

Justice Department Upholds DOMA in Calif. Lesbian Case

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The Department of Justice advised a San Francisco federal judge this week to uphold the federal Defense of Marriage Act as the law governing government agencies despite the Obama administration announcing last week that it will cease defending the law.

The lawsuit of Karen Golinski, an openly lesbian U.S. Circuit Court attorney, revealed the DOJ's new legal approach to the Defense of Marriage Act (DOMA). Golinski has sued the Office of Personnel Management for not providing health benefits to her wife.

Golinski's lawsuit was filed prior to President Barack Obama's order for the Justice Department to not defend the constitutionality of the federal law that defines marriage as between a man and a woman.

On Monday, the Justice Department told the San Francisco federal judge that the president's order is non-binding and affirmed the Office of Personnel Management's authority to continue following the current law, which in this case is DOMA.

The DOJ did not make any reference to DOMA's constitutionality in court, highlighting the president's recent order to not do so. The department explained, however, that it would "remain parties to the cases and continue to represent the interests of the United States" in cases such as Golinski's.

The department's actions are part of its new approach to DOMA since Obama ordered the DOJ to "no longer assert its (DOMA) constitutionality in court."

Last Wednesday, the president issued an executive order to the DOJ regarding defending the 1996 law signed by President Bill Clinton. Obama reportedly based his decision on legal precedents such as the Supreme Court's ruling that laws criminalizing homosexual activities are unconstitutional, the repeal of the military's Don't Ask, Don't Tell policy, and the rulings of lower courts that have decided that DOMA is unconstitutional.

According to DOJ documents, Obama has decided that laws classifying homosexuality and heterosexuality should be subject to higher standards of scrutiny beyond the "reasonable" argument. DOMA, he stated, does not stand up to higher scrutiny and is therefore unconstitutional.

Those higher standards were laid out in a letter to Republican House Speaker Rep. John Boehner (Ohio).

Liberty Counsel Chairman Mathew Staver told The Christian Post that those letters have already been sent to judges.

Staver noted that the president's higher standards fail to acknowledge that DOMA has been upheld by many courts and that marriage amendments have been passed in 30 states.

Similarly, Alan Sears, president of the conservative legal group Alliance Defense Fund, said, "The administration has 'expressly disavowed' the winning legal arguments that the Bush Administration had made in previous cases."

According to the letter, there are four standards justices will be urged to consider. The first is "a significant history of purposeful discrimination" against gay and lesbian people by government and private entities.

The second is scientific consensus that sexual orientation is a characteristic that is immutable. The third standard is the adoption of laws such as the ban on open homosexuals in the military and the absence of federal protection for employment discrimination on the basis of sexual orientation afford gays and lesbians limited political power.

And the final standard is a "growing acknowledgment" that sexual orientation bears no relation to ability to perform or contribute to society.

Staver said the president's action is setting a negative precedent for a president to opt out of defending any legislation he does not agree with.

