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Domestic violence an issue?

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RICHMOND--Opponents of the proposed constitutional amendment to ban same-sex marriage have repeatedly cited Ohio as a reason why Virginia should not approve the amendment.

Ohio passed a similar amendment in 2004, with similar wording regarding the amendment's ban on any legal status approaching the "rights and benefits of marriage."

The result was that a number of domestic violence abusers who weren't married to their victims challenged the charges against them, saying the amendment meant they couldn't be charged with domestic violence.

Their argument was that the amendment conflicted with the state's domestic violence laws, because the domestic violence statute related to those "living as a spouse."

Domestic violence laws typically provide for a greater punishment than just regular assault.

While several judges in Ohio have rejected the argument made by the abusers, two upheld it, and the case will be before the Ohio Supreme Court in December.

Opponents of the Virginia amendment warn that the same thing could happen here if Virginia's amendment is passed.

The Commonwealth Coalition--the group leading the campaign against the amendment--yesterday held a press conference with domestic violence groups and a lawyer from Ohio to talk about potential consequences for unmarried domestic violence victims.

Alexandria Ruden, a lawyer from the Legal Aid Society in Cleveland, said unmarried domestic violence victims there are in "limbo" while the legal challenges make their way through the courts.

"Police, prosecutors and victims have been in a state of perpetual confusion since the amendment passed," Ruden said. "The litigation has snowballed from one case to 45 to 60 cases and, until the Supreme Court of Ohio resolves the issue, victims in 10 to 12 counties are without coverage because of court decisions holding the law unconstitutional."

Ruden said Ohio prosecutors are refusing to file charges on behalf of unmarried domestic violence victims until the issue is resolved.

"Heterosexual victims of domestic violence are not being accorded protection in Ohio's courts," she said.

Virginia attorney John Russell, a former senior assistant attorney general, said lawyers would practically have to challenge Virginia's domestic violence law if the amendment passes.

"Any criminal lawyer would have an ethical obligation to raise a constitutional challenge if an individual is not married," Russell said. "Obviously the Ohio experience would be educational for us."

But proponents of Virginia's amendment say bringing up the Ohio case is just fear-mongering.

Attorney General Bob McDonnell and Lt. Gov. Bill Bolling yesterday held a press conference to talk about their support of the amendment. And McDonnell said he firmly believes Virginia's domestic violence laws would not be affected by the amendment.

"The ordinary civil rights of unmarried Virginians will not be affected by this amendment," McDonnell said. "The rights that we are discussing here are not rights that are unique to marriage."

McDonnell added that Virginia's domestic violence law is, he thinks, stronger than Ohio's because there is a provision specifically protecting unmarried partners.

He acknowledged that there may be court challenges, but said it's a "red herring" to oppose a law out of fear of it being challenged in court.

McDonnell also said any judge who heard such a case would be armed with his official opinion, issued last month, that the marriage amendment does not affect other contracts between unmarried people, as well as written statements from the General Assembly that the legislative intent of the amendment was not to affect anything other than same-sex marriage.

A Mason Dixon poll this week showed that the majority of Virginians still support the amendment, although that number is smaller than it was during the last poll. Fifty-two percent of those polled supported the amendment, down from 54 percent last month, and 42 percent opposed it, up from 40 percent last month.

The amendment is on the Nov. 7 ballot.

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