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Same-sex benefits may be ‘poison pill’ in immigration debate

By: Franco Ordonez – April 15, 2013

The Supreme Court may have an unexpectedly decisive role in helping to determine whether 11 million people who are in the U.S. illegally are allowed to remain without fear of deportation.

The nine justices who are debating the merits of a law whose provisions include preventing U.S. citizens from sponsoring same-sex spouses for green cards could, depending on their ruling, eliminate or fuel a lingering controversy that some immigration proponents fear might kill efforts to overhaul the nation’s immigration system.

If the Supreme Court rejects a key provision of the Defense of Marriage Act, which denies same-sex married couples federal benefits, the matter is moot. Gay and lesbian binational couples then should receive the same immigration benefits as opposite-sex couples.

But if the court upholds the act, there’ll be more pressure from advocacy groups on President Barack Obama and members of Congress to add same-sex benefits to the pending immigration proposal.

However, many conservative supporters of overhauling immigration – including conservative Roman Catholics and evangelicals – have warned that they might pull their support if same-sex marriage is in the package.

“I totally support not only gay spouse unification and same-sex marriage across the board, but at this point, given the fragile nature of these coalitions, it’s potentially divisive enough to break the effort,” said Alex Nowrasteh, an immigration policy analyst at the Cato Institute, a libertarian research center in Washington.

It’s a difficult challenge for Obama, who might be forced to choose between Latinos and gay supporters, two key constituency groups.

Sens. Patrick Leahy, D-Vt., and Susan Collins, R-Maine, last month introduced the Uniting American Families Act, which would permit citizens to sponsor same-sex “permanent partners” who are applying for legal residency in the United States. Obama has said it should be part of the immigration package.

Democratic members of the bipartisan group that's drafting the Senate immigration proposal, including Sen. Charles Schumer of New York, have lobbied for including the act. But the issue isn't expected to be part of any Senate or House of Representatives proposal, as Republicans have threatened to walk away if it is.

"It's not going to be in the bill," Sen. Lindsey Graham of South Carolina, a Republican leader of the Senate bipartisan team, said last week. "Immigration is hard enough. Let's not go down the road of redefining marriage."

Rep. Raul Labrador, R-Idaho, a leader of the House bipartisan team, called the issue a "poison pill" that would jeopardize progress on immigration legislation.

About 900,000 immigrants in the country identify themselves as gay, bisexual or transgender, including more than 48,000 members of same-sex couples in which one or both spouses or partners aren't U.S. citizens, according to a recent study by the Williams Institute at the UCLA School of Law, a research center on sexual and gender identity issues.

Standing outside the Supreme Court building during last month's oral arguments, Michelle Bailey of Maryland stood with her fiancée, Anna Olsson, originally of Sweden, with a sign that read: "Don't make me choose between my love for my wife and my love for my country."

The momentum for a comprehensive immigration overhaul appears stronger than it's been in years, with several interest groups – including business, labor, and religious leaders – working together to lobby for legislation.

But several of the same religious groups strongly oppose same-sex marriage. Catholic bishops, along with several evangelical groups, sent a letter to Obama earlier this year protesting his proposal to include same-sex benefits.

Even conservative groups that support same-sex marriage and comprehensive immigration legislation worry about the risks of taking up both issues.

During the oral arguments at the Supreme Court, several justices sounded as if they were prepared to strike down the Defense of Marriage Act provision. Justice Anthony Kennedy, a key swing vote on the issue, questioned whether the measure clashed with the role of state governments in defining marriage.

"You are at real risk of running in conflict with what has always been thought to be the essence of the state police power, which is to regulate marriage, divorce, custody," Kennedy said.

The justices' decision is expected in June.

Gay rights advocates were encouraged by the hearing, but they don't think they can back down in their efforts.

“We must continue to work on it, said Lavi Soloway, an activist who helped write the Uniting American Families Act. “But it’s impossible not to recognize the fact that we may be overtaken by events. That would be a moment for celebration.”