

BUSINESS INSIDER

The 'LeBron James Of Law' Is Arguing For The Defense Of Marriage Act

By: Brett LoGiurato – March 27, 2013

Proponents of the federal Defense of Marriage Act -- which gay rights advocates argue is discriminatory -- have the country's most powerful constitutional lawyer in their corner when the case comes before the Supreme Court on Wednesday.

His name is Paul Clement, and he has quickly become the Supreme Court's most visible lawyer. And for Clement, the fight over DOMA is bit more personal than two high-profile legal battles he was involved in last year.

In 2011, Clement resigned from the firm King & Spalding LLC after it withdrew as counsel for the U.S. House of Representatives in defending DOMA.

"Defending unpopular positions is what lawyers do," Clement said at the time, according to Bloomberg. "The adversary system of justice depends on it, especially in cases where the passions run high. When it comes to the lawyers, the surest way to be on the wrong side of history is to abandon a client in the face of hostile criticism."

Defending unpopular positions is how Clement has made his name. Last year, Clement led the legal challenge that nearly toppled President Barack Obama's Affordable Care Act. He also argued against the government in the high-profile case involving Arizona's controversial immigration law.

Clement has a long legal history both in and out of the federal government. He was Solicitor General under President George W. Bush, a position in which he argued and won controversial cases defending the Bush administration's war on terror and the Partial-Birth Abortion Ban Act.

When Clement left that position in 2008, Evan Tager, a partner at Mayer Brown LLP, dubbed him the "LeBron James of law."

"I knew there would be a massive bidding war and that he would probably break a lot of records in terms of what he could command out of the SG's office," Tager said in an interview last year.

However, Tager first saw Clement's potential seven years before that bidding war commenced, when he noticed a brief Clement had written in the 2001 *Cooper Industries v. Leatherman Tool Group, Inc.*, case, which established the standard of review for Federal Appeals Courts when taking on punitive-damages awards cases.

“I remember thinking, this is a complicated area of law,” Tager said. “There’s a lot of insider baseball here, and I think he’s figured it out. And not a lot of people have.”

But most of the nation came to notice Clement through his brilliant oral argument in last year's case involving the Affordable Care Act, in which he took apart argument after argument from Solicitor General Donald Verrilli.

In one standout moment, Clement pushed back against Verrilli's closing argument tying the affordability of health care to individual liberty, responding that Verrilli had a "funny concept of liberty" if he thought it entailed "forcing somebody" to purchase insurance.

"He just totally tore that apart," said Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute. "Paul is just the best Supreme Court lawyer in the country. It doesn't matter what particular case he's on."

Clement's next big moment will come Wednesday in a case that has been brewing in lower courts for nearly two years. It's another unpopular case, but that's the nature of his job.

"Simply pigeonholing him as the country's greatest advocate is actually an understatement of his ability," Viet Dinh, the founding partner of Bancroft who has known Clement since the pair's days at Harvard Law School, said last year.

"He is one of the best strategic thinkers I know beyond the narrow advocacy. The way he approaches the client's problem, the way he identifies the client's interests, the way he frames those interests into a litigation posture and the way he carries it out, it really is a soup-to-nuts command of his profession, whatever case he's arguing."