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Court upholds domestic-violence law

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COLUMBUS — A domestic-violence law that protects unmarried victims does not violate the strict definition of marriage in the state Constitution, the Ohio Supreme Court ruled on Wednesday.

In a case closely watched across the country, the justices

said in a 6-1 decision that the domestic-violence law, which applies to victims including a "person living as a spouse," does not clash with Ohio's 3-year-old constitutional amendment that prohibits the state from legally recognizing unmarried relationships.

Advocates for abuse victims and same-sex couples hailed the decision, while supporters of

the voter-approved marriage amendment, who worried the court could weaken it, said they could live with the ruling.

"The term 'person living as a spouse' merely identifies a particular class of persons for the purposes of the domestic violence statutes," wrote Chief Justice Thomas Moyer for the court's majority.

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"It does not create or recognize a legal relationship that approximates the designs, qualities or significance of marriage," Moyer wrote, borrowing a line from the two-sentence amendment that recognizes marriage as being between a man and a woman.

But in a strong dissent, Justice Judith Ann Lanzinger said "living as a spouse" does create a legal marital status and violates the marriage amendment. She believes the majority misinterpreted the amendment to save the statute.

"I believe this language implicitly repeals the domestic violence statute insofar as it applies to persons living as spouses," Lanzinger wrote.

The ruling could resonate around the country. While about half the states have an official definition for marriage, a few others considering such action were waiting to see if Ohio's amendment nullified its domestic-violence statute.

The court's decision also will ring loudly around Ohio, where dozens of domestic-violence cases have been hung up over the issue raised in this case. Two state appeals courts had ruled that the law is unconstitutional because of the marriage amendment.

In the case ruled on Tuesday, state v. Carswell, a Warren County man, Michael Carswell, fought a domestic-violence charge for choking his live-in girlfriend in 2005. Carswell claimed that he could not be

charged with a crime that — because of the amendment — should apply only to married couples.

A lower court agreed with Carswell. But an appeals court, differing from other appeals courts that had taken up the issue, reversed the lower court.

The high court's decision could have dire consequences for Carswell, who has two previous domestic-violence convictions for attacking two other live-in girlfriends, said Warren County Prosecutor Rachel Hutzel, who argued the state's case. Carswell is also wanted for failure to pay child support, she said.

"In the absence of this domestic-violence statute, he would have been facing six months, a simple assault charge, instead of five years" for being a repeat offender, Hutzel said.

She said she supports the marriage amendment but not if it were to weaken the domestic-violence law, considering that most of the abuse victims she sees are not married.

"All those people who we worried could not be protected under our domestic-violence statute will continue to enjoy the same protections as everyone else," said Alexandria Ruden, a domes-

tic-violence attorney for the Legal Aid Society of Cleveland.

Ohio State University law professor Marc Spindelman said the ruling has another ramification. It leaves open the possibility for the legislature to pass bills benefiting same-sex and unmarried couples, such as domestic partner benefit plans, without being barred by the marriage amendment.

Citizens for Community Values, which led the campaign for the amendment — also billed as an anti-gay marriage measure — backed Carswell with two court briefs claiming the law does indeed violate the constitution.

David Miller, vice president of the group, said the opinion "did not open the door for circumvention of the constitutional amendment. It was a loophole."

Miller said his organization recognizes the significance of domestic abuse but was trying to guard against giving unmarried couples rights intended only for married couples.

Carswell's lawyer, Thomas Eagle, said he is considering asking the court to reconsider its decision.

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