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CNS Story:

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US bishops criticize Obama administration's decision on marriage law

By **Catholic News Service**

WASHINGTON (CNS) -- The U.S. bishops' Office of General Counsel said the Obama administration's decision to no longer support the Defense of Marriage Act in legal challenges ahead "represents an abdication" of its "constitutional obligation to ensure that laws of the United States are faithfully executed."

"Marriage has been understood for millennia and across cultures as the union of one man and one woman," the office said in a statement issued Feb. 23 after President Barack Obama instructed the Justice Department to stop defending the federal law passed by Congress and signed into law in 1996 by President Bill Clinton.

The Defense of Marriage Act says the federal government defines marriage as a union between one man and one woman and that no state must recognize a same-sex marriage from another state.

"The principal basis for today's decision is that the president considers the law a form of impermissible sexual orientation discrimination," the Office of General Counsel said.

In a Feb. 23 statement, Attorney General Eric Holder said that although the administration has defended the 1996 law in some federal courts, it will not continue to do so in cases pending in the 2nd U.S. Circuit Court of Appeals. Unlike in the previous cases, said Holder, the 2nd Circuit "has no established or binding standard for how laws concerning sexual orientation should be treated."

In response to the announcement, the National Organization for Marriage, which opposes same-sex marriage, called on Congress to "get lawyers in the courtroom who actually want to defend the law, and not please their powerful political special interests."

"We have only begun to fight," said Brian Brown, president of the organization. He also said that with Holder's announcement, Obama "unilaterally" declared homosexuals "a protected class" under the Constitution and would effectively make a federal court decision on the law, "unreviewable by higher courts."

While Obama favors repealing the law, Holder said he has supported defending it as constitutional if a state or local law meets the legal standard of having "a rational basis" for singling out people for different treatment based on sexual orientation.

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But in the pending cases, Holder said, the administration "faces for the first time the question of whether laws regarding sexual orientation are subject to the more permissive standard of review or whether a more rigorous standard, under which laws targeting minority groups with a history of discrimination are viewed with suspicion by the courts, should apply."

Obama "has concluded that given a number of factors, including a documented history of discrimination, classifications based on sexual orientation should be subject to a more heightened standard of scrutiny," Holder's statement said. He added that Obama has concluded that the law "as applied to legally married same-sex couples, fails to meet that standard and is therefore unconstitutional. Given that conclusion, the president has instructed the department not to defend the statute in such cases. I fully concur with the president's determination."

Holder went on to say that the legal landscape has changed since the law was passed, including with Supreme Court rulings overturning laws criminalizing homosexual conduct and the repeal by Congress of the military's "don't ask, don't tell" policy.

Unless Congress repeals the Defense of Marriage Act, or a final court ruling strikes it down, it will continue to remain in effect and the administration will continue to enforce it, Holder noted.

"But while both the wisdom and the legality of (the pertinent section of the law) will continue to be the subject of both extensive litigation and public debate, this administration will no longer assert its constitutionality in court," Holder said.

END