

Obama disses marriage law as Justice defends it

By *DEVLIN BARRETT, Associated Press Writer* *Devlin Barrett, Associated Press Writer*— MON AUG 17, 1:39 PM ET

WASHINGTON — President Barack Obama insisted Monday he still wants to scrap what he calls a discriminatory federal marriage law, even as his administration angered gay rights activists by defending it in court.

The president said his administration's stance in a California court case is not about defending traditional marriage, but is instead about defending traditional legal practice.

Justice Department lawyers filed new papers Monday seeking to throw out a lawsuit brought by a gay couple challenging the 1996 [Defense of Marriage Act](#), or DOMA. Gay rights groups say that by doing so, the administration is failing to follow through on campaign promises made by Obama last year to work to repeal the law.

Department lawyers are defending the law "as it traditionally does when acts of Congress are challenged," Obama said in a statement.

The Clinton-era law denies federal recognition of [gay marriage](#) and gives states the right to refuse to recognize same-sex marriages performed in other states.

Obama said he plans to work with Congress to repeal the law, and said his administration "will continue to examine and implement measures that will help extend rights and benefits" to lesbian, gay, bisexual, and transgender couples under existing law.

The government says in its court filing that it will defend the statute in this case because a reasonable argument can be made that the law is constitutional — a standard practice of government lawyers.

The mixed message got a mixed review from Joe Solmonese, president of the Human Rights Campaign, a gay rights group.

"It is not enough to disavow this discriminatory law, and then wait for Congress or the courts to act," Solmonese said in a statement. "While they contend that it is the DOJ's duty to defend an act of Congress, we contend that it is the administration's duty to defend every citizen from discrimination."

Walter Dellinger, a former solicitor general during the Clinton administration, praised Monday's filing for striking "a delicate but appropriate balance between the government's obligation to respect federal laws enacted by Congress and this administration's policy and moral concerns about this particular law."

The government's previous filing in the case angered gay rights activists who supported Obama's candidacy in part because of his pledge to move forward on repealing the law and the "don't ask, don't tell" policy that prevents gays from serving openly in the military.

The [Justice Department](#) is obligated "to defend federal statutes when they are challenged in court. The Justice Department cannot pick and choose which federal laws it will defend based on any one administration's policy preferences," said department spokeswoman Tracy Schmalzer.

"DOMA reflects a cautiously limited response to society's still-evolving understanding of the institution of marriage," according to the filing by Assistant Attorney General Tony West.

The administration also disavowed past arguments made by conservatives that DOMA protects children by defining marriage as between a man and a woman.

"The United States does not believe that DOMA is rationally related to any legitimate government interests in procreation and child-rearing and is therefore not relying upon any such interests to defend DOMA's constitutionality," lawyers argued in the filing.

Monday's court filing was in response to a lawsuit by Arthur Smelt and Christopher Hammer, who are challenging the federal law, which prevents couples in states that recognize [same-sex unions](#) from securing Social Security spousal benefits, filing joint taxes and benefiting from other federal rights connected to marriage.

Justice lawyers have argued that the act is constitutional and contend that awarding federal marriage benefits to gays would infringe on the rights of taxpayers in the 30 states that specifically prohibit same-sex marriages.

Earlier this year, Massachusetts became the first state to challenge the law in court.

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