



## Conservatives wary of Chief Justice Roberts in same-sex marriage cases

By: [Sam Baker](#) – March 28, 2013

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Some social conservatives are ready to disown Supreme Court Chief Justice John Roberts if he votes in favor of same-sex marriage.

The conservatives were angered by Roberts' surprise backing of President Obama's healthcare law last year, and they don't want to see a similar surprise in the two marriage cases the court considered this week.

"I certainly think his credentials were tarnished with the ObamaCare decision," said Tony Perkins, president of the Family Research Council. "Does he care about his standing with conservatives? I don't know."

Gary Bauer, president of American Values and a former president of the Family Research Council, said Roberts shouldn't be considered a conservative if he sides with the proponents of same-sex marriage after casting the deciding vote on healthcare.

If Roberts breaks with conservatives "on another major issue ... then I think the whole understanding of the current makeup of the Supreme Court would be in question," Bauer said.

He said the court would have to be seen as having a liberal majority, at least on hot-button political and social issues.

Conservatives don't necessarily think Roberts owes them a debt because of healthcare, but they're still not convinced the ruling was a one-off event, Bauer said.

"I hope to the extent he feels a debt to anyone or anything, it would be to the Constitution," he said.

Roberts did not indicate during oral arguments this week that he's leaning toward supporting same-sex marriage in either case. But he also didn't look likely to support the healthcare law when those arguments wrapped up last year.

If conservatives are ready to ditch Roberts, they are already finished with Ted Olson, the attorney who argued against California's Proposition 8 banning gay marriage this week. Olson — a conservative legal superstar — argued marriage equality for gays is a conservative position and said the Constitution ensures a right for same-sex couples to marry.

Perkins and Bauer both reject those ideas.

"Any Republican that argues, from a Republican standpoint, this is the proper

conservative or Republican position is smoking medical marijuana or something,” Bauer said.

If Olson truly believes same-sex marriage is a constitutional imperative, Bauer said that “raises serious questions about whether he is the conservative litigator people think he was.”

Perkins has also soured on Olson, who represented George W. Bush in the case that decided the 2000 presidential election and went on to be the Bush administration’s top litigator.

“Well, he was,” Perkins said when a reporter described Olson as a conservative litigator.

The Proposition 8 fight was one of two gay marriage cases heard by the High Court this week. The second case challenged the Defense of Marriage Act, which prevents same-sex couples from getting some federal benefits granted to married couples.

Olson might have burned his bridges with social conservatives, but he isn’t alone before the Supreme Court.

The libertarian Cato Institute filed a brief urging the court to back marriage equality, and there is a significant libertarian argument against the Defense of Marriage Act — the federal law defining marriage as a union between a man and a woman, which had historically been up to the states to decide.

The conservative divide over same-sex marriage grew wider when Sen. Rob Portman (R-Ohio) announced his support for marriage equality.

Some GOP strategists said this week that the marriage debate will eventually disappear, because young Republicans don’t oppose same-sex marriage and don’t see why it’s an issue.

The social conservatives who dominate early Republican primaries, though, aren’t about to change their minds.

Perkins said the court’s cases on same-sex marriage carry shades of *Roe v. Wade*, the landmark decision declaring that abortion is legal.

The court in *Roe* cut off a debate that was working its way through the democratic process, Perkins said, and the court risks doing the same with a broad ruling now on same-sex marriage.

“I think they’ve very mindful of overreach,” he said.

“People are wondering, based on what [Roberts] did in the *ObamaCare* case,” Perkins said.

Perkins said he thinks Roberts will side against same-sex marriage in both of this week’s cases.

“I think he’s going to be on the right side of this, because it’s pretty clear-cut,” Perkins said.

The question, he said, is whether Roberts will be able to narrow the scope of a ruling in favor of same-sex marriage, even if he is in the minority.