

24 Feb 2011 01:39 pm

Walter Dellinger [rejects Kerr's](#) analysis:

[Orin Kerr's post](#) on Volokh Conspiracy comparing what the Justice Department has announced it will do in DOMA cases to some of John Yoo's theories of presidential power doesn't give proper weight to the enormous difference between refusing to obey a law (which the Bush administration did -- and secretly!) and obeying the law which the Obama administration will continue to do with DOMA. Informing the courts of the administration's view that a law is unconstitutional, while facilitating the participation of amicus who will argue in defense of the law, is respectful of the role of the other branches, both Congress and the judiciary.

In response, Kerr [narrows](#) his point. But this rather judicious use of executive power - in stark contrast with the last president's astonishing claims about his limitless and lawless powers in the war on terror - will still be described by the hard right as "dictatorship." When you watch [this clip](#) from Fox, you see pure untruth from the get-go.

Megyn Kelly [reports](#) that the Obama administration will no longer enforce DOMA - which is untrue - and that this means that states will now be immediately forced to recognize civil marriages from other states - which is also untrue. This is not some opinion; it is a news story read by an alleged news anchor. It's *untrue*.

And the only opinion in this segment comes from Maggie Gallagher. Gallagher even says that this has never happened in history before, even as the DOJ's letter cites obvious precedents, and specifically invites the House to defend the law in the courts. Kelly asks her if this means that one state's marriages will have to be recognized by others - and Gallagher doesn't say what she must know to be true - that this move does no such thing.

Fair and balanced? Just lies and propaganda.

[Permalink](#) :: [Sphere It!](#) :: [Share This](#)

**BOLD IDEAS. NEW FORMAT.**

The Atlantic for the iPad

Get full issues of the magazine plus video, slideshows and more. **Download now >>**

## [Voices](#)

-  [Andrew Sullivan](#)