

US Supreme Court hears arguments on gay marriage

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The US Supreme Court on Tuesday and Wednesday heard arguments on two cases challenging legal restrictions on gay marriage. The hearings became the focus of widespread media attention, bringing to the fore a democratic issue as well as the uses to which the question is being put by large sections of the American political establishment.

On Tuesday, the court heard arguments in *Hollingsworth v. Perry*, a suit challenging California's Proposition 8, a referendum proposal narrowly passed in 2008 that altered the state constitution to define marriage exclusively as a union between a male and a female. Passed only months after a state Supreme Court ruling overturning an existing state law banning same-sex marriages, Proposition 8 had the effect of banning gay marriages in California.

The following day, the Supreme Court held oral arguments in *US v. Windsor*, a suit challenging the Defense of Marriage Act (DOMA), passed in 1995 and signed into law by then-President Bill Clinton in 1996. DOMA defines marriage for federal purposes as a union between a male and female, effectively denying federal benefits such as Social Security and leave to care for a spouse, as well as tax advantages, to same-sex partners, including those whose unions are sanctioned as marriages in nine states and Washington DC, where gay marriage is recognized.

The oral arguments on Tuesday seemed to indicate a reluctance among the justices, liberal as well as right-wing, to issue a ruling on Proposition 8 that would broadly uphold the right to same-sex marriage on a national scale. Much of the back-and-forth between the lawyers and justices involved questions concerning the legal standing of the claimants and the propriety of the court even hearing the case. At the same time, the four liberal justices made clear their general support for the right of gays to marry and the right-wing bloc, headed by

Chief Justice John Roberts, signaled general opposition. The so-called "swing" vote, Justice Anthony Kennedy, expressed doubts about the court ruling on the legal merits of the case.

If the court majority stops short of a clear ruling overturning Proposition 8 on grounds of due process and equal protection under the law, it could let stand a federal Ninth Circuit Appeals Court ruling that overturned the gay marriage ban on narrow grounds that apply solely to California.

Arguments in the DOMA case seemed to point to a five-justice majority in favor of overturning the section of the law that defines marriage as a union between a male and a female. However, such a ruling, if it does emerge when the decisions are handed down later this year, could be crafted narrowly to affect only those states that already recognize same-sex marriages.

There is a clear issue of democratic rights in the same-sex marriage question. Gay people have a democratic right to marry, and people in general have a right to marry whomever they choose. Marriage is a legal and civil institution, and any benefits that derive from being married should be available to all spouses, regardless of their sexual orientation.

Such benefits should, in fact, be more broadly available to partners in unions, homosexual or heterosexual, that do not have the imprimatur of marriage.

All arguments against gay marriage are either directly or indirectly based on religious dogma, and should have no legal standing under the First Amendment separation of church and state. Moreover, claims that same-sex marriages somehow offend societal norms are being shattered by the growth of popular support for gay marriage. According to recent polls, 58 percent of the population supports the right of gays to marry.

Having said that, claims that recognition of same-sex marriage signifies a new flowering of democratic

rights—summed up in the media refrain that gay marriage is the civil rights movement of today—lack any credibility. The shift of large sections of the political and media establishment behind this issue coincides with an unprecedented assault on democratic rights and the erection of the legal scaffolding of a police state.

The embrace of gay marriage by the Obama administration, large sections of the Democratic Party and a growing number of Republicans underscores the degree to which identity and lifestyle politics in its various forms—race, gender, sexual orientation—has become a vital element of bourgeois politics.

It is a mechanism for diverting attention from the assault on democratic rights, the expansion of war and militarism, the growth of poverty and the widening chasm between rich and poor. It is being promoted as a means of defusing social opposition, particularly among liberal and “left” sections of the upper-middle class that are fixated on identity politics while prepared to go along with war, mass poverty and brazen violations of democratic rights such as drone assassinations and indefinite military detention.

The social layers that are most preoccupied with the issue of gay marriage are symbolized by the plaintiff in the case against DOMA. Edith Windsor, 83, sued the government after she was forced to pay an estate tax bill of more than \$360,000 on the inheritance left by her deceased spouse because the federal government did not recognize her same-sex marriage.

Under conditions of a massive assault on democratic rights, it is impossible to interpret the widespread embrace by the political establishment of identity politics issues such as gay marriage as motivated by anything other than political calculations. The American ruling class has for some time been utilizing “human rights”—defined largely in racial, gender and sexual terms—to marshal support for its predatory foreign policy.

In 1995, the Clintons had political reasons for supporting DOMA. Today they have political reasons for publicly opposing it.

Even as he was personally approving kill lists for drone assassinations in Afghanistan, Pakistan, Somalia and Yemen, including of American citizens; expanding CIA torture sites, renditions and domestic spying; and signing laws institutionalizing indefinite military detention, Obama was ostentatiously dropping his previous opposition to gay marriage. In 2011 he declared that he considered DOMA to be unconstitutional. In 2012, in a transparent bid to mobilize his liberal and pseudo-left

supporters for his reelection campaign, he announced that he had shifted from opposition to support for gay marriage.

The broad support in the political establishment for gay marriage was summed up in the legal team that argued for the overturn of Proposition 8 before the Supreme Court on Tuesday. The lead attorney was Theodore Olson, a Reagan appointee who defended the administration in the Iran-Contra affair, played a major role in the right-wing conspiracy that culminated in the impeachment of Bill Clinton, and argued in behalf of George W. Bush in the infamous case of Bush v. Gore, in which the Supreme Court closed down vote counting in Florida and stole the 2000 election for Bush.

Olson’s co-counsel on Tuesday was David Boies, the liberal attorney who in 2000 argued before the court in behalf of the Democratic presidential candidate Al Gore.

For organizations on the so-called “left” that reflect the interests of privileged upper-middle-class social layers, such as the International Socialist Organization, issues such as gay marriage provide a means to obscure the fundamental class divide in capitalist society and ally themselves with the Democratic Party and its appendages in the trade union bureaucracy. The right-wing politics of these groups is reflected in their attempt to portray the conferring of legal sanction to gay marriage as a profoundly progressive response to the social crisis.

With economic conditions and the accelerating assault on jobs, wages and social programs placing devastating pressure on working-class families, the notion that social problems will be solved by spreading the sanctity of marriage is, to say the least, highly conservative.

Moreover, any democratic gains are only as secure as the means used to obtain them. Legal recognition of gay marriage, bestowed by the political establishment for reasons of political expediency, will remain highly vulnerable as political conditions change.



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