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ATTORNEYS AT LAW

Emergency Prompts Marriage Lawsuit

BY DEB PRICE

TERRIFIED, DAWN BARBOUROSKE followed her partner's wishes in the delivery room and rushed with their premature baby to the neonatal intensive care ward.

At just 4 pounds, McKinley needed a ventilator to help her tiny lungs work. But her birth mom, Jen Barbou Roske, was also dealing with a serious health threat, a clotting disorder that could cause a stroke. Over the next few days, Dawn darted back and forth from her partner to their child, trying to keep the level head that her family desperately needed.

"You feel very vulnerable," says Dawn, who feared that if Jen died, McKinley would be parentless in the eyes of the law. "You are at the mercy and the kindness of strangers."

But at the very time Dawn needed to be focused solely on caring for her family, she was distracted by worries that she might be stopped because she had no legal connection to Jen or McKinley. "You feel very vulnerable," says Dawn, who feared that if Jen died, McKinley would be parentless in the eyes of the law. "You are at the mercy and the kindness of strangers."

Fortunately, the family survived intact, though without the legal safety net of marriage designed for just such crises. The three moved to Iowa, where Jen went on to become a neonatal nurse. And McKinley, now 7, has an adopted sister, Breeanna, age 3. While Dawn and Jen were able to go to court to become both kids' legal parents, the women still have no legal link to one another. Determined to

change that, they're among 12 couples suing to marry in Iowa.

Their lawsuit is part of a cultural upheaval dividing of states by their degree of gay family friendliness.

"The choices for couples are going to broaden," predicts attorney David Buckel of Lambda Legal Defense. "And we're going to see huge shifts begin, as gay couples choose where they live according to how secure they can be, particularly those with children or planning to have them."

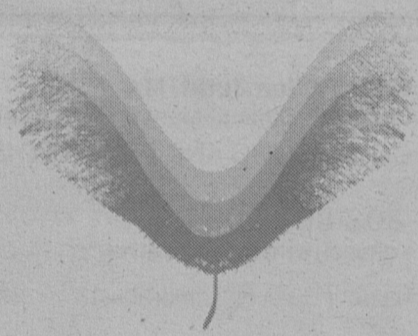
Right now, only Massachusetts marries its gay couples — 7,341 couples have already wed there. The next-most gay family-friendly states are Vermont, Connecticut and California, with state-level protections similar to marriage. Six more states — Delaware, Illinois, Indiana, New Jersey, New York and Pennsylvania — also offer gay residents dual parenting rights statewide. The Iowa lawsuit joins six promising others — in Washington state, New Jersey and New York, where final marriage decisions are likely in 2006; and in California, Maryland and Connecticut, where final rulings are expected within two years.

Also expected in 2006 is a ruling in Massachusetts on whether a racist 1913 law can continue to be used to bar out-of-state gay couples from marrying. And courts will decide whether amendments passed in Michigan and Utah to limit marriage to mixed-gender couples also ban public entities from offering partner benefits.

The heartland couples hoping to add Iowa to the list of gay family-friendly states include senior citizens, current and prospective parents, and churchgoers. Their inability to marry places them in precarious — and sometimes humiliating — situations.

For example, when his partner's mom died in the middle of the night, Jason Morgan left a message on his new employer's answering machine explaining why he'd miss work the next day. "I had to go to the funeral not knowing if when I came back I would have a job," recalls Jason. He kept his job, but, unlike married workers who get leave for an in-law's death, his absence was recorded as unexcused.

As the marriage wars continue, gay family-friendly protections are on the rise: They're a good gauge of how seriously a state takes its responsibility to safeguard all its people. ▼



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