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Amendment foes point to Ohio rulings

Critics say a gay marriage ban could subvert domestic violence laws. Supporters call it a scare tactic.

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RICHMOND -- In November 2004, voters in Ohio approved a constitutional ban on same-sex marriage similar to one now on the ballot in Virginia.

As a result, critics say, domestic violence laws in that state have been thrown into a treacherous legal limbo that has prevented some unmarried abused women from obtaining protective court orders. What's worse, the issue will not be settled until Ohio's top court hears arguments in December, more than two years after the vote.

Virginia could follow Ohio's bad example, according to attorneys and domestic violence activists who called a press conference Wednesday.

Forget for a moment how the issue will be resolved, said Stacy Ruble, a coordinator with the Virginia Sexual and Domestic Violence Action Alliance. The uncertainty itself is the problem.

"It really doesn't matter who's right and who's wrong here," she said. "What our concern is, during those two or three years in limbo, this can affect twenty, forty, sixty thousand victims in the meantime."

Supporters of the constitutional ban dismissed the concerns as fear mongering. They point out that most appeals courts in Ohio ruled that the constitutional amendment does not undermine domestic violence laws, and that Virginia's laws are different from Ohio's.

"I have no concern that a Virginia court is going to say that domestic violence laws don't apply ... if this amendment is passed," said Lt. Gov. Bill Bolling. "That's just the most recent red herring that the other side is parading down the street."

In a matter of weeks after the Ohio amendment passed, defense attorneys raised questions regarding domestic violence laws.

That's because the state constitution, as amended, prevented state or local governments from granting legal status to relationships that resemble marriage, and Ohio domestic violence laws protect people in spouse-like relationships.



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In the past two years, more than 60 men accused of abusing their girlfriends argued that the domestic violence law conflicts with the constitution, according to a recent story in the Dayton Daily News.

Two appeals courts in Ohio agreed with that argument. Nine did not, and ruled that the amendment does not stand in the way of prosecution. Now the Ohio Supreme Court will settle the matter. For the time being, a woman's success in getting a protective order depends on the region of the state.

In the nine courts that upheld domestic violence laws, it's "business as usual," said Alexandria Ruden, an attorney for the Legal Aid Society of Cleveland. In the two other courts, which cover 10 to 12 counties, abused women who are unmarried must file assault charges or pursue some other legal option.

Attorney John Russell is a former assistant U.S. attorney and senior assistant attorney general of Virginia. He chairs the criminal law section of the Virginia Bar Association. As in Ohio, where a public defender first raised a question, the same will happen in Virginia should the amendment pass, he said.

"As a defense attorney, I would absolutely have an obligation to raise a constitutional challenge," he said.

Virginia Attorney General Bob McDonnell said the threat of court challenges is always present, no matter what law is passed.

"As long as there are creative lawyers, there will be the potential for creative court challenges," he said. "That would be a chilling effect on the General Assembly in enacting any statute."

He predicted there would be no flood of lawsuits in Virginia.

Any Virginia judge considering a court challenge would be armed with McDonnell's own opinion, which says the amendment does not affect the civil rights of ordinary Virginians. It would also have the clear legislative intent of the General Assembly, which is simply to ban same-sex marriage. And it would be able to examine court decisions in other states.

Further, Virginia has a specific legal clause different from Ohio that sets out six definitions of a family or household member who qualifies for protection under domestic violence laws, McDonnell said.

One definition protects unmarried individuals who live together, whether they are of the same sex or opposite sex.

McDonnell's argument is "somewhat faulty," said Ruden.

She said Ohio law also describes the same types of classes of victims. But one Ohio judge said the victim's status was not based on the living circumstances, but on the relationship.

"Once you base it on the relationship, then you've elevated it to a marriage-type relationship," she said.

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