Anti-gay measures threaten democratic rights

Ballot initiatives seek to bar same-sex marriage

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On November 2, election ballots in eleven US states, including Michigan, Ohio, Georgia and Oregon, will include initiatives to outlaw same-sex marriage. Other states, such as Missouri, have already voted such bans into their constitutions.

The Bush administration last February came out in support of a federal constitutional amendment that would define marriage solely as "a union between a man and a woman." The proposed amendment is designed to prevent individual states from recognizing same-sex marriages.

Such an amendment would nullify the recent ruling of the Massachusetts Supreme Court, which held that denying marriage to same-sex couples violated their constitutional right to equal protection under the law and their fundamental right to marry whomsoever they pleased. Under that ruling, gays have been free to marry in Massachusetts since May.

The Socialist Equality Party opposes all efforts to limit the rights of gay persons, including the right of same-sex couples to marry. Involved here is a basic question of democratic rights and equality under the law. The SEP opposes any and all measures that discriminate against people on the basis of race, gender or sexual orientation.

In the case of laws against same-sex marriage, anti-gay discrimination and bigotry combine with an anti-democratic and unconstitutional promotion of religious conceptions as the basis for public policy—something that violates the separation of church and state laid down in the First Amendment of the US Constitution. Ultimately, the arguments supporting a ban on same-sex marriage rest on religious beliefs, which, according to the Constitution, may not be enshrined as law.

The institution of marriage is itself the product of a particular historical and social evolution. Limiting marriage by law to one of its historical forms, in order to discriminate against a section of society, is fundamentally reactionary, whether it takes the form of a ban on marriage between gays, or, as was the case not so long ago in parts of the US, prohibits marriage between people of different races.

Most opponents of gay marriage make a nebulous argument that permitting it undermines the "traditional" definition of marriage as a union between a man and a woman. In February, Bush said he was calling for a constitutional amendment banning same-sex marriage because "marriage cannot be severed from its cultural, religious and natural roots without weakening the good influence of society." This typically disjointed statement is bad science, bad sociology and bad history.

The conception that some ideal marriage form exists is itself erroneous and ahistorical. Marriage, like all other social institutions, evolved and changed over time in accordance with definite economic and social conditions. Karl Marx's closest colleague, Frederick Engels, explained in *The Origin of the Family, Private Property and The State* that monogamous marriage itself arose at a definite stage in the development of the productive forces, which resulted in the accumulation of property, particularly in the form of slaves, inheritance of that property through the male, and male domination of women.

In classical and medieval society, marriage was usually arranged by parents. Engels called modern individual sex love "the greatest moral advance which we derive from and owe to monogamy." He noted that it was only with the development of bourgeois society that love marriage was proclaimed a human right.

In the early history of the United States, marriage was often freely and informally entered into. People could simply call each other husband or wife, without first obtaining the sanction of a church or the state. It was not until the latter half of the nineteenth century, with industrialization and urbanization, that individual states widely began to pass laws regulating marriage and its terms. Not until then did most states outlaw common law marriage.

"Traditional" notions of marriage, and the male dominance associated with them, have been largely undermined by modern economic conditions. Women gained formal legal equality in the course of the last century, they have entered into the labor market outside the home, and the individual family is no longer the economic unit of society in industrialized countries.

Denying marriage to adults of the same sex has very concrete repercussions. Marriage laws provide for rights to inherit and distribute property after death, for care of children and adults, and protections in other important spheres of life.

Most recent polls show that while most people claim they do not object to what adults, including homosexuals, do in the privacy of their homes, most also oppose same-sex marriage. For many, democratic instincts are in conflict with religious teachings, which are whipped up by reactionary politicians. Undoubtedly, many who oppose gay marriage reflect a fear that homosexual conduct will be promoted by putting the stamp of approval on gay unions.

In fact, prejudice toward homosexuals, like the marriage form itself, is a historically conditioned phenomenon. The attitude toward homosexuality has varied throughout history and from one society to anther, with the cultural spectrum spanning proscription, tolerance and

even promotion of homosexuality.

In a recent book entitled *Why Marriage? The History Shaping Today's Debate Over Gay Equality*, Professor George Chauncey of the University of Chicago makes a strong case that it was not until the 1930s Depression that gays in the US encountered the widespread social ostracism and intense legal persecution that drove them underground for several subsequent decades. Chauncey associates this with the impact of the Depression on men's status as family breadwinners. The author concludes that "anti-gay discrimination is a unique and relatively short-lived product" of the twentieth century, and "is neither natural nor inevitable."

It is instructive to compare the current opposition to gay marriage to the past experience in the US with opposition to interracial marriage. In that case, a widely held prejudice became a minority position in the course of a few decades. According to the Associated Press, 73 percent of Americans now approve of interracial marriage. But during the twentieth century, up to 38 states forbade marriage between whites and people of color. State courts upheld these laws numerous times. Even into the 1960s—until the US Supreme Court ruling in 1967 that declared Virginia's anti-miscegenation statute unconstitutional—13 states criminalized marriage between persons of different races.

In 1948, when California's Supreme Court became the first state to strike down a ban on interracial marriage, nine out of 10 Americans opposed such unions. Ten years later, the first Gallup poll conducted on the subject of interracial marriage found that 94 percent of whites opposed it, with only 4 percent in favor.

In 1965, at the crest of the civil rights movement, another Gallup poll found that 72 per cent of Southern whites and 42 per cent of Northern whites still wanted to ban interracial marriage. When the US Supreme Court issued its 1967 decision against laws banning interracial marriage, more than 57 percent of Americans still did not approve of interracial marriage.

The legal views expressed by the Supreme Court in the 1967 *Loving v. Virginia* decision are highly relevant to the current debate over gay marriage. The court stated that "the freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men," such that the Virginia statute deprived interracial couples of their liberty without due process of law, in violation of the Fourteenth Amendment of the US Constitution.

The Supreme Court further argued that the Virginia statute also violated the equal protection clause of the Fourteenth Amendment, and noted that it "had consistently repudiated distinctions between citizens solely because of their ancestry as being odious to a free people whose institutions are founded upon the doctrine of equality."

Even under limited principles of bourgeois equality before the law, there can be no credible argument that persons should be deprived of the basic civil right to marry whomever they choose because of an inclination toward those of the same sex, no more so than because of the accident of their ancestry. The Massachusetts Supreme Court reasoned in precisely that fashion this year in granting same-sex couples the constitutional right to marry.

For the Massachusetts court to arrive at its ruling, the US Supreme Court had first to reverse its fifteen-year-old ruling that a state (Georgia, in that case) could constitutionally prosecute homosexuals for engaging in sodomy. Last year, the US Supreme Court did just that. In the *Lawrence* case, it ruled that Texas's anti-sodomy statute violated the equal protection and due process rights of homosexuals. Justices Anthony Kennedy and Sandra Day O'Connor, considered the conservative "swing vote" justices on the Court, wrote concurring opinions essentially conceding that the Court's view only 15 years before was rooted in backward prejudice against homosexuals, much like prejudice against women or blacks in the past.

The ruling in *Lawrence* emphasized that laws against homosexuality interfered with the most private aspects of consensual adult relations. Such considerations of fundamental privacy rights argue strongly as well for recognition of gay marriages. The right to privacy is an expression of the more general democratic and legal proposition that the state does not have a right to impose a moral standard on individuals, except to prevent actions that harm others, e.g., criminal actions such as theft, homicide, fraud and the like.

Ruling classes have long used religious conceptions and base prejudices to obscure the workings of society and divert exploited classes from struggle against their exploiters. The campaign against same-sex rights is such an attempt, this time by the most reactionary sections of the American ruling elite.

The Republican Party's platform at its national convention in August was even more extreme than the proposed constitutional amendment forbidding states from recognizing gay marriage. It called for banning not only same-sex marriage, but also civil union laws. (The latter give to couples who register their union with the state some (as in Hawaii) or virtually all (as in Vermont and in California beginning in 2005) of the protections afforded marriage. Bush last week backed away from that more extreme position, but the ballot propositions in Michigan, Ohio and some other states call for precisely that.

The timing of Bush's support for the constitutional amendment, and of the official opposition of the Republican Party to granting any legal recognition to same-sex couples, is politically calculated to energize their fundamentalist religious base in this election year.

The official position of the Democratic Party, and of its presidential candidate, John Kerry, once again displays the inability of a decaying American liberalism to seriously oppose the onslaught against democratic rights. They oppose the proposed constitutional amendment banning gay marriage, but at the same time oppose gay marriage.

The Democratic Party does not call on the US Supreme Court to rule that gays have a constitutional right to marry. Quite the contrary. In 1996, Democratic President Bill Clinton signed into law the Defense of Marriage Act, which gives states the right to not recognize same-sex marriages occurring in other states.