

The US Supreme Court and marriage equality

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By a vote of 5 to 4, the US Supreme Court on Friday upheld the right of same-sex couples throughout the United States to legally marry. The decision, long overdue, invalidates laws in a minority of US states that prohibit recognition of same-sex marriage and arbitrarily discriminate against homosexuals.

Under the legal regime as it had existed until yesterday, 36 of the 50 states had recognized same-sex marriage, but the rest had not. This meant that a couple could marry in one state, only to find that their marriage was not recognized in another state. Under the US Constitution, states are required to give “full faith and credit” to each other’s official acts, records and proceedings.

Same-sex couples and their children also found themselves subject in many states to humiliating and discriminatory limitations on the privileges afforded to other married couples. They were treated differently in areas such as inheritance, taxation, parenthood, adoption, guardianship, health care benefits and other matters.

The majority decision—authored by conservative Justice Anthony Kennedy and joined by Justices Elena Kagan, Sonia Sotomayor, Stephen Breyer and Ruth Bader Ginsburg—referred to previous Supreme Court decisions intended to “correct inequalities in the history of marriage, vindicating precepts of liberty and equality under the Constitution.” Accordingly, the court declared that “the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same sex may not be deprived of that right and that liberty.”

The decision sweeps away an accumulation of reactionary laws passed by state legislatures seeking to appeal to right-wing and religious fundamentalist

elements. It is a setback to efforts to infiltrate essentially religious criteria into the legal system in violation of the principle of separation of church and state.

The fact that the decision was reached by just one vote is, given the obvious democratic issues at stake, extraordinary. The tirades of dissenting justices Clarence Thomas, Antonin Scalia, John Roberts and Samuel Alito are reactionary and obscene.

Notwithstanding all of the above, the self-congratulatory euphoria in sections of the political establishment and media is unwarranted and hypocritical. Especially grotesque were the attempts of the Obama administration to cloak itself in the mantle of freedom, equality and progress.

“This decision affirms what millions of Americans already believe in their hearts,” Obama declared. “When all Americans are treated as equal, we are more free. My administration has been guided by that idea.”

This from an administration that has presided over an attack on the most basic democratic rights and a historic transfer of wealth from the broad mass of the population to the super-rich. It has advanced pseudo-legal arguments for assassination of US citizens, shielded war criminals and torturers, persecuted whistleblowers, overseen the expansion of illegal domestic spying, deported immigrants en masse, and has constantly sought to accommodate itself to the far right on a host of matters relating to the separation of church and state.

The Supreme Court, too, has trampled on the Constitution and rode roughshod over basic democratic principles. This same Supreme Court is responsible, among the many other reactionary decisions that could be named, for a decision in recent weeks upholding the Obama administration’s assertion of the arbitrary

power to deny an immigration visa to the spouse of a US citizen based on vague invocations of the so-called “war on terror.” So much for “the sacred institution of marriage”!

At the same time, the court is concerned about its own legitimacy and the majority opinion yesterday repeatedly references “public opinion.” The justices no doubt had the recent experience in Ireland very much in mind, which saw voters overwhelmingly approve same-sex marriage legislation. Given that the right to same-sex marriage has enthusiastic support among a new generation of young people, the majority on the Supreme Court was concerned that a decision denying that right would destroy whatever shred of confidence the population retained in the institution.

The public support for marriage equality reflects the basic commitment of the broad mass of humanity to democratic rights and the ability of the working population to overcome previous prejudices. The political establishment confronts vast changes in popular consciousness of a broadly democratic character that it neither encouraged nor welcomes.

While it has increasingly relied on identity politics focused on matters of race, gender and sexual preference to conceal the basic class divisions in American society, for many decades it utilized reactionary laws against the rights of gay people as part of its efforts to cultivate backward and fascistic layers.

It now feels the need to make certain tactical adjustments to preempt a further development of mass democratic sentiment along independent working-class and socialist lines. This is especially the case in light of demonstrations around the country against police killings and other signs of growing social discontent.

The political establishment is prepared to make concessions on some issues, particularly those that have a base of support among more privileged layers of the upper-middle class, while continuing its policy of social counterrevolution against the working class at home and imperialist bullying and war abroad.

Nobody should be fooled into thinking that the American ruling class has suddenly “seen the light.” No democratic right can be secured outside of a struggle against the ruling class and the capitalist system. The defense and expansion of democratic and social rights must be anchored in an independent political movement based on the working class.

Otherwise, what is granted one day can easily be taken away the next.



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