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## Ohio Hints at Legal Tangle That Could Befall Va.

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Last year, an Ohio man accused of abusing his girlfriend tried a unique defense: He argued that the domestic violence law under which he was charged conflicted with a new constitutional amendment banning same-sex marriage and other relationships that sought to "approximate" marriage.

Michael Carswell's case wound its way through the legal system and is now before the Ohio Supreme Court. It has touched off similar challenges to domestic violence statutes in the state. Two appellate courts found that the constitutional amendment exempts unmarried couples from prosecution under domestic violence laws, but eight courts have ruled otherwise.

Yesterday, people who work with victims of domestic violence in Virginia warned that Carswell's case -- and dozens of similar challenges that followed in Ohio -- could put Virginia in a similar legal limbo if voters pass a similarly worded constitutional amendment Nov. 7.

The ballot question before Virginia voters bans same-sex marriages and civil unions but also would prohibit the state from recognizing relationships intended to "approximate the design, qualities, significance or effects of marriage." That language is nearly identical to the text of the Ohio constitutional amendment, which was passed in November 2004. Opponents in Virginia have said that the state is sure to see similar challenges, which could prevent victims from receiving protection while such challenges are litigated.

"We do not believe that there is a reason to take any risk that unmarried domestic violence victims will be denied these essential protections," Stacy Ruble, a coordinator for the Virginia Sexual and Domestic Violence Action Alliance, said at a news conference in Richmond. "My concern is the victims that are going to get caught during any court challenges, and frankly I'm not willing to take that risk."

The news conference sponsored by amendment opponents represents the latest back-and-forth in a war of legal interpretations of the ballot question.

Supporters of the amendment have rejected this argument. Last month, Attorney General Robert F. McDonnell (R) issued a legal opinion saying that state law specifically prohibits domestic abuse against unmarried members of the same household.

"Virginia's existing law does not confer a legal right unique to marriage . . . that might be invalidated by the marriage amendment," he wrote at the time.

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But opponents at the news conference said that the Ohio case suggests that lawyers will nonetheless use the amendment to help shield clients from a tougher domestic violence charge and potentially tie up the courts. And they point out that supporters of the amendment in Ohio are now supporting Carswell's argument in court, suggesting they knew all along that this would be the effect.

"It's going to be a problem [for Virginia] because someone is going to raise it and someone will look at what Ohio has done and defense lawyers across the country will have no choice but to raise that challenge," said Alexandria Ruden, a staff attorney for the Legal Aid Society of Cleveland. She said such laws have been suspended in 10 counties in Ohio as the legal wrangling continues.

In an interview, Virginia Deputy Attorney General David Johnson said that defense lawyers use all kinds of maneuvers for their clients. He pointed out that a majority of judges in Ohio have found that the domestic violence laws are sound.

"I don't know how you could write a criminal statute at all if you assume that just because defendants are going to challenge any part of the statute, we can't have it," Johnson said. "We have confidence that any judge looking at the law as written can dispatch that defense in about five minutes."

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