

## **OHIO COURT DECISIONS ON THE EFFECT OF STATE MARRIAGE AMENDMENTS ON DOMESTIC VIOLENCE LAWS**

Cases marked with an asterisk held that the challenged law conflicted with the marriage amendment.

### OHIO APPELLATE COURTS

#### STATE V. CARSWELL

2005-Ohio-6547

Court of Appeals Twelfth Appellate District of Ohio

December 12, 2005

The trial court held that the state domestic violence statute was unconstitutional because it conflicted with Ohio's marriage amendment by creating a marriage-like status for the unmarried. The court of appeal reversed, holding that the amendment did not expressly overrule the domestic violence statute. It also held that it was not overruled by implication since the statute does not create a legal status for unmarried individuals. The statute merely sets forth potential victims, as opposed to creating a status. Even if it had created a status, though, the court said that it clearly does not intend to create a marriage equivalent which is what would be required to conflict with the amendment. The court concluded that the statute's intent is merely to protect all household members from domestic violence, and is therefore valid under the new amendment.

#### STATE V. NIXON

2006-Ohio-72

Court of Appeals, Ninth Appellate District of Ohio

January 11, 2006

Defendant was charged with domestic violence for an incident involving his live-in girlfriend. He argued that the statute he allegedly violated was unconstitutional under the state marriage amendment. The court disagreed, holding that the use of the phrase "person living as a spouse" in the statute is a description rather than a legal status. The court also held that the amendment's purpose was not to alter the domestic violence law.

#### STATE V. BURK

2005-Ohio-6727

Court of Appeals, Eighth Appellate District of Ohio

December 20, 2005

Defendant motioned to dismiss domestic violence indictment stemming from assault on partner. He claimed that the domestic violence statute's application to cohabiting couples violated Ohio's newly enacted marriage amendment that prohibits the creation or recognition of "a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage." The court held that the legislature did not intend for the domestic violence statute to confer a legal status. The court noted that the domestic violence statute is premised on the determination of cohabitation rather than on a legal status like marriage.

Thus, there is no conflict between the statute and the marriage amendment.

STATE V. REXROAD

2005-Ohio-6790

Court of Appeals, Seventh Appellate District of Ohio

December 13, 2005

The court here was faced with a facial challenge to the domestic violence statute based on the Ohio marriage amendment. The court held that the statute was not facially unconstitutional even given the newly enacted marriage amendment.

STATE V. NEWELL

2005-Ohio-2848

Court of Appeals, Fifth Appellate District of Ohio

May 31, 2005

In this appeal of a domestic violence conviction, the court held that the state marriage amendment was enacted to preclude same-sex marriage and has no application to criminal statutes in general and the domestic violence statute in particular.

\*OHIO V. LOGSDON

2006-Ohio-2938

Ohio Court of Appeals, Third Appellate District

June 12, 2006

A man charged with domestic violence on cohabiting partner alleged the domestic violence statute conflicted with the state marriage amendment. The court held that the “use of the word ‘spouse’ in [the statute] recognizes a legal status for relationships of unmarried individuals that intends to approximate the significance or effect of marriage. If the General Assembly did not want to approximate the significance or effect of marriage, it could have used a word other than ‘spouse.’” The court noted that its decision conflicts with opinions in six other districts and so certified the question to the Ohio supreme court.

\*STATE V. WARD

2006-Ohio-1407

Court of Appeals, Second Appellate District of Ohio

March 24, 2006

The court rejected the ACLU argument that the amendment must be construed not to conflict with a statute. In determining the meaning of the marriage amendment, the court identified the “general principles evident in the Defense of Marriage amendment” as “a legal status of a de facto marital relationship shall neither be created nor recognized in Ohio as having the same effect as the legal status of a de jure marital relationship.” The court believed that the statute’s use of “‘person living as a spouse,’ for purposes of the Domestic Violence statute, is the sort of quasi-marital relationship that the Defense of Marriage amendment was concerned with.” The court held that if the domestic violence statute covered all persons sharing a residence it would

not conflict would not conflict with the amendment. To the court, the current identification of “persons living as a spouse” in the statute is, however, inconsistent with the amendment. One judge dissented.

### OHIO TRIAL COURTS

#### OHIO V. RODGERS

Case No. 05CR-269

Court of Common Pleas, Franklin County (Tenth Appellate District)

March 29, 2005

Defendant charged with domestic violence against person he lived with challenged the constitutionality of the charging statute on the basis of an alleged conflict with the Ohio marriage amendment. The court held that “cohabitant” is not a legal status, it is a factual status. The court noted that the criminal code does not define marriage so it is unlikely to create a conflict with an amendment that does. The context of the Ohio marriage amendment, to the court, suggests that it was a response to cases redefining marriage so there was no conflict between the amendment and the domestic violence statute.

#### HUFFORD V. CLARK

Case No. DV0500206

Court of Common Pleas, Hamilton County (First Appellate District)

April 12, 2005

One partner in a cohabiting relationship sought a domestic violence protection order against the other who then motioned to dismiss arguing that the domestic violence statute conflicted with the state marriage amendment. The court summarily rejected the motion because it saw no reason to believe the state was trying to limit domestic violence protection to married couples. Thus, there was no conflict with the amendment.