

Leaving Marriage Unguarded

✖ In 1996 Congress approved, and President Bill Clinton signed, the Defense of Marriage Act (DOMA). This law defines marriage in federal law as the union of one man and one woman and clarifies that no state can require another to recognize same-sex marriage. The bill passed overwhelmingly by a vote of 342 to 67 in the U.S. House and 85 to 14 in the U.S. Senate.

Last week, Attorney General Eric Holder announced that the Obama administration would no longer defend the law in court, claiming that it violated the constitutional rights of gays and lesbians.

The President's decision not to defend DOMA is hardly a surprise. Over the past two years, the Justice Department has been, shall we say, tepid in their defense of the law in court. In fact, they haven't bothered to use the most compelling legal arguments in favor of the law that were made by the Bush administration. Basically, they've been throwing the cases.

What's amazing is the administration's conclusion that there aren't any reasonable constitutional arguments to support the Defense of Marriage Act.

The fact is there were several clear reasons why Congress passed DOMA in 1996: encouraging responsible procreation and child-bearing, defending and nurturing the institution of traditional heterosexual marriage, defending traditional notions of morality, and preserving scarce resources.

Instead of addressing each of these defenses to the law head on, Attorney General Holder is dismissive. He calls the unique contributions of married heterosexual couples to the health and well-being of their children an "unreasonable" basis for protecting the institution of marriage. All human experience

and social science data to the contrary is thus rendered mute with a flippant phrase.

There isn't the space in this column to tackle all the ways this law is rational (or why it should withstand any level of scrutiny applied by our courts), but it's important to point out that there's a reason why every society throughout human history has granted a special favor and status to the relationship between men and women who commit to each other for life. It's because every society has seen the value of formalizing the tie between men and women who bear and raise children.

The reality is that the future of society depends on the well-being of children, and the well-being of children is largely determined by the relationship between those who have conceived and bore them. Elevating the lifelong commitment between men and women (what we call marriage), is not only rational, but essential. And protecting our country's (and each state's) ability to maintain this institution is well within our nation's constitutional framework.

According to Attorney General Holder, any arguments in favor of DOMA are essentially moral ones and should render the law unconstitutional. In his letter explaining the administration's decision, he wrote, "The record contains numerous expressions reflecting moral disapproval of gays and lesbians and their intimate and family relationships—precisely the kind of stereotype-based thinking and animus the Equal Protection Clause is designed to guard against."

So, according to the Attorney General, any expression of moral sentiment for or against a law—even where the law is demonstrably good or bad for society—should render the law unconstitutional. On such "reasoning" slavery would continue to be an institution in this country and the Civil Rights Movement would have never made legal gains since each was championed based upon moral arguments. Morality guides our

thinking about how things ought to be, not merely in the abstract, but in the real world where outcomes for people prove its wisdom.

Distinguishing between marriage as defined in DOMA and all other relationships comports with the highest standards of rationality because it gives legal protection and validation to the singular institution that has allowed man to flourish throughout history. If it cannot withstand a constitutional challenge, frankly, it's difficult to imagine a law that could.

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