

# Akron Beacon Journal<sup>(OH)</sup>

March 23, 2005

## Judge: Gay Marriage Ban Prohibits Some Domestic Violence Charges

By Connie Mabin, Associated Press

**CLEVELAND** – Domestic violence charges cannot be filed against unmarried people because of Ohio’s recently enacted definition of marriage, a judge ruled Wednesday.

Cuyahoga County Common Pleas Judge Stuart Friedman changed a felony domestic violence charge against Frederick Burk to a misdemeanor assault charge because of the state’s constitutional amendment banning gay marriage.

Judges and others across the country have been waiting for a ruling on how the gay marriage ban, among the nation’s broadest, would affect Ohio’s 25-year-old domestic violence law, which has not been limited to married people.

Friedman’s ruling is the first high-profile one in the state among several similar requests to overturn domestic violence charges. Prosecutors immediately appealed.

Friedman said the ruling applies specifically to this case, but advocates said they believe its impact will be felt statewide because appeals likely will reach the state Supreme Court.

Frederick, 42, of Cleveland, is accused of slapping and pushing his live-in girlfriend during a January argument over a pack of cigarettes.

Frederick’s public defender, David Magee, had asked the judge to throw out the domestic violence charge because of the new wording in Ohio’s constitution that prohibits any state or local law that would “create or recognize a legal status for relationships of unmarried individuals.”

Before the amendment, courts applied the domestic violence law by defining a family as including an unmarried couple living together as would a husband and wife, the judge said. Now courts can't do that because of the gay marriage amendment, Friedman wrote.

“By mandating that the State deny any legal recognition ‘that intends to approximate the design, significance or effect of marriage’ to relationships between unmarried individuals, the Ohio Constitution now appears to threaten the limited protections previously available to them by law,” he wrote.

John Martin, who supervises appeals in the public defender's office, said the office was pleased with the ruling but would not comment further because of the appeal.

Because Burk was accused as a second-time domestic violence offender, the charge was a felony which could result in an 18-month jail term and a \$5,000 fine. A misdemeanor assault carries a maximum sentence of six months and a \$1,000 fine.

“This case is a good example of why we need a domestic violence law. A misdemeanor assault doesn't carry with it a significant enough penalty for repeat domestic violence abusers,” said Matt Meyer, an assistant Cuyahoga County prosecutor.

The American Civil Liberties Union of Ohio and domestic violence advocates have been concerned about the conflict. The groups say a victim can get quick protective orders under domestic violence laws, but cannot if the charge is assault. In an interview with The Associated Press, Friedman would not comment on the broader effect his ruling may have on the marriage amendment.

“That's what everyone wants to know,” he said. “I'm not getting into that.” Some opponents of the amendment have said they hope the conflict over the domestic violence law would result in the gay marriage ban being repealed.

Phil Burress, president of Citizens for Community Values and chairman of the Ohio Campaign to Protect Marriage, said the problem isn't with the amendment, but with the criminal law that he

said should be changed to apply to anyone, regardless of marital status. His group was key in pushing the amendment, which won 62 percent of the vote in November.

“If anyone beats another person, whether it’s on the street or in the home, they need to be treated the same,” Burrell said.

Nancy Neylon, executive director of Ohio Domestic Violence Network, said each judge in the state could rule differently on the issue. Earlier this month, a Cleveland municipal judge ruled that the state’s domestic violence statute includes unmarried couples, she said.

Neylon expects a higher court will eventually have to resolve the conflicting rulings. “It’s going to continue to be problematic for victims of domestic violence who are unmarried partners to use the legal system effectively until this is resolved,” she said. Messages left with several gay rights groups and lawmakers were not immediately returned.

Opponents of the amendment have said they fear the measure would be used to try to curtail all sorts of rights for unmarried people, including property ownership, hospital visitation and domestic violence protection.

Seventeen states have constitutional language defining marriage as between a man and a woman. Ohio’s is regarded as the broadest marriage amendment of those passed by 11 states on Nov. 2 because it bans civil unions and legal status to all unmarried couples and gay marriages.

Copyright © 2005 Knight Ridder.