Yes, Marriage Can Be Saved From the Gay Lobby

by Phyllis Schlafly April 17, 2009

Since the April defeats for traditional marriage in the Iowa Supreme Court, the Vermont legislature, and the Washington, D.C. city council, Americans in the other 48 states are quietly stress-testing their legal defenses against the spread of legalized same-sex marriage.

The Iowa ruling was particularly shocking. Not one of Iowa's seven supreme court justices, who were appointed by both Republican and Democratic governors over the past 15 years, could identify a valid public purpose for the institution that has guided our civilization for thousands of years.

The unanimity of the decision sets Iowa apart from the seven other states — Massachusetts, Washington, New York, New Jersey, Maryland, Connecticut, and California — where state supreme courts have ruled on same-sex marriage since 2003. A majority of the more than 50 state supreme court justices in those seven states had no trouble recognizing the value of conferring public recognition and benefits on the union of husband and wife, as also did lower court judges in Indiana and Arizona.

Unlike the 30 states that added language to their state constitutions supporting the traditional definition of marriage, Iowa does not allow citizen initiatives to go directly to the ballot. The leaders of both houses of the state legislature have refused to allow their members to vote on a marriage amendment, so Iowans now have the difficult task persuading legislators to bypass their own leaders in order to schedule a vote on a measure that polls show two-thirds of Iowans support.

However, a much more critical legal drama began last month in a federal court in Boston. The same law firm that brought gay marriage to Massachusetts is trying to overturn the federal law that protects the traditional definition of marriage in all federal departments, agencies and programs. Leftwing Harvard professor Laurence

Tribe praises this lawsuit as a "surgical attack on DOMA," a law he calls "particularly invidious."

The federal Defense of Marriage Act (DOMA) — signed by President Bill Clinton in 1996 after an overwhelming bipartisan vote in Congress (342-67 and 85-14) — provides that federal laws must be interpreted in accord with the traditional definition of marriage as the union of husband and wife.

Five years ago, the Government Accountability Office (GAO) counted 1,138 federal laws that refer to marriage, spouse, husband or wife, and DOMA requires these laws to be administered uniformly throughout the nation. DOMA requires that even in states where same-sex unions are recognized, their partners are not recognized as married for purposes of federal law.

Same-sex partners cannot claim the privileges and benefits that Congress makes available to those who are married or widowed. For example, they cannot file joint income tax returns, receive Social Security benefits on their partner's wages, collect life insurance following the death of a military service member, or obtain a green card for a partner from another country.

The anti-DOMA lawsuit claims it is unfair and discriminatory that same-sex couples who, they say, are legally married under state law, are not recognized as such by the U.S. government. But the federal government must consider the entire nation, including the 43 states whose laws categorically declare that same-sex marriages from other states are not valid and may not be recognized for any purpose whatsoever.

If we didn't have a uniform federal definition of marriage, it wouldn't be long before every state had same-sex couples saying they were "married" in Massachusetts, Vermont or Iowa, and demanding that their "marriages" be recognized by those 1,138 federal laws even after moving to a traditional marriage state.

If judges overrule Congress and the majority of the American people by striking down DOMA, it would be the same type of judicial supremacy that occurred 152 years ago in the famous Dred Scott case. The U.S. Supreme Court ruled that once a slave became "property" under the laws of a slave state, that legal status had to be maintained and respected even after the slave was taken to a free state, or even to a U.S. territory where slavery was specifically forbidden by Congress.

In his first campaign for the Illinois state senate in 1996, Barack Obama wrote: "I favor legalizing same-sex marriages, and would fight efforts to prohibit such marriages." On his first day as President, the White House website was updated to declare: "Obama also believes we need to repeal the Defense of Marriage Act and enact legislation that would ensure that the 1,100+ federal legal rights and benefits currently provided on the basis of marital status are extended to same-sex couples in civil unions and other legally-recognized unions."

Will the Obama Justice Department do its duty and defend federal law? 77 Members of Congress wrote to Attorney General Eric Holder on March 24 requesting assurances by April 1 "that you plan to defend vigorously this law in its entirety."

We're still waiting for Holder's response. Americans must preserve DOMA at any cost.