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Monday, September 13, 2004

Marital bias hurts spouses and children

By Deb Price / The Detroit News



Wearily flying back from Amsterdam via Canada this June, Connecticut dads Jeffrey Busch and Stephen Davis got a quick lesson on why marriage matters.

A couple for 14 years, they were traveling with their 22-month-old son, Elijah, conceived with the help of a surrogate mother. Until Davis' legal parenthood becomes final through what's called second-parent adoption, Busch is listed as Elijah's sole parent on the toddler's passport.

"Who are you?," a Canadian immigration official asked Davis brusquely.

After the couple explained that Davis is Elijah's second dad, the official responded: "How do I know this isn't a kidnapping?"

Davis was mortified.

"The implication was that I was a baby stealer or worse," recalls Davis, who had taken his family to a conference he was attending as director of Columbia University's digital library program.

The border guard eventually let them pass — with a lecture — but not until after trying to confiscate the baby's milk.

"She'd never have treated us like that if we were married. It really scared us," says Busch, an administrative law judge, noting that marriage would have made Davis their son's legal second parent from birth, protecting the family in countless legal and financial ways.

The border incident underscored to the couple how their efforts to cobble together safeguards through legal documents will always fall short of the protections — fine-tuned over the centuries to meet the evolving needs of families — that accompany civil marriage.

Determined to protect Elijah, the dads recently joined six other gay couples in suing Connecticut for the right to marry. Most have children. As their wholesome yet frustrating stories bear witness, couples denied access to marriage are left outrageously vulnerable no matter how much they contribute to society or have merged their lives. They cannot count on being treated as a family by, say, hospitals or lenders. And they get socked with special taxes when they take ordinary steps to protect one another by sharing health insurance or adding a second name to a house deed.

Janet Peck and Carol Conklin, a couple of 28 years in the lawsuit, were subjected to indignities when Peck had surgery. Despite a slew of legal papers, Conklin was barred from intensive care because she was not considered "immediate family."

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The Connecticut suit, one of a half-dozen promising cases around the country, comes as two lower courts in Washington state have ruled in favor of gay marriage and a Virginia ruling has highlighted the flimsiness of “marriage-lite” protections.

In an interstate custody battle, a Virginia judge ruled Aug. 24 that his state doesn’t recognize the Vermont civil union two women entered into before having a baby and splitting up. The mom who moved to Virginia with the child claims the other mom has no parental rights. Disagreeing, a Vermont judge — the first one involved in the case — ruled Sept. 2 the Virginia mom is in contempt of court and chastised her for forum shopping.

Meanwhile, a decision by Judge William Downing, who handed down the first of Washington state’s breakthrough rulings, ought to be required reading for fair-minded Americans. His Aug. 4 decision warns that moves to create second-rate alternatives to marriage are what could weaken the institution.

Calling the gay couples asking to marry “model citizens,” the judge declared, “There is not one among them that any of us should not be proud to call a friend or neighbor or to sit with at small desks on back-to-school night. There is no worthwhile institution that they would dishonor, much less destroy.”

Anyone who listens to the stories of couples locked out of marriage hears why that door must be opened everywhere: Good people and their children are being needlessly frightened and hurt.

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You can reach Deb Price at (202) 906-8205 or dprice@detnews.com.

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