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High court to decide if abuse law voided by marriage amendment

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The case of a 29-year-old Lebanon, Ohio, man accused of choking his girlfriend and throwing her to the floor is before the Ohio Supreme Court.

It is atop a stack of domestic-violence cases in limbo, waiting for the justices to decide whether the state's decades-old domestic-violence law conflicts with the new "preservation of marriage" amendment to the state Constitution.

The amendment, aimed at barring same-sex unions, has had unintended consequences -- some judges say it made the domestic-violence law unconstitutional.

Those judges have tossed out the charges and let accused offenders walk free, or they have reduced the charges. The country is watching the Ohio case.

Eleven states have similar marriage amendments. Six more have them on the November ballot. More are being considered.

Ohio's will be the first state supreme court to consider whether the wording of the amendment conflicts with the wording of the domestic-violence law.

The first sentence of the amendment is straightforward: "Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions."

It's the amendment's second sentence that has spurred debates in lower courts since voters approved it as Issue 1 in November 2004. It prohibits the state and communities from giving the legal rights of marriage to unmarried couples.

The domestic-violence law forbids harming or attempting to harm a family member, former spouse or "person living as a spouse."

Some judges have ruled that the phrase "living as a spouse" creates a legal status for unmarried couples, in violation of Issue 1. So they have dismissed charges or reduced them.

No one has tracked the number of cases that have been affected. But, either way, unmarried victims don't get the benefit of the domestic-violence law. It is designed to give them quick and easy access, without an attorney, to restraining orders that bar offenders from contacting them, buying a gun and using alcohol and drugs.

Among the 12 Ohio district courts of appeals, nine, including the one in Northeast Ohio, have decided that the marriage amendment and the domestic-violence law do not conflict. Two district courts, the 2nd in southwest Ohio and the 3rd in the center of the state, have ruled that the amendment does make the law unconstitutional.

The Supreme Court will have the final say after hearing arguments Dec. 12. The court has received more than 60 briefs filed by battered-women's groups from across the country and the American Civil Liberties Union. All favor domestic-violence laws that give equal protection to married and unmarried, heterosexual and homosexual victims.

Attorney Alexandria Ruden of the Legal Aid Society of Cleveland is one of Ohio's leading advocates for victims of domestic violence. She helped research and write the current law.

Ruden says the justices could decide that the law and the amendment as currently worded don't conflict, because the use of the word "spouse" does not impart a legal status like that of marriage.

Until this battle of semantics is resolved, Ruden says, "let's hope an abuser doesn't kill his victim after a domestic-violence charge is dismissed."

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