



Written by [Dave Bohon](#) on February 24, 2011

Obama Orders Government to Stop Defending Marriage Law

While President Obama may be “grappling” with his own views on homosexual marriage, on February 23 he ordered his Administration’s Justice Department to stop defending the constitutionality of the 1996 federal Defense of Marriage Act (DOMA), which essentially defines marriage as between a man and a woman, and protects states from being required to recognize same-sex partnerships as marriage.



Mr. Obama, who has enjoyed the strong support of the homosexual rights lobby, had postured himself as a defender of traditional marriage, insisting that he pained over the implications of legalized homosexual partnerships. And while he made a show of defending DOMA over the first two years of his Administration, he concluded that after “careful consideration” of the law he could “no longer assert its constitutionality in court.”

Mr. Obama’s decision was predicated upon two recent court cases challenging the constitutionality of DOMA, filed in the 2nd U.S. Circuit Court of Appeals, a judicial district without precedent on the issue. “The Administration will not defend the Defense of Marriage Act in the 2nd Circuit,” White House Press Secretary Jay Carney announced, adding that “the President directed the attorney general not to defend because of the decision that it is not constitutional....”

Carney stated that the President’s position on the law “has been consistent. He has long opposed it as unnecessary and unfair.”

In a statement announcing the decision Attorney General Eric Holder declared, “Much of the legal landscape has changed in the 15 years since Congress passed DOMA. The Supreme Court has ruled that laws criminalizing homosexual conduct are unconstitutional. Congress has repealed the military’s Don’t Ask, Don’t Tell policy. Several lower courts have ruled DOMA itself to be unconstitutional.”

In the fifteen years since President Clinton signed DOMA into law, Connecticut, Iowa, Massachusetts, New Hampshire, Vermont, and the District of Columbia have all legalized homosexual marriage, with other states passing laws allowing civil unions. By contrast, at least 30 states have enacted constitutional amendments or legislation defending marriage as between a man and a woman and prohibiting same-sex marriage.

Conservative lawmakers and groups defending traditional values noted the timing of the announcement, saying that Mr. Obama’s decision appeared to be motivated more by political considerations than



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impending court cases. "It's only in the run-up to re-election that he's suddenly changed his mind," pointed out Senator Jim DeMint (R-S.C.) of the President's announcement.

Homosexual activists applauded the Administration's announcement, saying it only made sense in light of the President's recent successful campaign to repeal the "Don't Ask, Don't Tell" policy banning open homosexuals from serving in the armed forces. "This major turn should be a final nail in the coffin for the different treatment of gay and non-gay people by the federal government," said Suzanne Goldberg of Columbia University's Center for Gender and Sexuality Law.

Similarly, as reported by the Associated Press, Rea Carey of the National Gay and Lesbian Task Force said that Mr. Obama's decision represented "a tremendous step toward recognizing our common humanity and ending an egregious injustice against thousands of loving, committed couples who simply want the protections, rights, and responsibilities afforded other married couples."

But Jordan Sekulow of the American Center for Law and Justice told the [Christian Broadcasting Network](#) that he believes President Obama lacks the authority to tell the Justice Department not to defend a standing federal law. "President Obama is not a king," said Sekulow. "He can't go around and say, 'You know what, Eric Holder and I decided it's not constitutional so we're not going to defend a law of the country anymore.'"

Maggie Gallagher of the [National Organization for Marriage](#) noted that "on the one hand this is a truly shocking extra-constitutional power grab in declaring gay people are a protected class." But she added that "the good news is this now clears the way for the House to intervene and to get lawyers in the courtroom who actually want to defend the law, and not please their powerful political special interests."

Tony Perkins of the [Family Research Council](#) used the Administration's announcement to issue a challenge to conservative lawmakers who secured their office with a vow to fight for families and traditional values. "Never in the history of this great nation has a President so openly defied his duty to uphold and defend the law of the United States," said Perkins. "Now, this White House is declaring war, not only on marriage but on Congress, whose authority this President now rejects."

Perkins said that conservative senators and representatives "need to see this challenge for what it is: the White House throwing down the gauntlet on marriage and declaring them irrelevant. That same piece of yellowed parchment that empowers this President is the one that demands, 'He shall take care that the laws be faithfully executed.'" (Article II, Section 3.)

Added Perkins, "And where he fails, Congress must not."

Photo: Members of the Gay & Lesbian Advocates & Defenders, or GLAD discuss the filing of a federal lawsuit challenging the constitutionality of the federal Defense of Marriage Act: AP Images



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