Quebec court rejects petition to stay anti-democratic provisions of CAQ's "secularism" law

Louis Girard
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In a split 2-1 decision, a three-judge panel of the Quebec Court of Appeal has refused to suspend the application of Sections 6 and 8 of Quebec's law "respecting the laicity [secularism] of the State" pending a decision by the courts—and, in all likelihood, an eventual ruling by Canada's Supreme Court—as to their constitutionality.

Commonly known as Bill 21, Quebec's "secularism" law is chauvinist and anti-democratic. Among other things, it prevents teachers and other state employees in so-called "positions of authority" from wearing "religious signs"—that is, the Muslim hijab, Jewish kippah, and Sikh turban and kirpan. The law was adopted last June by Quebec's right-wing nationalist and autonomist ("Quebec First") Coalition Avenir du Quebec (CAQ) government, with the support of the pro-independence Parti Quebecois.

Although they were divided on whether Bill 21 should be stayed pending determination of its constitutionality, all three judges found that key clauses of the CAQ law are causing "serious and irreparable harm" to some religious minorities and that it infringes on fundamental rights guaranteed under the Canadian constitution's Charter of Rights and Freedoms, such as freedom of religion.

The two judges who nonetheless ruled that the law should remain in force cited as their principal reason the CAQ's decision to shield it from constitutional challenges by making it subject to the "notwithstanding clause." This anti-democratic provision of Canada's constitution allows the federal and provincial governments to pass laws that run roughshod over the fundamental rights stipulated in the Charter, such as freedom of expression, peaceful assembly or protection against arbitrary detention, so long as they invoke the "notwithstanding clause."

Chief Justice Nicole Duval Hesler acknowledged that Bill 21 has already caused serious harm to teachers and students, citing, among other things, "financial problems, psychological problems, humiliation, obstacles to pursuing the career of their choice, and obstacles to advancing in their careers because they cannot exercise another function within the same school board or change to another school board." (As a "concession," the government stipulated teachers who wear religious signs can keep their current jobs, but they cannot be promoted and, since there is now a ban on hiring people who wear religious signs, they cannot switch to another school board.)

The three plaintiffs (a university student who wants to become a teacher and who wears the hijab, the National Council of Muslims, and the Canadian Civil Liberties Association) argued that there are strong reasons to believe the Supreme Court will find Sections 6 and 8 of Bill 21 unconstitutional, and that their application, therefore, should be immediately suspended.

This is what happened in 2018 to the Quebec Liberal government's newly adopted Bill 62. An earlier chauvinist law targeting Muslim women, Bill 62, stipulated that public services in Quebec must be given and received with "uncovered faces"—stripping women who wear the *niqab* or *burqa* of their right to receive schooling at a Quebec university or even public health care.

Bill 62 inspired Section 8 of the CAQ's Bill 21, but, as Justice Hesler noted in her ruling, since its "discriminatory effect…is obvious, the legislature included the so-called 'notwithstanding' clause," so as to prevent it being stayed and ultimately struck down as unconstitutional.

In an attempt to circumvent the "notwithstanding clause" and in anticipation of the arguments that they will make when the constitutionality of Bill 21 is adjudicated, the plaintiffs pointed to Section 28 of the Canadian Charter. It states that rights and freedoms are guaranteed equally to male and female persons "notwithstanding anything in this Charter," including the notwithstanding clause.

Justice Hesler deemed the plaintiffs' argument compelling, and in her ruling supporting a stay found that Bill 21 "disproportionately" discriminates against women (since the vast majority of those adversely affected are hijab-

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clad Muslim women who are, or are training to be, teachers).

The other two members of the Appeal Court panel, Justices Bélanger and Mainville, disagreed. Given the government's invocation of the "notwithstanding clause," they said that it was far from evident the courts will strike Bill 21 down as unconstitutional. They found the plaintiffs' proof Bill 21 violates the constitution's guarantee of gender equality needed to be more comprehensive. Furthermore, how Section 28 precisely relates to the notwithstanding clause is, they contended, a complex legal issue, since it has not previously been the subject of court decisions.

In the absence of clear legal precedents and jurisprudence demonstrating Bill 21 was unconstitutional, Justices Bélanger and Mainville ruled that "the public interest" is served by the law remaining in force, since it was the "will" of the National Assembly (provincial legislature.)

However, both judges severely criticized the use of the notwithstanding clause. Justice Bélanger wrote that "at this stage of the case, the courts must abandon to their fate women graduates who are willing to work and who, for the sole reason that they wear the veil, have been denied access to a job for which they hold all the skills."

Justice Mainville added that the use of the notwithstanding clause "is not a trivial matter. It entails a suspension of citizens' fundamental rights, hard-won rights that guarantee the freedoms we cherish as a society and country."

The claims of the Quebec political elite that Bill 21 is aimed at ensuring the secular character of the state are a hypocritical and cynical fraud. Like the defunct Quebec Charter of Values of the 2012-2014 Parti Quebecois government, Bill 21 provides numerous exemptions for Roman Catholic symbols in the public sphere, under the cover of protecting Quebec's "cultural heritage." Moreover, the CAQ government has publicly declared it has no objection to teachers wearing "discreet" Catholic crucifixes.

Not without validity, CAQ Premier Francois Legault has boasted his government's law represents a consensus of Quebec's political elite because it draws on both the PQ's Charter of Values (which sought to impose an even wider ban on Quebec state employees wearing religious signs) and the Liberals' Bill 62. It is also inspired by the pseudo-liberal recommendations of the Quebec government-appointed Bouchard-Taylor Commission, which in 2008 proposed a prohibition on state employees in a "position of coercion," such as judges, prison guards and police officers, wearing "religious signs."

This last recommendation was long trumpeted by Québec Solidaire (QS), a pro-independence pseudo-left party. For well-over a decade, QS provided a cover for the Quebec elite's pronounced turn to chauvinism, insisting that the official debate over "secularism" and "excessive accommodations" to minorities was "legitimate"—not a trumped-up issue used to deflect mounting social anger over austerity and divide the working class.

Despite its purported opposition to Bill 21, QS has refused to conduct any campaign against the chauvinist law and has conspicuously boycotted public protests against it.

The "opposition" displayed by the federalist wing of the Canadian ruling class to Bill 21 is no less hypocritical. Other provincial governments, including the hard-right governments of Doug Ford and Jason Kenney, in Ontario and Alberta, respectively, have stoked hostility to refugees and connived with far-right forces.

As for the Trudeau Liberal government, its first term in office was marked by a massive increase in military spending and a strengthening of the role of the Canadian Armed Forces in Washington's neo-colonial wars in the Middle East, which have killed and displaced millions. Since George W. Bush proclaimed a so-called "war against terror" in 2001, these wars have been associated with the promotion of Islamophobia. Despite its purported "pro-refugee" stance, the Trudeau government has worked closely with the Trump administration in its witch hunt of immigrants.

The CAQ's Bill 21, along with its measures to restrict immigration and subject prospective immigrants to "cultural" selection criteria, are part of an international shift toward authoritarian forms of rule and the promotion of chauvinism and racism. In the United States, Trump has fomented hostility to migrants from Latin America with constant denunciations of them as "criminals." Supported by the Democratic Party, he has allocated billions to build a wall between the United States and Mexico and to militarize the border.

All over the world, faced with mass opposition to austerity, social inequality and war, the ruling class is seeking to use the poison of chauvinism to divide workers along ethnic lines and to make immigrants and minorities the scapegoats for the social crisis engendered by capitalism.

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