

White House takes stance against gay-marriage ban

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WASHINGTON -- The Obama administration came out forcefully Thursday (Feb. 28) against California's ban on same-sex marriage and, by extension, implicated similar bans in 37 other states.

In a brief to the Supreme Court, which will hear two landmark same-sex marriage cases in late March, the Justice Department argued that gay and lesbian couples should have the same right to marry as heterosexuals.

"The government seeks to vindicate the defining constitutional ideal of equal treatment under the law," Attorney General Eric Holder said. "Throughout history, we have seen the unjust consequences of decisions and policies rooted in discrimination."

The brief marks the first time the administration has weighed in on the constitutionality of any state ban on gay marriage. Although it was aimed at the voter initiative passed in California in 2008, it put the administration squarely against other such prohibitions. It urged the court to subject the state's ban to a difficult legal standard that no state prohibition is likely to meet.

In particular, the brief implicated the other states that, like California, allow domestic partnerships or civil unions: Delaware, Hawaii, Illinois, Nevada, New Jersey, Oregon and Rhode Island.

"The designation of marriage ... confers a special validation of the relationship between two individuals and conveys a message to society that domestic partnerships or civil unions cannot match," the Obama administration's brief states.

"Proposition 8's denial of marriage to same-sex couples, particularly where California at the same time grants same-sex partners all the substantive rights of marriage, violates equal protection."

Theodore Boutsos, a partner in the law firm Gibson Dunn, which is representing the two same-sex couples who filed the case initially, said the administration's arguments represent "a clear path to marriage equality across the United States."

The court filing completes President Obama's self-described evolution on gay marriage and puts his administration squarely on the side of gay rights groups and the nine states where same-sex marriage is legal.

The president opposed California's ban, Proposition 8, during his 2008 campaign but refused to endorse gay marriage. He made that endorsement during last year's campaign but said the issue should be decided by the states.

"President Obama and the solicitor general have taken another historic step forward, consistent with the great civil rights battles of our nation's history," said Human Rights Campaign President Chad Griffin, co-founder of the American Foundation for Equal Rights, which brought the challenge to Proposition 8.

Conservative groups criticized the decision to weigh in against the gay marriage ban, particularly since Obama once said it should be left to the states. Tony Perkins, president of the Family Research Council, said the president was "putting allegiance to extreme liberal social policies ahead of constitutional principle."

The high court has reserved two days in late March to consider the California ban on gay marriage and the Defense of Marriage Act, which denies federal benefits to legally married same-sex couples. Both have been declared unconstitutional by lower courts, decisions which are being challenged by gay-marriage opponents.

Proposition 8 was approved by California voters in November 2008 to block a state Supreme Court decision legalizing same-sex marriage.

What effect a court ruling striking down Proposition 8 would have on other states is not clear. The justices could rule narrowly, as a federal appeals court did, holding only that voters cannot take away a right previously enjoyed, however briefly, by Californians. But a more sweeping decision declaring marriage rights for gays and lesbians would endanger all state bans.

The Defense of Marriage Act (DOMA) passed by Congress and signed by President Clinton in 1996, has blocked legally married couples from receiving federal benefits in Connecticut, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, Washington and the District of Columbia.

The administration is leading the effort to overturn DOMA in the case of Edith Windsor, an 83-year-old New York widow who was forced to pay hundreds of thousands of dollars in estate taxes when her lesbian spouse died in 2009. Had she been married to a man, she would have faced no inheritance tax.

The new filing is more significant, however, because the administration did not have to get involved at all. Two same-sex couples are contesting Proposition 8 along with the state of California, while organizations that promoted the 2008 voter initiative are defending it.

In the Windsor case, the Justice Department's brief argues that gays and lesbians have been subjected to a long history of discrimination, and it refers specifically to the California marriage ban as an example.

On the subject of states' rights vs. the Constitution, its brief to the Supreme Court states: "Deference to the democratic process must give way to the fundamental constitutional command of equal treatment under law."

Polls have been shifting toward approval of gay marriage. In a December USA TODAY survey, 53% of Americans said same-sex couples deserve the same marriage rights as heterosexual couples, up from 40% in 2009.

California's ban has attracted 37 "friend of the court" briefs, mostly from conservative and religious groups, including a coalition of organizations representing Episcopal, Lutheran, Methodist, Quaker, Presbyterian and Jewish faiths.

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