

UK Supreme Court case on the Scottish referendum draft bill: a reactionary distraction

Steve James
18 October 2022

The Scottish government's case seeking a legal basis for a second referendum on independence reached the UK Supreme Court last week. The two-day hearing arose from the publication, June this year, by the government of First Minister Nicola Sturgeon, of a draft Independence Referendum Bill.

The bill sought to legislate in the Scottish parliament for a new independence poll, to be held October 19, 2023, nine years after the previous poll of September 18, 2014.

A manoeuvre by the ruling Scottish National Party (SNP), the draft bill was accompanied by the government's exploration of the legal grounds for the new referendum in the UK Supreme Court. Under the terms of Section 30 of the 1998 Scotland Act, powers on constitutional and other matters reserved for Westminster, can be transferred temporarily to the Scottish parliament. After the 2014 vote, held under a Section 30 transfer of authority, was much closer than expected, successive British governments have refused to transfer powers for a rerun.

Anticipating that the court will throw out the Scottish government's case, Sturgeon also announced the SNP's intention to treat the next UK general election, due 2024, as a “de facto” referendum on independence, without explaining precisely what that means.

The Supreme Court hearings summarised the arguments put forward by Scotland's current Lord Advocate, Dorothy Bain KC and her opponent, James Eadie KC, representing the Office of the Advocate General. The Lord Advocate is Scotland's leading law officer, overseeing criminal prosecutions, advising and representing the Scottish government on civil cases. The Office of the Advocate General is a British government department, set up as part of the devolution settlement, dealing with Scottish legal matters.

The issues in dispute in the Supreme Court amount to the following:

- Could the Supreme Court even issue a verdict on the case

at all? The Lord Advocate argued she could not sign off on the draft referendum bill without being confident that the bill was legally competent. The Advocate General said the case should not even be heard since the bill should have been passed by the Scottish parliament before it was presented to the Supreme Court.

- Given the British government is opposed to a Section 30 order which would allow the Scottish government to hold a poll, could the Scottish government nevertheless hold a legal referendum on such a crucial constitutional question, which should be reserved for Westminster; and even should that vote only be viewed as only having an 'advisory' role? The Scottish government case appears to rest on the claim that an “advisory” vote would have no constitutional impact.

Unsurprisingly, there is a broad consensus among commentators that the Scottish government's case will be thrown out. It is not even being heard by the whole Supreme Court. Only five Supreme Court judges are sitting, out of a possible eleven, although these include representatives of the differing legal environments in Scotland, Wales and Northern Ireland along with two experts in English law. Nevertheless, the judges, who have 8,000 pages of submissions to digest, are not expected to issue a verdict for months.

Particularly since the result of the Brexit referendum of June 2016, the Sturgeon government has been seeking an opportunity to reverse the clear rejection of independence, by 55 to 45 percent, in 2014. Year after year, Sturgeon has made statements on the imminence of another poll.

The SNP leadership, however, are anxious to avoid emulating the Catalan example. In 2017, the regional Catalan government held a referendum on Catalan secession from Spain, which was declared illegal by the Spanish Constitutional Court. Voters in the outlawed poll were subjected to brutal repression by the Spanish state and leading Catalan nationalists were hounded and jailed across Europe. The SNP leadership made clear its own attitude

towards democratic rights by saying almost nothing in defence of its Catalan peers. It prioritised largely futile efforts to convince the European bourgeoisie that Scotland could be granted its own place in the European Union (EU) and its Single Market—weakening British imperialism after Brexit—without inflaming separatist movements in Spain, Belgium and elsewhere that threaten the stability of member states.

The SNP are in addition seeking to square the circle and maintain relations with the British government, its legal system and massive state and military apparatus, and access to markets on which Scotland's economy still depends. In effect, Sturgeon is using the draft bill as means to keep the independence issue in the headlines, fending off pressure from hardline nationalists within the SNP and from former SNP leader, Alex Salmond and his Alba party, seeking a more aggressive independence push.

Salmond's stance has been endorsed by the Scottish pseudo-left tendencies, underscoring their role as a ginger group for a section of the financial oligarchy.

Former Scottish Socialist Party leader Tommy Sheridan, now an Alba member, has for years insisted that the successive electoral triumphs of the SNP, in power since 2007, give the party a “mandate” to open independence negotiations immediately. A Socialist Party Scotland statement echoed this, declaring its support for “the right to indyref2” and advocating “a mass mobilisation of the working class and trade unions in the streets, workplaces, schools and colleges to deliver it.”

But Sturgeon and Salmond speak for business interests in Scotland, including those whose access to EU markets and dependence on a steady supply of workers from Eastern Europe have been disastrously disrupted by Brexit. Scotland voted 65 to 35 percent against Brexit, the largest majority in the UK. The Scottish government presents independence as a means to reverse Brexit, while offering a stable platform for the intensified exploitation of the working class and the expansion of private wealth for transnational companies seeking access to the Single Market.

Further indication of the class interests driving the SNP, regardless of any independence poll, is its response to the British government's proposal for freeports, where national tax, labour, planning and environmental regulations can be ripped up in pursuit of unrestricted profit making.

The SNP aims to host two “green freeports”, where, under the cover of some net zero rhetoric, that same basic model will apply. One of the candidate freeports is the North East Scotland Green Freeport, based around Aberdeen and Peterhead, centres of the oil, windfarm and carbon capture industries. The freeport's backers include the local authorities, Macquarie Group one of the world's largest

infrastructure investors and Scottish billionaire Sir Ian Wood, founder of the global oil services giant, Wood Group PLC.

The SNP has also stepped up efforts to present the business case for independence. The latest in a series of government papers, “Building a New Scotland: A stronger economy with independence” was published this week. The section “What our proposals would mean for your business”, stressed increased productivity, access to the European Single Market and “reformed models of corporate governance that evidence shows improve productivity.”

The draft bill and Supreme Court case have emerged amid the greatest upsurge of the working class for decades internationally, including in all corners of the UK. All factions of the Scottish bourgeoisie, the Labour and trade union bureaucracy and the pseudo-left recognise the immense utility of the endless arguments and counter arguments on the “Scottish question” towards maintaining political control of the working class.

This is underscored most clearly by the fact that the SNP vociferously supports NATO's war against Russia, an issue that counts for nothing when determining the pseudo-left's nationalist orientation. Indeed the war is an issue that barely concerns them as they pursue the chimera of “national independence”, courtesy of the global corporations, the EU and NATO.

The net result is that the essential class questions of brutal and deepening exploitation across Britain and the catastrophic decline of public services under the impact of inflation, war and world crisis can be suppressed and diverted.

The question posed to workers in Scotland is not the tail ending one or other faction of the ruling class, but building a unified socialist movement with workers across Britain and internationally in defence of living standards and in opposition to war.



To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact