

# OBAMA DOJ STOPS DEFENDING DEFENSE OF MARRIAGE ACT

Finally, some good news from DOJ: Eric Holder has just announced the government will stop defending DOMA.

In the two years since this Administration took office, the Department of Justice has defended Section 3 of the Defense of Marriage Act on several occasions in federal court. Each of those cases evaluating Section 3 was considered in jurisdictions in which binding circuit court precedents hold that laws singling out people based on sexual orientation, as DOMA does, are constitutional if there is a rational basis for their enactment. While the President opposes DOMA and believes it should be repealed, the Department has defended it in court because we were able to advance reasonable arguments under that rational basis standard.

Section 3 of DOMA has now been challenged in the Second Circuit, however, which has no established or binding standard for how laws concerning sexual orientation should be treated. In these cases, the Administration faces for the first time the question of whether laws regarding sexual orientation are subject to the more permissive standard of review or whether a more rigorous standard, under which laws targeting minority groups with a history of discrimination are viewed with suspicion by the courts, should apply.

After careful consideration, including a review of my recommendation, the President has concluded that given a

number of factors, including a documented history of discrimination, classifications based on sexual orientation should be subject to a more heightened standard of scrutiny. The President has also concluded that Section 3 of DOMA, as applied to legally married same-sex couples, fails to meet that standard and is therefore unconstitutional. Given that conclusion, the President has instructed the Department not to defend the statute in such cases. I fully concur with the President's determination.