but also bad for society. It exploits women. Plenty of material has been published on this subject. We recommend, for purposes of our Critique, a recently published bestseller on the topic, Scott Carney’s The Red Market: On the Trail of the World’s Organ Brokers, Bone Thieves, Blood Farmers, and Child Traffickers (2011). Pages 135 through 151 describe the plight of poor women in India who surrogate for \$5,000 a child. Surrogate farms have proliferated there as demand in the developed world for surrogate mothers has increased.

In 2011 Romania has rejected attempts to legalize surrogate motherhood in Romania. A bill to legalize it was introduced in the spring, only to be killed in a legislative committee, shortly thereafter, for lack of support.

Artificial Insemination

The subject of artificial insemination is also vast. We limit ourselves, however, to explaining why, in our view, it is not in the best interests of children. In recent years, and in tandem with advances in the technology of reproduction, artificial insemination has also undermined the rights of children conferred on them by the Convention on the Rights of the Child. Recent trends also suggest that artificial insemination is geared to satisfy the demand of adults for children, and is calculated to adjust technology to changing lifestyles, not to accommodate the best interests of the children or society generally.

First and foremost, children conceived through artificial insemination are deprived of the right to know their biological fathers, just like children conceived by surrogacy are deprived of their right to know their biological mothers.

Artificial insemination also fosters irresponsible parenting. It is not uncommon for sperm donors, who boastfully refer to themselves as “donorsexuals,” to father tens of children, without, however, discharging, with respect to any of them, any parental obligations as fathers. Undoubtedly, this undermines family life. Children grow up not only not knowing their fathers, but also being raised by single mothers or two cohabiting women without experiencing the beneficial presence of a father figure in their lives. This also amounts to sex discrimination against those women who raise children alone and are solely responsible for the children’s upbringing.

Artificial insemination likewise fosters a new generation of males whom society and courts have completely relieved of parenting obligations and the responsibilities of fatherhood. Procreation through sperm donation rewards them with hefty fees in exchange for the sperm they sell. A mindset of irresponsibility is thus being instilled in young men while women are forced to singularly bear the brunt of parental responsibilities. This cannot be good for society and especially for children. Periodically, the media reports scandalous cases of males who travel internationally and sell sperm to couples or sperm banks for large fees. Some of them boast having fathered as many as 150 children. (“One Sperm Donor, 150 Offspring,” New York Times, September 5, 2011) (http://www.nytimes.com/2011/09/06/health/06donor.html?_r=3&hp=&pagewanted=print) Faced with a growing “baby-making” business, society should focus on responsible fatherhood instead.

The multifaceted impact of reproductive technology and changing lifestyles on children has been the object of an impressive and thorough fresh Report issued in October 2011 by the prestigious Institute for American Values (New York) and titled **One Parent or Five? A Global Look at Today’s New International Families** (<http://www.familyscholars.org/assets/One-Parent-or-Five.pdf>) It examines the rise of what sociologists and family scholars have labeled “the new international family.” The “new international family” finds itself caught in the crosshairs of modern reproductive technologies, nanotechnology, lifestyles which parallel the natural family, medical advances, and scientific research vying for preeminence in the effort to push humankind toward new frontiers, the so-called “brave new world.” The report identifies no less than five (5) “types” of families: (1) the **one-parent family** (single-mother by choice; single father by choice; posthumous conception; and cloning); (2) the **two-parent family** (married mother and father; same sex marriage; co-parenting; pre-conception arrangements; and same-sex procreation); (3) the **three-parent family** (polyamory, polygamy, and three-person reproduction); and (4) the **four-and five-parent family** (children conceived with four or five legal, social, biological, and/or gestational parents).

The impact on children of the varying “family” themes is devastating. The Report’s author, internationally renowned scholar Elizabeth Marquardt, concluded her report with justifiable

skepticism about the contemporary trends: “Some of these family forms are too recent, too rare, or until recently too secret to have been studied very much. But some types of families we know a great deal about. At the same time, intriguing new research on the practice of internationally conceived children who will not know or be known by their biological fathers, through anonymous sperm donation – suggests that **intention alone hardly guarantees good child outcomes**. ... most persons conceived through anonymous sperm donation believe it is wrong that they were intentionally denied knowledge of their father’s identity. For them, this intentional denial is precisely the problem.”

In 2010 the Institute for American Values also published a Report on the social handicaps developed by children conceived through sperm donation. Appropriately called “**My Daddy’s Name Is Donor** – A New Study of Young Adults Conceived Through Sperm Donation.” (http://www.family scholars.org/assets/Donor_FINAL.pdf), the Report was compiled by a group of prestigious scholars and experts who issued fifteen (15) major conclusions about the impact on children of not knowing their biological fathers. We mention those that are more germane to our discussion.

In contrast to children born in natural, biological families, children born as a result of sperm donation: (1) “experience profound struggles with their origins and identities;” (2) their family relations as “more often characterized by confusion, tension, and loss;” (3) are often unable to establish bonding ties to members of their own families; (4) are “more likely to have experienced divorce or multiple family transitions in their families of origin; (5) are more prone to develop “negative outcomes, such as delinquency, substance abuse, and depression;” (6) share similar developmental problems as those encountered by children raised in same-sex environments where the binary-parent model is absent; and (7) “are far more likely than others to become sperm or egg donors or surrogate themselves.”

Chaos or confusion is not good for children or society. Ill defined principles of conduct, the separation of biology from reproduction, no commonly accepted ethical standards, all add to the confusion surrounding the best interests of the child. One conclusion, however, is certain: reproductive technology has by and large undermined the best interests of the child. The child has become a commodity where one parent or five or more compete to hold on to the child. More compete to be declared parents of the same child. And the list grows. In all of this the child loses out to the vain ambitions of adults who claim to have had a role in the conception and rearing of the child. Where a child loses, that cannot be said to be in her best interest. With so many “parents” the child becomes a disoriented nomad, migrating from household to household, from “parent” to “parent,” biological or legal, from country to country, and from a natural family environment to a family setting consisting of same-sex partners. In this paradigm, the child is the victim and the adults the ones who victimize.

V.

Psychological Parenthood

The Draft further extends legitimacy to the novel concept of “social or psychological parenthood.” We oppose it. Psychological parenting ushers in a new parenting paradigm which is not good for children or parents alike. It, too, vitiates the best interests of the child by disrupting his right to a stable, continuous family environment. More egregiously, it severs the biological relationship between children and parents, violating the right of the child, affirmed in the Convention on the Rights of the Child, to know and be raised by her parents. This notion is too radical, too recent, and, therefore, too risky to be included in a potential European-wide legal instrument.

The Draft’s Explanatory Memorandum (Paragraph 18) explains that the Draft’s “provisions on legal parentage ... are intended to provide a balance between ‘the biological truth’ reflecting biological and genetic parentage, and ‘social and psychological parenthood’ reflecting the fact with whom the child is living and who is or would be taking care of him or her.” A generation ago, the notion of “psychological parenting” was unheard of, but now an attempt is made to “balance it out” with “biological parenting,” or, in other words, to render them equivalent and equal. This proposition is disconcerting.

The Alliance believes that the Draft should recite what has always been accepted, historically and universally: a presumption of parentage in favor of biological parents as fit parents to raise their own children. Biological parents should be extended the fundamental right to make decisions regarding the care, custody and nurturing of their children, one that could only be displaced by the legitimate state interest to avoid harm to the child. In an action between a fit biological parent and a third party, a presumption of parental autonomy should be acknowledged in favor of the biological parent, and the third party should bear the burden of establishing that custody or visitation of nonbiological children are necessary to avoid harm to them. We believe it is improper to place the right of biological parents to their own children on an equal footing with that of third parties.

Unfortunately, the Draft does just that. Its aim to “balance” biological parenting with psychological parenting lowers the bar for the attainment of the legal status of “parent” in favor of non-biological parents. The long history of family law reflects that circumstances in which biological parents have been found “unfit” have been exceptional and rare. Allowing third parties legal rights to a child can be confusing and damaging to the child. Psychological parenting is particularly damaging to parental rights because it displaces parental rights on grounds other than not being fit to raise the child. It proliferates the rationales for displacing the parental rights of biological or adoptive parents and in many cases would make parenting a matter of wealth and economics, of influence and pressure. This is wrong.

We are mindful, of course, that mutual bonds of affection can form between a child and a surrogate, that such bonds do resemble those of the natural family, and that they can enrich the lives of both the child and the surrogate. However, a psychological parent, once declared as such, would have a permanent legal relationship with the child in displacement of the parental rights of the biological parent. This, of course, subtracts from the legal parent’s right to direct the upbringing of the child. That is why we view it inappropriate for a legislative body or a tribunal

to extend “parent” status to a nonbiological child in cases other than where the biological parent is unfit. Giving legal rights to third persons at the expense of the child’s biological parents offends public policy. Legislatures and policy makers cannot improve on the reality that the best person to bring up a child is the natural parent, and the only deviation from this norm should be where the natural parents are unfit parents. Derogations from this time-honored principle should not be lightly acknowledged.

VI.

Parental Rights

We strongly believe in parental rights. The Alliance’s **Timisoara Declaration** affirms that “The rights of parents are fundamental, foremost among them the parents’ right to carry out the civic, moral and religious education of their children as they see fit.”

Unfortunately for the hundreds of millions of the Council of Europe’s parents, the Draft is silent on parental **rights** and speaks loudly on parental **responsibilities**. It allocates to the state a fundamental role in determining the responsibilities of parents. This is fundamentally unfair. We believe the state has a limited role in determining parental responsibilities and to the extent only necessary to prevent harm to the child. In recent decades the state has intensified its intrusion into family life and has usurped the right of parents to, within reason, rear their children as they see fit. The Draft, speaking on behalf of states, defines parental obligations and restricts parental rights. Children already benefit from an international convention which outlines their rights, namely the Convention on the Rights of the Child, but parents do not benefit from a similar and much needed international instrument. Consequently, we believe the Draft should address and cure this anomaly. It is fundamentally unfair for states to define parental obligations and then use their coercive power to compel parents to carry them out. Society is a byproduct of human relationships and interactions not a byproduct of a state created blueprint. Parents, not states, know best what is in their children’s best interest.

Article 20 of the Draft references “rights” but, contradictorily, only in the context of the right to exercise “parental responsibilities” but not parental rights. Likewise, Article 29(1) incoherently repeats that parents have “an equal right and duty to exercise [parental] responsibilities.” But neither Article enumerates specific “rights” which Europe’s parents are acknowledged to have. We believe, for instance, that Europe’s parents should have the right to educate their children as they see fit and to provide to them the moral and religious upbringing they deem appropriate for them. This right includes the right to homeschool children as well as the right to private education. These notions, dear to many Europeans, are not mentioned in the Draft. Romania has a growing homeschooling movement and its right to homeschool should be acknowledged. In the absence of choice and the monopoly which the state has on education, children’s education could more appropriately be characterized as indoctrination not education or learning. Here, we echo Article 26(3) of the Universal Declaration of Human Rights which grants to parents, not states, autonomy in the education of their children. (“Parents have a prior right to choose the kind of

education that shall be given to their children.”) Thus, the Declaration allocates to states an assistive and enabling, not leading, role in the education of our children.

Unfortunately, we witness with concern opposite trends in some countries of the Council of Europe. Sweden has adopted a new education code last year which specifically disallows homeschooling except in the “most compelling circumstances.” Swedish authorities have arrested parents who sought to homeschool their children. Germany has done the same, resulting, rather awkwardly, in arrested German homeschoolers being granted asylum in the United States. Similarly, in recent years the Spanish government has used its monopoly on education to indoctrinate, not educate, children, compelling hundreds of Spanish parents to sue the Spanish Government in the European Court of Human Rights.

Inevitably, state imposed education will often conflict with the moral and religious education parents choose to provide to their children. In this regard, the Draft is ineptly constructed to address such rival moral visions. Parents are responsible for bringing new people in the world and for ensuring their intellectual and moral growth. The state is intrinsically unable to do this. We propose, therefore, that allocating rights to children only but not to their parents, or rights to children but only responsibilities to their parents, is an anachronism which undermines the best interests of the child. As a general rule, we urge, as intimated before, that parental rights with respect to their children should override state authority except in the most exceptional circumstances.

VII.

CONCLUSION

In the Alliance’s view, the Council of Europe has ceased being a family-friendly environment. We believe this needs to change. The natural family has been pushed to the brink of collapse. These are times when the Council of Europe should devise policies which reinforce the natural family, marriage and the rights of parents to parent their children. Parents should be allowed freedom to parent and states should not interfere with it. The younger generation should be educated and encouraged to marry and maintain stable and faithful marital relationships, not to embrace alternate lifestyles or pursue alternate living relationships. We view the contrary notions espoused in the Draft as destructive of family, marriage and the parent-child relationship. As part of our call on the Council of Europe to focus on devising family and marriage friendly policies, we think it should take a realistic and critical view of the impact of modern reproductive technologies on the human family in ways it has not done before. Detached from morals and ethics, such technologies spell trouble for the human family. Until now left largely unregulated, we believe it is time for Europe to focus on a common approach to regulate reproductive technologies. Artificial insemination, surrogacy, sperm donation and designer children, combined with changing lifestyles can only contribute to the further erosion of the welfare of children. The adverse consequences will only worsen. The power to avert the consequences resides with us as citizens of the Council of Europe. We close hoping that our voice will be heard and our concerns addressed.

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Respectfully submitted,

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