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President Obama's DOMA Outrage Will Backfire

Mr. President, you just picked a fight you can't win.

BY MAGGIE GALLAGHER 02/28/2011 Comment

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By refusing to defend the Defense of Marriage Act (DOMA), by calling it "legally indefensible," by inventing a new constitutional doctrine (i.e. that sexual orientation is a protected class) never accepted by the Supreme Court, by rejecting controlling Supreme Court precedent in *Baker v. Nelson* on marriage, by nakedly politicizing the Justice Department, by nationalizing the marriage question and forcing major GOP leaders and presidential candidates to act — President Obama is not only helping build up a national marriage movement, he has actually made it far more likely the Supreme Court will ultimately vote to uphold DOMA.

Obama, living in an increasing bubble, must have started believing those press releases and New York Times headlines saying Americans don't care about marriage anymore. He must have calculated that Congress would not respond to his outrageous dereliction of duty.

Instead Speaker John Boehner, R-Ohio, today announced that the House will act to intervene in the DOMA legal cases. This is a huge victory for marriage, and hugely important to winning these cases in the Supreme Court.

The federal Defense of Marriage Act does two simple things: It defines marriage for federal law as the union of husband and wife, and it clarifies that states are not required to recognize "gay marriage" performed in other states.

Neither of these DOMA provisions is extraordinary or unusual in any way. The federal law has often defined terms like "marriage" and "parent" differently from state law for a number of purposes — such as immigration for example. Back in the 19th century, when the issue was polygamy, numerous courts upheld the federal government's right to define marriage in federal territory as one man and one woman. And states are already permitted to refuse to recognize marriages that contradict that state's marriage policy.

But DOMA lost at the trial court level in the First Circuit — in large part because no-one in that court room mounted a serious defense of the statute.

Obama's Department of Justice was quietly undermining the law by presenting only enormously weak arguments approved by the gay legal lobby. (This is not just my opinion. In a very public brouhaha, the Department of Justice suddenly pulled one legal brief because gay activists objected to its legal reasoning, and substituted a far weaker brief they approved).

Marriage is a union of husband and wife because these unions really are unique: They make new life and connect children in love to their mother and father. No other union can do this, or serve the common good in this unique way.

The idea driving "gay marriage" is the idea that "gay is like black" and that opposition to homosexual marriage is like opposition to interracial marriage. Intellectually this is an utter misnomer. It's not discrimination to treat different things differently. Two men cannot fulfill the public purpose of marriage; indeed, their inclusion in the pool of marriage couples will undermine the very idea that marriage has a clear public purpose, rooted in the natural family and in the need for responsible procreation.

This week, some grim news from Great Britain confirms where we are headed if we do not summon the will to defend the goodness of our marriage laws: A black Pentecostal married couple that had taken great care of foster kids for years was told by the British court they could no longer be foster parents because they do not believe in gay sexual relationships. Christians need not apply to care for children, because the court ruled protecting sexual orientation trumps religious liberty.

Fortunately, Obama went from playing an insider's game that was hard to expose in public, to a big public gesture that makes the stakes clearer and clearer.

The bad news is this is an incredible dereliction of duty by a sitting president.

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