

March 1, 2011

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Posted: February 24, 2011 12:01 PM

## [Why Obama Is Wrong on DOMA](#)

Liberals rejoiced on Wednesday when the Obama Administration, which has often seemed indifferent to gay rights, [announced that it would not defend a key provision of the Defense of Marriage Act](#) in court. DOMA, as the law is known, establishes that only opposite-sex marriages are recognized by federal law. While DOMA is a discriminatory law and should be repealed, Obama's decision not to defend it should be condemned.

For decades, presidents, Democrats and Republicans alike, have taken the position that it's the executive's obligation to defend the constitutionality of all federal laws. The basis for this view is the Constitution's command that the president "shall take Care that the Laws be faithfully executed."

But now Obama has declared that if the president doesn't agree with a law--even if the courts say it's constitutional--he can choose not to defend it. This sets a terrible precedent that could well come back to haunt those who are cheering the president's decision. Don't be surprised if a President Palin points to Obama's decision when announcing her refusal to enforce and defend the landmark healthcare reform law because, in her view, the individual mandate is unconstitutional.

The administration decided not to defend DOMA on the basis of a controversial reading of the Constitution. [Attorney General Eric Holder's letter to John Boehner](#), in which the announcement was made, stated that discrimination against gays must meet what the courts call "heightened scrutiny." That means that any law singling out gays must have unusually strong justification.

If only that were the case. Twice the Supreme Court has been asked to hold that discrimination against gay people warrants heightened scrutiny. And twice the Supreme Court has rejected that argument. Instead, the Court has suggested that discrimination against gays only needed to meet a lower standard of rationality. The lower courts asked to rule on the constitutionality of DOMA so far have consistently agreed that heightened review is not appropriate.

In my view, the Supreme Court was wrong to reject heightened scrutiny for sexual orientation discrimination. Nevertheless, that's the law of the land and, for better or worse, it's the Supreme Court, not the president, who gets to make that decision.

The administration had other alternatives. It could have continued to defend the relevant provisions of DOMA in court but drop some of the specious arguments traditionally used to support it--that marriage is only about procreation or that gay people aren't good parents. The administration could even argue that the Supreme Court was wrong to reject heightened scrutiny and that the law should be judged by that higher standard. But to declare unilaterally that the law is unconstitutional, on the basis of an interpretation of the Constitution with little support in Supreme Court doctrine, is a mistake.

Think of the laws that might be undermined by the next Republican president. Senator Rand Paul has argued that the [Civil Rights Act may be unconstitutional](#). Senator Mike Lee has insisted that the [federal laws barring child labor were not within Congress's constitutional authority](#) to enact. Some in Republican circles even suggest that the [federal government doesn't have the constitutional power to require background checks on gun purchases](#).

It should take more than a presidential announcement to repeal these vital and important federal laws. Unfortunately, President Obama's decision on DOMA makes that very threat more of a reality.

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