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A Milestone in the Betrayal of Marriage

The President has made his decision. The Attorney General has now made his announcement. Mark your calendars for yesterday. That day now represents a tragic milestone in the betrayal of marriage.

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Attorney General Eric Holder informed Congress yesterday that President Obama had ordered the Department of Justice to cease all efforts to defend the Defense of Marriage Act in the courts. The announcement came without public warning, even as the administration was dealing with an international crisis in Libya and a political showdown over unions in Wisconsin.



The Defense of Marriage Act [DOMA] emerged in 1996 as at least one state — Hawaii — indicated the very real possibility that it would vote to approve same-sex marriage. The Act makes clear that no state can require any other state to recognize a same-sex marriage, and that the federal government is prohibited from extending marital benefits to same-sex couples. The Senate approved the measure by a vote of 85 to 14. In the House of Representatives, the vote was 342 to 67. Faced with such overwhelming congressional support, President Bill Clinton signed the bill into law.

But 1996 was a long time ago, politically and culturally speaking. President Obama vigorously and repeatedly declared his opposition to DOMA during the presidential campaign of 2008.

In subsequent statements, President Obama had indicated his hope that Congress would repeal the measure. That was unlikely, though Sen. Diane Feinstein signaled late Wednesday her intention to offer legislation to repeal DOMA. She did so only after the White House made its announcement.

President Obama's decision to enforce but not to defend DOMA in the courts is not without precedent, but such presidential actions are extremely rare. The President is required by the Constitution and his oath of office to enforce the nation's laws, but he has instructed his Attorney General no longer to defend the law in the courts. In essence, this seals the judicial fate of the Defense of Marriage Act — it is now left without its most important defender.

What makes this decision even more unusual is that the Obama Administration had previously taken action to defend DOMA against legal claims. Faced with new court challenges and protests from gay rights groups and editorials in the liberal media, the President changed his mind.

In his letter to Congress, Attorney General Holder stated, "As you know, the Department has a longstanding practice of defending the constitutionality of duly-enacted statutes if reasonable arguments can be made in their defense, a practice that accords the respect appropriately due to a coequal branch of government." And yet Mr. Holder proceeded to argue that there were no reasonable arguments to be made in defense of DOMA. "This is the rare case," he asserted, "where the proper course is to forgo the defense of the statute."

Addressing reporters in a White House press briefing, Press Secretary Jay Carney defended President Obama, arguing that his position on DOMA "has been consistent." The President "has long opposed it as unnecessary and unfair." Carney also said that the administration had been forced to act, having been given a deadline by the U.S. Court of Appeals for the

Second District, which is currently hearing a case challenging DOMA on constitutional grounds.

Who could possibly be surprised by this action? During his campaign for the nation's highest office, President Obama made his advocacy for homosexual rights clearly and unambiguously. He attacked DOMA and called for its repeal. Even as pundits suggest he is moving to the political center, in the course of the past few days, the President has revoked the Bush-era conscience protections for medical personnel and betrayed marriage by ceasing the defense of DOMA. If anything, these moves represent a shift even further to the left.

Clearly, the President believes that he has sufficient political support to make this move. While gay rights groups have been pressuring the administration for this kind of action, in the first two years of his term, the President clearly felt that such a move would be too politically expensive and risky. No longer.

Is the President right in thinking that he will not be hurt politically by this action? The game played by many liberal politicians in general, and by Democratic politicians in particular, is to say that they are personally opposed to same-sex marriage, even as they work to remove all defenses against it. The political game played by many conservatives, by the way, is to pose as defenders of marriage without taking any action that would draw political risk. Remember that when conservative politicians now call for a constitutional amendment to define marriage as exclusively the union of a man and a woman. Where were they when such an action would have required courage but was politically viable and clearly needed?

In the press briefing, Jay Carney said that the President's personal position on same-sex marriage is "distinct from this legal decision." Last December, President Obama told reporters that his personal position on same-sex marriage is "constantly evolving."

Well, there may be issues in which the distinction between the legal and the moral arguments makes a real difference, but this is not one of those issues. To suggest that President Obama does not personally support same-sex marriage is to posit a dualism within him that is nothing less than Gnostic. Mr. Carney would do better to stick with his argument that the President's support of the gay rights movement is consistent. It is not credible for the President now to play Hamlet on the question of his own position on same-sex marriage.

The most immediate meaning of this announcement is two-fold. In the first place, it means that the constitutionally appointed defender of the nation's laws, the Attorney General of the United States, has now been ordered to cease defending this single law in the courts. That alone is almost surely sufficient to spell the doom of DOMA in short order.

In the second place, this announcement means that President Obama and his advisers now believe that the full legalization of same-sex marriage is both inevitable and without major political risk to the President and his plans for re-election. That, in itself, represents a moral earthquake. The President clearly believes that a sufficient number of Americans will either support or accept same-sex marriage — and this comes just a few years after a majority of the states passed constitutional amendments prohibiting same-sex marriage, and most by huge margins.

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Coming Next: What does this mean? How did it happen? What now?

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