

Are Same-Sex Marriage Laws Inevitable?

President Barack Obama (who was against same-sex “marriage” before he was for it) and his administration (which said the Defense of Marriage Act was constitutional before they said it was unconstitutional) may be on the verge of another flip-flop.

The Supreme Court will hear arguments in late March on two marriage cases—one challenging the federal **Defense of Marriage Act** (DOMA), and the other challenging California’s marriage amendment, **Proposition 8**. Both DOMA (for purposes of federal law) and Prop 8 (for California law) define marriage as the union of one man and one woman.

Although Obama has always favored repeal of DOMA—which prevents the federal government from recognizing same-sex “marriages” even in states where they are legal—his Justice Department originally said that the law could be defended as constitutional. They reversed that position in 2011, however, and have intervened in the DOMA case to call for it to be overturned.

The Associated Press has reported that, under pressure from supporters of marriage redefinition, the president and his Solicitor General are considering filing a brief in the California case as well, to urge that **Prop 8** be overturned.

If they do so, it would be a sharp reversal from the position President Obama articulated just last May, when he finally announced that he had “evolved” to a position of support for same-sex couples “marrying.”

In the interview with ABC’s Robin Roberts where he announced his new position, he repeatedly said it would be a mistake to “nationalize” the marriage issue. In fact, he said, that was a

key part of why he opposed DOMA.

Here is an excerpt of what Obama said on May 9, 2012:

. . . [W]hat you're seeing is, I think, states working through this issue—in fits and starts, all across the country. Different communities are arriving at different conclusions, at different times. And I think that's a healthy process and a healthy debate. And I continue to believe that this is an issue that is gonna be worked out at the local level, because historically, this has not been a federal issue, what's recognized as a marriage.

. . . [O]ne of the things that I'd like to see is- that a conversation continue in a respectful way.

Roberts even pressed him on the possibility of the Justice Department pushing more strongly to redefine marriage:

Can you ask your Justice Department to join in the litigation in fighting states that are banning **same-sex marriage**?

Again, Obama resisted:

I've got an opponent on—on the other side in the upcoming presidential election, who wants to—re-federalize the issue [with] a constitutional amendment . . . And, you know, I think it is a mistake to—try to make what has traditionally been a state issue into a national issue.

If Obama now decides to challenge Proposition 8—“federalizing” what is a settled matter under California state law—it would be a brazen act of hypocrisy.

Supporters of **redefining marriage**, and their allies in the media, seek to promote a narrative that homosexual “marriage” is “inevitable.” Nothing could be further from the truth. Indeed, it is laughable to pretend that a position adopted by only nine states out of 50, and rejected by voters at the ballot box in 31 states out of 34, should be considered

“inevitable.”

Some point to polls that purport to show a majority of Americans backing same-sex “marriage.” But polls are very sensitive to how a question’s wording frames the issue. Questions asking about noble-sounding concepts like “equality” and “rights,” and pitting them against policies to make certain relationships “illegal,” will always generate a sympathetic emotional response. Polls asking the real question at issue—should marriage be defined as the union of a man and a woman?—still show that 60 percent of Americans back this natural definition of marriage.

Of course, the Supreme Court could short-circuit the ongoing democratic debate that President Obama said he supports. However, I consider that unlikely. The role of **marriage** in promoting responsible procreation, and in keeping a man and woman together to raise the children produced by their union, is more than sufficient “rational basis” for laws classifying opposite-sex couples and same-sex couples differently.

Lawyers for the plaintiffs in the Prop 8 case are urging the Court to impose a redefinition of marriage on all 50 states by judicial fiat. I am also skeptical that the justices will adopt such a Roe v. Wade approach to marriage. I think they have learned from that 1973 mistake, which undermined respect for the Court and served only to indefinitely inflame, not settle, the issue of abortion.

The debate over marriage can, and should, continue through the democratic process.

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