



Written by [Dave Bohon](#) on February 25, 2012

Ruling in Calif. Sets up Battle Over Federal Defense of Marriage Act

As reported by [UPI News](#), U.S. District Court Judge Jeffrey White ordered the federal Office of Personnel Management to enroll the “wife” of lesbian Karen Golinski, an attorney for the 9th U.S. Circuit Court of Appeals, in the health benefits program that is offered to federal judiciary employees and their spouses.



According to [Reuters](#), Golinski “married” her lesbian partner, Amy Cunningham, after California legalized homosexual “marriage” but before that state’s voters passed Proposition 8, which stipulates that “only marriage between a man and a woman is valid or recognized in California.”

White determined in his ruling that “DOMA, as applied to Ms. Golinski, violates her right to equal protection of the law under the Fifth Amendment to the United States Constitution by, without substantial justification or rational basis, refusing to recognize her lawful marriage to prevent provision of health insurance coverage to her spouse.”

White claimed that hostility toward “gays” dominated the legislative history behind DOMA. While the federal government has traditionally shunned interference in the domestic relationships of Americans, he said, he found that “the passage of DOMA, rather than maintaining the status quo in the arena of domestic relations, stands in stark contrast to it.”

Wrote White: “The imposition of subjective moral beliefs of a majority upon a minority cannot provide a justification for the legislation. The obligation of the Court is to define the liberty of all, not to mandate our own moral code.” He added that the ancient tradition buttressing marriage “cannot form an adequate justification for a law.... The ancient lineage of a classification does not render it legitimate.... Instead, the government must have an interest separate and apart from the fact of tradition itself.”

The case is one of several to challenge DOMA since the [Obama administration ordered the Department of Justice to stop defending it](#) in February 2011. In justifying the abandonment, Attorney General Eric Holder pointed out that “much of the legal landscape has changed ... since Congress passed DOMA. The Supreme Court has ruled that laws criminalizing homosexual conduct are unconstitutional. Congress has repealed the military’s Don’t Ask, Don’t Tell policy. Several lower courts have ruled DOMA itself to be unconstitutional.”

Two weeks later the U.S. [House of Representatives said](#) that it would take up the defense of DOMA. “It is regrettable that the Obama administration has opened this divisive issue at a time when Americans want their leaders to focus on jobs and the challenges facing our economy,” House Speaker John Boehner (R-Ohio) said in announcing the move. “The constitutionality of this law should be determined by the courts — not by the President unilaterally — and this action by the House will ensure the matter



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is addressed in a manner consistent with our Constitution.”

The next step in the legal process would be for the House of Representatives to appeal White’s ruling to the 9th U.S. Circuit Court of Appeals, which recently ruled that California’s Proposition 8 marriage defense amendment is unconstitutional. On February 21, Prop 8 defenders appealed that ruling, made by a three-judge panel of the 9th Circuit, to the entire 9th Circuit Court for reconsideration.

Attorneys for [ProtectMarriage.com](#), the group that led the campaign for Prop 8’s passage, said that they decided to hold off on appealing to the Supreme Court until they have exhausted lower-court options. “After careful consideration, we determined that asking for reconsideration by the full 9th Circuit is in the best interests of defending Prop 8,” said Andy Pugno, one of the ProtectMarriage.com attorneys. “This gives the entire 9th Circuit a chance to correct this anomalous decision by just two judges overturning the vote of seven million Californians.”

Pugno noted that the panel’s two-to-one ruling against Prop 8 “conflicts with every state and federal appellate court decision — including binding decisions of the Supreme Court and the Ninth Circuit itself — that has upheld the traditional marriage laws under the federal Constitution as rationally related to the state’s interest in responsible procreation and child-rearing.”

The [Alliance Defense Fund’s](#) Brian Raum, a member of Prop 8’s legal defense team, said that the ruling by the 9th Circuit panel “mischaracterized the purpose of marriage, failed to faithfully and fairly interpret the Constitution, and disregarded every relevant appellate and Supreme Court precedent in American history.”

As for White’s ruling on DOMA, ADF Legal Counsel Dale Schowengerdt told *The New American* that it, too, is starkly out of step with most other courts, as well as Congress and public opinion. “The Defense of Marriage Act was passed by overwhelming majorities in both the House and Senate, and was signed by President Clinton,” he recalled. “That was after extensive congressional testimony about the fundamental importance of recognizing marriage as a union of a man and a woman to society, and especially to children. We are confident that this law, which reflects the view of 62 percent of Americans, will ultimately be upheld.”



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