

# Viewpoints: Basic right of self-government is in peril

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The Obama administration's decision to abdicate its responsibility to defend the constitutionality of the Defense of Marriage Act, enacted with overwhelming majorities in both houses of Congress and signed by President Bill Clinton in 1996, is the latest assault on representative government. The act affirms the traditional definition of marriage for federal purposes and allows states to deny recognition of same-sex unions performed elsewhere.

Similarly, former Gov. Arnold Schwarzenegger and former Attorney General Jerry Brown, now governor, refused to defend Proposition 8, the 2008 ballot measure that engraves the traditional definition of marriage in our state Constitution.

Whatever one's view of same-sex marriage, we all must be disturbed when the constitutional process whereby we exercise the right to govern ourselves is undermined.

The U.S. Department of Justice will no longer defend the federal law because the president and Attorney General Eric Holder have deemed it unconstitutional – making a mockery of the "separation of powers." It appears that now that the executive branch can ignore a law enacted by the legislative branch and usurp the role of the judicial branch.

In our country, a president or a governor cannot decide what is constitutional and what is not. Their authority cannot override a law passed by Congress and signed by a president, or in California an amendment to the Constitution enacted by the people.

What's more, whenever there is a question of authority among the three branches of government, "the legislative authority necessarily predominates," James Madison wrote in Federalist 51, as it most closely represents the people.

The refusal to defend laws supporting traditional marriage is not "progressive," as politicians pandering to the same-sex marriage lobby would have us believe. It is a regression to political systems based on brute power, not on individual liberty and self-government.

Usurpation of power to promote one's own personal opinion might feel like "success" momentarily, but what will prevent a future president from refusing to represent the Environmental Protection Act or any other law that he may personally oppose?

Our representatives have become our rulers. If they don't like what we decide through the legitimate voting process, they just refuse to implement the law or defend it in court.

Proposition 8 was upheld by the California Supreme Court, but opponents then took it to a federal court in San Francisco. Not only did our "representatives" fail to defend the measure – forcing proponents to raise private funds to finance its defense – but when Judge Vaughn Walker of the U.S. District Court ruled against it last August in a widely suspect decision, the people's "representatives" wouldn't even file an appeal. The ruling has been suspended pending an effort to appeal.

The question now is whether the initiative's sponsors even have a right to file an appeal since state officials bailed. Just recently the California Supreme Court granted a request by the 9th U.S. Circuit Court of Appeals in San Francisco to answer that question. Even the 9th Circuit, known for its many left-leaning decisions, expressed concern about whether the governor and the attorney general can essentially "annul" a constitutional provision enacted by the people of California. The "initiative power" of the people, it stated, "would appear to be ill-served" by allowing elected officials to nullify a voter-approved constitutional amendment by refusing to defend it.

Immediately after the Obama Justice Department dropped its defense of DOMA, Ted Olson, a lawyer for the gay marriage lobby in the case, proclaimed that the effect "will be very persuasive" as judges weigh their decision. New California Attorney General Kamala Harris joined him in asking the court to lift the stay on Walker's decision to allow same-sex marriages to proceed in California with no apparent regard for the appeals process.

In fact, this whole episode seems orchestrated by same-sex marriage proponents to influence the judiciary through the bully pulpit, since by some accounts their legal case against Proposition 8 is weak. Indeed, many supporters of gay marriage objected to filing this case, fearing the risks of having a ruling like Walker's overturned by the U.S. Supreme Court, where it is likely to end up – and so preferring to make their case on a state-by-state basis.

In every state where the issue has been put to a vote, voters have affirmed traditional marriage, with 30 states having enshrined it in their constitutions. To accuse these Americans of "discrimination," as Holder has, is an injustice to those who oppose true discrimination and also believe that traditional marriage has a unique and valuable role in society.

The true victims of discrimination are the voters whose rights are being trampled by rulers who do not represent them.

Traditional marriage proponents are now asking Congress to defend the Defense of Marriage Act. In California, it remains to be seen if anyone will be allowed to defend Proposition 8.

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