



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**J.B. VAN HOLLEN
ATTORNEY GENERAL**

**Kevin M. St. John
Deputy Attorney General**

**114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529**

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Via e-mail

David D. Haynes, Editorial Page Editor
Milwaukee Journal Sentinel
Post Office Box 371
Milwaukee, WI 53201

Subject: Why I'm Defending the Constitution, by J.B. Van Hollen

Editor Haynes:

When I took the job of Attorney General seven and a half years ago, I swore an oath to discharge the duties of my office faithfully and impartially, and to the best of my ability. The most important duty of Wisconsin's Attorney General is to defend our state laws and Constitution. No other official in Wisconsin is vested with such a solemn and foundational responsibility.

The Constitution, our laws and Wisconsin's very sovereignty, cannot defend themselves. Without someone to stand up for them, to enforce them and to defend them, our laws aren't even worth the paper on which they're written. In Wisconsin, that is the duty of my office. You can see the chaos that reigns in regions throughout the world where the law has no defender.

Wisconsin was one of many states during the last decade to ban same-sex marriage. The people voted for it, and it became part of our Constitution. Current polls, however, suggest that many people have changed their minds, and probably wouldn't vote for such a ban if a referendum were held today. So, many politicians, citizens and commentators – from the left *and the right* – have urged me to give up the fight. “You're on the wrong side of history.” “It's a political loser to defend this ban.” “People have changed their minds.” “Loss is inevitable.”

I emphatically reject these arguments.

An Attorney General should stand up for the law and defend it. An Attorney General should be the champion of the law and should reject the urge to pick and choose which laws to defend based on personal political beliefs and ambitions, or the polling data of the day that has not yet found its way into law. An Attorney General must trust the democratic processes through which law is created and be a servant to its outcomes.

If you don't personally support the marriage amendment and think I should give up its defense, then consider a law that you actually support -- a law that is very close to you. Medicaid? School lunches? Charter schools? And consider this simple fact: there are people out there who don't like these laws and believe that they are unconstitutional. There are people out there willing to risk their reputation and personal treasure to void these laws.

If these laws were to be challenged in court, would you want the Attorney General to consider *first* his or her own personal beliefs? If the Attorney General did not like, for example, certain water-pollution regulations, should he concede defeat in court and refuse to defend that law?

If the Attorney General refuses to stand up for laws, then no one will. The laws will be thrown out, and the Attorney General will become a fourth branch of government with his own veto power. But just as the accused, however unpopular, deserve a defense, so too does our Constitution. That is my oath.

This is why I have defended, and continue to defend the marriage amendment. Until the United States Supreme Court gives the final word or our state Constitution is amended, our law deserves a defense.

I reject the idea that this position is standing in the way of history. History does not require an abandonment of democracy or the rule of law to make itself known. If social change is inevitable, it can occur within the framework of law and its democratic and judicial processes. The irony is not lost on me that those who claim same-sex marriage will not weaken traditional institutions are asking me now to abandon the traditional role of the Attorney General.

Let's let the legislature make the law, the judges judge the law, and the executive execute the law. Such a system has given Wisconsin stability and prosperity for more than 166 years. There is simply no reason to abandon our separation of powers and our bright future.