

Obama's Acrobatics on Homosexual 'Marriage'

The number of flip-flops President Obama has now performed on the issue of marriage would be impressive for an Olympic gymnast.

He was for **homosexual marriage** (in a 1996 Illinois state Senate campaign), then against it (in his 2008 presidential run), then for it again (in a widely publicized interview last May). His administration said the **Defense of Marriage Act** (DOMA) was constitutional, then decided in 2011 it was unconstitutional. Now the president, who said last May that the issue should be decided at the state level, is asking the U.S. Supreme Court to overturn California's law on the issue.

The high court will hear arguments in late March on two marriage cases—one challenging the federal act, 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**—part of which prevents the federal government from recognizing homosexual marriages even in states where they are legal—his Justice Department originally said the law could be defended as constitutional. Justice reversed that position in 2011 and has intervened in the DOMA case to call for it to be overturned.

On Feb. 28, however—the last possible day—the president's solicitor general filed a brief in the California case as well, urging that Proposition 8 be overturned.

In the interview with ABC's Robin Roberts where Obama announced his new position on marriage last year, 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.

On May 9, Obama said, “[W]hat you’re seeing is, I think, states working through this issue. 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.”

Roberts even pressed him on the possibility of the Justice Department pushing more strongly to **redefine marriage**, but Obama resisted, saying, “I’ve got an opponent on—on the other side in the upcoming presidential election, who wants to refederalize 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.”

Obama’s decision last week to challenge Proposition 8—“federalizing” what is a settled matter under California state law—is a brazen act of hypocrisy.

The Justice Department’s brief in the Proposition 8 case is premised entirely on the argument that classifications based on “sexual orientation” should be subjected to “heightened scrutiny” under the Constitution’s “equal protection” clause—the same skeptical standard as a classification based on race.

In law, defining marriage as the union of a woman and a man does not create a classification based on the sexual orientation of any individual at all, but bases it on the gender complementarity of the couple. Yet even conceding the disparate impact of such laws upon homosexuals, they do not qualify for what is termed “strict legal scrutiny,” which generally involves an immutable characteristic (which sexual orientation is not) and political powerlessness (which is belied by the apparent stranglehold that homosexual activists

now have on the Democratic Party).

The other typical requirements are a “history of discrimination,” but what history actually shows is long-standing disapproval of homosexual conduct, which is not the same as discrimination based on group identity. The characteristic also must be one that “bears no relation to the ability to perform or contribute.”

In this case, however, the question is not whether homosexual individuals contribute to society (they can and do, in various nonsexual ways), but whether **same-sex couples**, as a class, are capable of performing the core public purpose of marriage, which is procreation. They cannot.

The Justice Department brief fails to note that nearly all federal appeals courts have evaluated “sexual orientation” under the more lenient “rational basis” test. 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.

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