

Hillary Clinton and New York's gay marriage ruling: a calculated bow to the right

By Bill Van Auken, Socialist Equality Party
candidate for US Senate from New York
15 July 2006

Last week, New York's highest court handed down a shameful ruling upholding the state's law barring same-sex marriages. This decision repudiated the constitutional guarantee of equal protection under the law and endorsed bigotry and discrimination as a matter of "tradition."

Just as shameful as this judicial sanction for discrimination and the denial of basic democratic rights was the silence of New York's Democratic Senator Hillary Clinton, who refused to condemn the ruling.

This is not merely a matter of Clinton opportunistically adapting herself to prevailing political winds in New York state, instead of basing her position on democratic and constitutional principles. On the contrary, recent polls have indicated that a clear majority of New Yorkers favor affording same-sex couples the same right to marry as anyone else.

Rather, the New York Senator is positioning herself for a run for the 2008 Democratic presidential nomination and is therefore attempting to curry favor with the political right.

The New York decision is one in a series of judicial and legislative actions nationally aimed at denying the right of gays and lesbians to marry. On the same day as the New York State Court of Appeals issued its ruling, the Georgia Supreme Court upheld the recently passed amendment to that state's constitution banning such marriages.

And this week, in Massachusetts, the Supreme Judicial Court—which legalized same-sex unions in 2003—gave the green light for a proposed amendment to that state's constitution banning them in the future. The state's Republican Governor Milt Romney, a potential candidate for his party's 2008 presidential nomination, has been the most prominent advocate of the ban. The state's Democratic-controlled legislature, however, delayed a vote on the measure, preventing it from being placed on the ballot in November. Some 8,000 same-sex couples have been married in the state—the first and only to issue licenses for such marriages—in the last two years.

Some 20 states have already enacted amendments to their constitutions banning same-sex marriages, while six more will vote in November on such bans. Two states—New Jersey and Washington—are awaiting decisions by their high

courts on whether such unions will be legalized. In Washington, lower courts ruled that marriage was a fundamental right that could not be abridged on the basis of sexual orientation, while in New Jersey they found that no such constitutional right exists. In both cases, the decisions were appealed.

Legal challenges seeking to legalize gay marriage are also pending in California, Connecticut, Iowa, Maryland, Nebraska and Oklahoma.

An amendment to the US Constitution to ban such unions throughout the country was voted down by the US Senate last month, despite vocal public support from President Bush and the Republican leadership. The House of Representatives is scheduled to conduct its own vote on the amendment next week.

In a statement issued by a spokesperson in response to the New York court decision, Clinton declared her support for "full equality for people in committed relationships, including health insurance, life insurance and pensions, and hospital visitation and believes we have to keep working to reach these goals."

This amounted to a reiteration of Clinton's stated support for state-sanctioned civil unions, such as already exist in Vermont and Connecticut. California, Hawaii, Maine and New Jersey have more limited domestic partnership statutes. These are by no means the same thing as marriage, however, and do not end inequality. The discrimination and unequal treatment that underlie this distinction are anything but symbolic.

Civil unions are not recognized outside the states in which they are sanctioned and have no federal standing, thus denying those who enter them federal benefits and protections provided under 1,138 statutes and policies, including Social Security and family medical leave as well as tax and immigration policies.

The model for the anti-gay marriage statutes and amendments that are being enacted around the country is the federal Defense of Marriage Act, which was signed into law by President Bill Clinton in 1996. Senator Hillary Clinton continues to defend this statute enacted by her husband.

The arguments of the majority in the New York high court's 4-2 decision bordered on the absurd. In concluding that the ban on gay marriage was not merely a matter of "ignorance and prejudice against homosexuals," the majority

speculated, on the one hand, that the state legislature could believe—despite a lack of any supporting evidence—that children are better off in households composed of a mother and a father than in those formed by same-sex couples. On the other hand, it advanced the novel claim that affording marriage rights to heterosexual couples while denying them to gays and lesbians could be justified on the grounds that “it is more important to promote stability, and to avoid instability, in opposite-sex than in same sex relationships” because of the likelihood of unplanned pregnancies.

Dissent: a “tradition of discrimination”

In a dissent joined by one other judge, Chief Judge Judith Kaye wrote that “Limiting marriage to opposite-sex couples undeniably restricts gays and lesbians from marrying their chosen same-sex partners... and thus constitutes discrimination based on sexual orientation.” She took apart the majority’s invocation of “tradition” to support the ban, comparing it to the “tradition” of outlawing interracial marriage in the Jim Crow South. “A history of tradition of discrimination does not make the discrimination constitutional ... it is circular reasoning ... to maintain that marriage must remain a heterosexual institution because that is what it historically has been.”

Kaye also assailed the argument that marriage was “more important” for protecting children of heterosexual couples, pointing out that there was no rational argument for denying the same protection to children of same-sex couples. She concluded that future generations would see the court’s ruling as a “misstep,” adding, “This state has a proud tradition of affording equal rights to all New Yorkers. Sadly, the court retreats today from that proud tradition.”

While advocates of gay marriage have vowed to pursue the issue in state legislatures, decisions like that of the New York high court and the failure of Democratic politicians like Hillary Clinton to clearly oppose them have an unmistakable significance. There is no significant section of the ruling elite and its two major political parties which maintains any serious commitment to fundamental democratic rights.

The Republican right is deliberately and cynically attempting to whip up fears, insecurity and prejudice over gay marriage among layers of the population in order to divert attention from the debacle in Iraq and the deteriorating economic conditions confronting the majority of working people in the US.

They base their reactionary appeal very directly upon religion, flouting the bedrock constitutional principle of separation of church and state.

Why are Democratic politicians like Clinton, who pose as liberals and count gays among their electoral base, incapable of mounting a principled defense against this campaign?

Of course, there is the not inconsiderable role of base political calculations at work here. Clinton no doubt reasons that she does not need to take a clear stand on this issue, posing the timeworn cynical Democratic question, “Who else are they going to vote for?”

But, more fundamentally, an effective defense of democratic rights on any question today is impossible outside of a program that seeks to mobilize working people—the vast majority of the population—against all forms of social and economic inequality.

If the Democrats are unwilling and unable to mount such a defense, it is because as a party they represent not the interest of this majority, but of the top 1 percent of the population—Hillary Clinton among them—which has amassed vast personal fortunes precisely through the unrestrained growth of social inequality.

Moreover, politicians like Clinton are unable to expose the attempts of the Republicans to utilize so-called “social issues” like gay marriage to divert public opinion away from issues like the war in Iraq and social inequality precisely because they pose no political alternative on these more fundamental questions. Hillary Clinton supports the war and recently voted to continue the military occupation of Iraq indefinitely. She represents the interests of the corporations and Wall Street.

She herself has tried to outdo the Republicans by posturing as the defender of the same dubious “values,” co-sponsoring a federal law against flag-burning and joining right-wing Republican senators Sam Brownback and Rick Santorum in a campaign against “inappropriate” video games.

My party, the Socialist Equality Party, upholds the unrestricted right to same-sex marriages as a basic issue of equality and democratic rights. But the SEP insists that such rights cannot be defended solely on the basis of civil liberties and resisting attacks on constitutional norms.

Equal rights before the law cannot be realized in a society in which social and economic inequality are all-pervasive. The defense of such rights can be advanced only as part of a broader struggle to unite working people against the stranglehold exercised by a financial oligarchy over political life and its increasing monopolization of the wealth of society. In the final analysis, the defense and extension of democratic rights are inseparable from the independent political mobilization of the working class in the struggle for the socialist transformation of society.