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Same-sex marriage statute faces test

By Julie Carr Smyth
Associated Press

COLUMBUS - Ohio's gay marriage ban does not prevent domestic violence charges against unmarried people, a lawyer for the state told the Ohio Supreme Court on Tuesday.

In a case expected to set a precedent affecting a dozen similarly worded bans around the country, Warren County Prosecutor Rachel Hutzel argued that Ohio's 2004 constitutional amendment was clearly intended to outlaw same-sex marriages and civil unions, not to render obsolete portions of the state's domestic violence law as the case seeks to do.

The case is among the first before a state Supreme Court to interpret any of the constitutional gay-marriage bans passed in the wake of the controversial Massachusetts decision allowing same-sex marriages, legal observers said.

Hutzel said public statements, campaign literature and press accounts at the time of the amendment made the intent of its backers and supporters clear.

She was rebuffed by the justices on that point.

"Counsel, we can't look at the intent of the amendment," Justice Judith Lanzinger said. "We have to look at the language itself, because we don't know what all the voters may have intended when they voted to pass the amendment."

Chief Justice Thomas Moyer agreed. "Our responsibility here is to look at the words that were adopted by voters, and do those words conflict or not conflict with existing statute."

Attorney Thomas Eagle told justices the domestic violence statute clearly conflicts with the wording of the marriage amendment, which states that unmarried people may not be given the legal status of married people in the state.

"You cannot get a conviction in Ohio for domestic violence for unmarried people unless you prove beyond a reasonable doubt pretty much that these people acted like they were married," said Eagle, representing Michael Carswell of Lebanon.

Carswell was charged with the assault of his live-in girlfriend because he was "living as a spouse" with her under the domestic violence law. A Warren County Common Pleas judge dismissed a felony domestic violence charge against Carswell after he argued the section of the law under which he was charged conflicted with the new marriage amendment. The charge later was reinstated by an appeals court, and Carswell took the case to the Supreme Court.

"The only argument is very narrow: the domestic violence statute recognizes the legal status of unmarried people whose relationship is 'like a spouse.' So there you get the legal status," Eagle said.

Hutzel said that if justices want to stick exclusively to the language of the amendment, they should remember that it said nothing about repealing Ohio domestic violence laws - which is the potential outcome of the case.

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Alexandria Ruden, an attorney representing the Ohio Domestic Violence Network, said if Carswell's arguments prevail, it could jeopardize sections of the law that allow domestic violence victims to obtain protective orders and that keep batterers in prison while awaiting trial, among others.

She said her research found more than 1,000 aspects of federal domestic violence law effective in Ohio would also be affected.

She said domestic violence statutes - and innumerable other state laws with reference to marital status - would be vulnerable to litigation depending on the outcome of the Ohio case.

"This is the tip of the iceberg if the justices rule that the amendment will invalidate a portion of our domestic violence statute," she said. "We are one case and one purpose, but this won't stop. We'll open up the floodgates to litigation like we have not seen."

Ohio State University law professor Marc Spindelman said, as it judges the case, the high court also must grapple with the moral implications of a ruling.

"There's something even broader at stake here, which is how much is it possible for the forces of traditional morality in the state of Ohio to commandeer the Constitution of the state through a voter initiative?" Spindelman said.

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