

## In gay rights victory, Obama administration won't defend Defense of Marriage Act

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The Obama administration said Wednesday that it will no longer defend the federal law that bans the recognition of same-sex marriage because it considers the legislation unconstitutional, a sudden and rare reversal.

Gay rights groups hailed the administration's move, saying it will bolster their argument that laws that apply a different standard to people based on sexual orientation are unconstitutional. At least three challenges to the Defense of Marriage Act are working their way through the federal courts.

"When the U.S. government takes this position and then is taking it before the courts of the United States, it seems to me that's a powerful argument to add to the mix," said Gary Buseck, legal director for the [Gay and Lesbian Advocates and Defenders](#).

The move, the latest in a series of political [victories for gay rights advocates](#), was driven by the White House and announced by Attorney General [Eric H. Holder Jr.](#) Republicans said the decision was political.

As recently as last month, the [Justice Department](#) had vowed to continue going to court to oppose those who were challenging the 1996 Defense of Marriage Act, which defines marriage as between a man and a woman and denies marriage-based federal benefits to same-sex married couples.

But Holder said Wednesday that he and [President Obama](#) had determined after an extensive review that the law's key section is unconstitutional. "Given that conclusion, the President has instructed the Department not to defend the statute" in court, Holder said in a statement.

Administration officials said the review was triggered by a court-imposed filing deadline in two new challenges to the law, filed in federal courts in New York and Connecticut.

The change in position - for the time being, at least - could be more symbolic than legal. Although the administration will no longer defend the law, any member of Congress may do so. On Wednesday, opponents of same-sex marriage called on House Speaker [John A. Boehner](#) (R-Ohio) to intervene.

[Michael Steel](#), a spokesman for Boehner, declined to say what the speaker will do.

Some opponents of same-sex marriage said the administration's decision could end up helping to preserve the law in court.

"The previous efforts of the Obama administration and DOJ to defend the law were so inadequate as to raise the suspicion that the Justice Department was deliberately throwing the case," said Robert George, a political science professor at Princeton University who opposes same-sex marriage. "Chances are the law

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will get a robust defense, and I suspect it will withstand constitutional scrutiny."

In the meantime, the law remains in place. Under the measure, same-sex couples who have been legally married can be denied certain federal benefits. For example, gays who work for the federal government cannot extend their health benefits to their spouses.

Same-sex marriage is legal in five states and the District. The Maryland Senate advanced a bill Wednesday to legalize it and is expected to give the measure final approval Thursday.

The legal battle over the federal law comes amid a broader national debate over gay rights and several other legal challenges nationwide relating to the issue, including one aimed at California's ban on same-sex marriage.

Obama's dealings with the gay community, a key part of his political base, have been complicated, and activists had opposed the administration's earlier backing of the Defense of Marriage Act. The president has said in the past that he does not support the right of gay couples to marry, though he said in December that his views were "evolving."

[White House](#) press secretary [Jay Carney](#) said Wednesday that Obama's "position on the Defense of Marriage Act has been consistent: He has long opposed it as unnecessary and unfair." He said that the president has been "grappling" with the broader issue of same-sex marriage.

Justice Department lawyers had appealed the [decision of a federal judge in Massachusetts](#), who struck down the federal marriage law in July.

The new challenges to the Defense of Marriage Act that led to the administration's review were filed in November in federal courts in Connecticut and New York on behalf of same-sex married couples who say they were denied a variety of federal benefits.

In a statement and a letter to Boehner, Holder said the review focused on the legal standard that appellate courts should use in evaluating the law's constitutionality.

Unlike in Massachusetts, there has been little precedent in Connecticut and New York for how laws concerning sexual orientation should be reviewed.

That led the administration to change the legal approach it had followed in the past.

White House officials said the review that led to the decision was managed by White House counsel [Bob Bauer](#), with input from senior adviser [Valerie Jarrett](#), who oversees the office that conducts outreach to the gay community. Those officials were the subject of intense lobbying by gay rights groups who had opposed the administration's defense of the law, according to activists familiar with the White House's thinking.

While several Republicans issued scathing statements accusing the administration of shirking its responsibility to defend federal laws, as the Justice Department customarily does, they fell short of demanding that Congress step in.

In his letter to Boehner, Holder criticized portions of the congressional debate leading up to the law's passage, saying they had undermined the prospects for defending the measure. "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 that the Equal Protection Clause is designed to guard against," Holder wrote.

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