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Office of the President

Most Reverend Timothy M. Dolan
Archbishop of New York
President

September 20, 2011

President Barack Obama
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

I write with a growing sense of urgency about recent actions taken by your Administration that both escalate the threat to marriage and imperil the religious freedom of those who promote and defend marriage. This past spring the Justice Department announced that it would no longer defend the Defense of Marriage Act (DOMA) in court, a decision strongly opposed by the Catholic Bishops of the United States and many others. Now the Justice Department has shifted from not defending DOMA—which is problem enough, given the duty of the executive branch to enforce even laws it disfavors—to actively attacking DOMA's constitutionality. My predecessor, Cardinal Francis George, OMI, and I have expressed to you in the past our strong disappointment about the direction your Administration has been moving regarding DOMA. Unfortunately the only response to date has been the intensification of efforts to undermine DOMA and the institution of marriage.

The Justice Department's move, in addition to other troubling federal decisions occurring recently, prompts me yet again to register my grave concerns. The content of this letter reflects the strong sentiment expressed at a recent meeting by more than thirty of my brother Bishops who serve on the Administrative Committee of our episcopal conference. I know they are joined by hundreds of additional Catholic bishops throughout our nation. My observations are offered in the spirit of respectful, but frank dialogue.

The Catholic Bishops stand ready to affirm every positive measure taken by you and your Administration to strengthen marriage and the family. We cannot be silent, however, when federal steps harmful to marriage, the laws defending it, and religious freedom continue apace. Attached you will find an analysis prepared by my staff detailing the various executive activities of late that warrant our increasing apprehension.

Mr. President, your Administration's actions against DOMA and the values it stands for contrast sharply with your excellent Mother's Day and Father's Day proclamations issued earlier this year, which are also referenced in the attached analysis. In these perceptive and heartening statements, you correctly emphasize the critical role played by both a mom and a dad in a child's life, and you rightly call upon society to do all it can to uphold *both* mothers *and* fathers.

I know that you treasure the importance that you and the First Lady, separately and as a couple, share in the lives of your children. The Mother's Day and Father's Day proclamations display a welcome conviction on your part that neither a mom nor a dad is expendable. I believe therefore that you would agree that every child has the right to be loved by both a mother and a father.

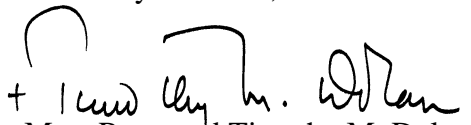
The institution of marriage is built on this truth, which goes to the core of what the Catholic Bishops of the United States, and the millions of citizens who stand with us on this issue, want for all children and for the common good of society. That is why it is particularly upsetting, Mr. President, when your Administration, through the various court documents, pronouncements and policies identified in the attached analysis, attributes to those who support DOMA a motivation rooted in prejudice and bias. It is especially wrong and unfair to equate opposition to redefining marriage with either intentional or willfully ignorant racial discrimination, as your Administration insists on doing.

We as Bishops of the Catholic Church recognize the immeasurable personal dignity and equal worth of all individuals, including those with same-sex attraction, and we reject all hatred and unjust treatment against any person. Our profound regard for marriage as the complementary and fruitful union of a man and a woman does not negate our concern for the well-being of all people but reinforces it. While all persons merit our full respect, no other relationships provide for the common good what marriage between husband and wife provides. The law should reflect this reality.

Mr. President, I respectfully urge you to push the reset button on your Administration's approach to DOMA. Our federal government should not be presuming ill intent or moral blindness on the part of the overwhelming majority of its citizens, millions of whom have gone to the polls to directly support DOMAs in their states and have thereby endorsed marriage as the union of man and woman. Nor should a policy disagreement over the meaning of marriage be treated by federal officials as a federal offense—but this will happen if the Justice Department's latest constitutional theory prevails in court. The Administration's failure to change course on this matter will, as the attached analysis indicates, precipitate a national conflict between Church and State of enormous proportions and to the detriment of both institutions.

Thus, on behalf of my brother Bishops, I urge yet again that your Administration end its campaign against DOMA, the institution of marriage it protects, and religious freedom. Please know that I am always ready to discuss with you the concerns raised here and to address any questions that you may have. I am convinced that the door to a dialogue that is strong enough to endure even serious and fundamental disagreements can and must remain open, and I believe that you desire the same. Also please know that you, your family, and your Administration continue to be in my prayers.

Faithfully in Christ,


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Most Reverend Timothy M. Dolan
Archbishop of New York
President, United States Conference of Catholic Bishops

Attachment: USCCB Staff Analysis of Recent Federal Threats to Marriage April-August 2011

USCCB Staff Analysis of Recent Federal Threats to Marriage April-August 2011

Early in 2011, the Department of Justice (DoJ) announced its decision to *refuse to defend* the federal Defense of Marriage Act (DOMA) from constitutional challenge,¹ which is a serious problem in its own right given the duty of the executive branch to enforce even laws it disfavors. More recently, however, the Department has begun *actively attacking* DOMA's constitutionality. On July 1, 2011, DoJ filed a brief in *Golinski v. U.S. Office of Personnel Management*, arguing that DOMA should be struck down as a form of sexual orientation discrimination.² This escalates yet again the level of hostility shown by DoJ against the definition of marriage codified in DOMA.

The Justice Department's argument in *Golinski* compares DOMA in effect to racially discriminatory laws. According to the government's view, support for a definition of marriage that recognizes that sexual difference is a defining and valuable feature of marriage now constitutes a forbidden intent to harm a vulnerable class of people. The false claim that animus is at work ignores the intrinsic goods of complementarity and fruitfulness found only in the union of man and woman as husband and wife. DoJ's contention thus transforms a moral disagreement into a constitutional violation, with grave practical consequences.

This new, more aggressive position poses a threat reaching well beyond the elimination of the federal DOMA. If successful in federal court, the Justice Department's claim would create a precedent that casts into constitutional doubt all state DOMAs. Also at risk would be any other federal or state policy that applies unique incentives for households where children are raised by a father and a mother who are legally married to each other.

The Justice Department's position also denigrates the considered judgment of the American people. In every state where citizens have been allowed to vote on state constitutional versions of DOMA, twenty-nine states in all, voters by sizable majorities have affirmed marriage as the union of a man and a woman. A total of forty-one states have statutory or constitutional DOMAs on the books. Equating the approval of these state laws with racial bias wrongly treats the millions of voters in those states as if they were bigots, who refuse to redefine marriage only out of hostility against those who experience same-sex attraction. It falsely imputes the same supposed bigotry and hostility to the substantial, bi-partisan majorities in Congress—and to President Clinton—who were responsible for the passage of DOMA only fifteen years ago.

Other steps taken by the Administration in this area also merit grave concern.

1. In May, a White House spokesperson indicated that President Obama supports the imposition of a federal mandate that "ensure[s] adoption rights for all couples and individuals, regardless of their

¹ Office of Public Affairs, U.S. Dep't of Justice, Statement of the Attorney General on Litigation Involving the Defense of Marriage Act (Feb. 23, 2011), available at <http://www.justice.gov/opa/pr/2011/February/11-ag-222.html>.

² Defendants' Brief in Opposition to Motions to Dismiss, *Golinski v. U.S. Office Pers. Mgmt.*, No. C3:10-00257-JSW (N.D. Cal. Filed Feb. 23, 2011).

sexual orientation.”³ This statement followed the introduction in Congress of H.R. 1681, Every Child Deserves a Family Act, a bill proposing to punish adoption and foster care agencies that refuse to participate in same-sex adoptions or foster care. The bill would deny access to federal funding and create a federal cause of action for damages. In a May 3 gathering of supporters of the bill, David Hansell of the Administration for Children and Families stated that “[t]he goals of that Act are admirable, and I’m delighted to say that we have already implemented much of what the Act would require of the federal government—specifically, providing technical assistance and guidance on recruiting adoptive and foster parents regardless of sexual orientation or gender identity[.]”⁴

This endorsement of parenting arrangements that, by design, exclude a child from the care of either an adoptive father or an adoptive mother ignores the indispensable role of *both* mothers *and* fathers. It also conflicts with President Obama’s Mother’s Day and Father’s Day proclamations issued in May and June of this year, which appeared to affirm a conviction on the President’s part that neither a mom nor a dad is expendable.⁵ Regarding mothers, President Obama acknowledged “the extraordinary importance of mothers in our lives,” and rightly affirmed that “[m]others are the rocks of our families and a foundation in our communities.” Regarding fathers, the President noted that “we honor the men in our lives who have helped shape us for the good, and we recommit to supporting fatherhood in our families, in our communities, and across our Nation.” The President observed that “[a] father’s absence is felt by children, families, and communities in countless ways, leaving a hole that can have lasting effects.” He called on all “to recommit ourselves to making fatherhood, and the support men need to be fathers, a priority in our Nation.” These stated commitments to the importance of both a mother and a father cannot be reconciled with a policy that supports adoption by same-sex couples, which are always missing either a mother or a father.

2. It was also reported in June that a push is underway to expand to all federal agencies a sexual orientation “sensitivity training” program created by the U.S. Department of Agriculture for its employees. The training materials advise that support for DOMA is to be treated as an actionable form of “heterosexism,” which, employees are told, is “an ‘ism’ like sexism or racism.”⁶ The underlying goal of such a program—the elimination of so-called “heterosexism”—puts all federal officials subject to its mandate in an unavoidable bind: carrying out their very duty to uphold and enforce DOMA now would violate their workplace responsibilities. The training also pressures federal employees opposed to redefining marriage to ignore their moral and faith-based convictions.

3. Finally, anticipating the lifting of the “Don’t Ask, Don’t Tell” military policy, the Office of Navy Chaplains issued in April a directive requiring access to Navy chapels for wedding ceremonies

³ See Chris Johnson, *Stark Introduces Adoption Anti-Discrimination Bill*, Wash. Blade Online, May 3, 2011, at <http://www.washingtonblade.com/2011/05/03/stark-introduces-adoption-anti-discrimination-bill/> (reporting on statement of White House spokesperson Shin Inouye).

⁴ Office of Public Affairs, Admin. For Children & Families, U.S. Dep’t of Health & Human Services, Remarks for David Hansell: Meeting of Parents and Friends of Lesbians and Gays, the National Black Justice Coalition, and the Family Equality Council (May 3, 2011), available at http://www.acf.hhs.gov/opa/remarks_050311b.html.

⁵ Presidential Proclamation—Mother’s Day (May 6, 2011), available at <http://m.whitehouse.gov/the-press-office/2011/05/06/presidential-proclamation-mothers-day>; Presidential Proclamation—Father’s Day (June 17, 2011), available at <http://m.whitehouse.gov/the-press-office/2011/06/17/presidential-proclamation-fathers-day>.

⁶ U.S. Dep’t of Agriculture, Including Sexual Orientation and Sexual Identity in Diversity, slides 16-17 (Jan. 2010), available at http://www.la.nrcs.usda.gov/about/LGBT/GLBT_Training_January_2010.pdf.

involving two persons of the same sex.⁷ The directive acknowledged that “[t]his is a change to previous training that stated that same sex marriages are not authorized on federal property.” The directive also referred to proposed amendments in training materials on the repeal of “Don’t Ask, Don’t Tell” that open the possibility that two persons of the same sex with a marriage license would have access to military housing on the same basis as married couples. In May, the Navy suspended the chaplaincy directive—but did not reject it outright—and this minimal retreat occurred only after strong congressional protests were raised highlighting the conflict with DOMA.⁸

In sum, these recent actions undermine certain fundamental truths about the nature of the human person—the equal importance of mothers *and* fathers to children, and the unchangeable meaning and nature of marriage as a communion of the sexes. They also oppose the deeply rooted consensus among the American people in support of the authentic definition of marriage and laws that reflect it. These actions also harm the common good by imperiling the religious freedom of those who hold these truths and defend these laws.

In particular, the Administration’s efforts to change the law—in all three branches of the federal government—so that support for authentic marriage is treated as an instance of “sexual orientation discrimination,” will threaten to spawn a wide range of legal sanctions against individuals and institutions within the Catholic community, and in many others as well. Based on the experience of religious entities under some state and local governments already, we would expect that, if the Administration succeeds, we would face lawsuits for supposed “discrimination” in all the areas where the Church operates in service to the common good, and where civil rights laws apply—such as employment, housing, education, and adoption services, to name just a few.

Even if religious entities prevail in such cases, we will face an additional layer of government punishments, such as the cessation of long-standing and successful contracts for the provision of social services, and other forms of withdrawn government cooperation. Society will suffer when religious entities are compelled to remove themselves from the social service network due to their duty to maintain their institutional integrity and not compromise on basic moral principles.

Thus, the comprehensive efforts of the federal government—using its formidable moral, economic, and coercive power—to enforce its new legal definition of “marriage” against a resistant Church would, if not reversed, precipitate a systemic national conflict between Church and State, harming both institutions, as well as our Nation as a whole.

⁷ Memorandum from the Chief of Navy Chaplains to Chaplains and Religious Program Specialists on the Subject of Revision of Chaplain Corps Tier 1 Training (April 13, 2011), available at <http://assets.nationaljournal.com/pdf/2011.05.10.RevisionofChaplainCorpsTier1Training.pdf>.

⁸ Sara Sorcher, *Navy Suspends Guidelines for Same-Sex Marriages on Bases*, NationalJournal.com, May 11, 2011, available at <http://www.nationaljournal.com/nationalsecurity/navy-suspends-guidelines-for-same-sex-marriages-on-bases-20110511>.