# US Supreme Court hears oral arguments on same-sex marriage cases

**By Evan Blake**
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On Tuesday, the US Supreme Court heard oral arguments in a multi-state challenge to the constitutionality of state bans on same-sex marriage.

The case, *Obergefell v. Hodges*, includes lawsuits challenging restrictive bans on same-sex marriage in Kentucky, Michigan, Ohio and Tennessee—four of the only 13 states remaining that prohibit gay marriage.

The first element of the case focuses on whether the states have the right to circumvent the Fourteenth Amendment's guarantees of due process and equal protection with respect to the right to marriage. If the court rules in favor of same-sex marriage on the first element, it is possible that the Court may make a decision that effectively legalizes same-sex marriage nationwide.

During the course of the oral arguments, the expected split between justices emerged, with Justices Ruth Bader Ginsberg, Stephen Breyer, Sonia Sotomayor and Elena Kagan indicating their opposition to the marriage bans; and arch-reactionaries Justices Samuel Alito, Antonin Scalia and Clarence Thomas indicating their support for the bans.

While Justice Anthony Kennedy is expected to be the "swing" vote that determines the final outcome of the trial, questions remain as to whether Chief Justice John Roberts—a George W. Bush appointee—will back same-sex marriage. Because either of the two conservative votes of Kennedy and Roberts would swing the vote in favor of same-sex marriage, it is generally expected that the Court will strike down the marriage bans as unconstitutional.

The fact that an issue as elementary as the democratic right to marriage remains a confrontational legal question speaks volumes to the right-wing, religious character of the American political system. The reactionary character of the debate was framed by the pseudo-legal rationale put forward by Justice Antonin Scalia.

Scalia was the most open in sharing his contempt for the First Amendment's Establishment Clause, which prohibits the government from passing laws that sanction a particular religious belief. "I'm concerned about the wisdom of this Court imposing through the Constitution a requirement of action which is unpalatable to many of our citizens for religious reasons," he said.

Scalia's remarks underscore the unavoidable legal contradiction bound-up with any defense of same-sex marriage bans. Though the courts have long recognized marriage as a "fundamental right" under the Fourteenth Amendment's Due Process Clause, opponents of same-sex marriage make the baseless legal argument that their religious beliefs are upset by the civil rights of millions of homosexual people.

The degree to which a section of the Court is swayed by such legal hogwash was highlighted by Justice Scalia's response to a delusional right-wing religious protester who interrupted yesterday's arguments to shout that the justices would "burn in hell" if they voted in favor of gay marriage. Scalia declared that the outburst "was rather refreshing, actually."

Justice Kennedy, who has cast votes in favor of same-sex couples on prior occasions, seemed to share the antiquated and reactionary views of Scalia, declaring, "This definition [of marriage being between a man and a woman] has been with us for millennia. And it's very difficult for the Court to say, oh, well, we know better."

The same spurious standard of the inertia of tradition was used to justify slavery prior to the Civil War, as well as anti-miscegenation laws throughout the era of Jim Crow, which were finally abolished in the

landmark 1967 Supreme Court case *Loving*

Brought to the Court during the stormy years of the Civil Rights Movement, the final ruling came a mere ten months before the assassination of Dr. Martin Luther King, Jr.

In that case, a unanimous Supreme Court backed Chief Justice Earl Warren's declaration that "there is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. .. There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause."

Attempts by the religious right to draw a distinction between same-sex marriage and interracial marriage are completely without legal merit. The distinction made is not a legal one, and it relies upon a religious definition of "marriage" that does not stand up to constitutional analysis.

Equally erroneous is the assertion that same-sex marriage bans are supported by wide swaths of the population.

In fact, the past decade has seen a major shift in public opinion on the question of same-sex marriage. A February CNN poll shows that 63 percent of Americans believe same-sex marriage is a constitutional right, with just 35 percent in opposition. This figure represents a major shift in opinion from as recently as 2009, when a CBS poll showed only 33 percent in favor of same-sex marriage rights.

Such a shift in public opinion is evidence not only of growing support for same-sex marriage; it also refutes claims that the American population is beholden to bigoted religious backwardness. To the contrary, the shift on same-sex marriage is proof of the essentially open and democratic outlook of the broad majority of the population.

Though by no means a certainty, it is increasingly possible that the US Supreme Court will finally strike down state bans on same-sex marriage. Such a move is not proof of the progressive capacities of the American ruling class. Rather, it is an expression of the severe limitations of the whole political set-up, where those democratic rights not bound up with identity politics—a principal component of bourgeois politics in general and the politics of the Democratic Party in particular—are ignored outright.

Whatever the Court's decision in *Virginia* on same-sex marriage, this term will be defined not by the decisions that are reached, but by those cases that are not heard at all. During its 2015 term, the Court will not hear any cases on: the constitutionality of the Obama administration's state assassination of US citizens without trial or warrant, the impunity granted to police officers to shoot and kill people in the streets on a daily basis, the massive spying operations carried out against the population, the cruel and unusual use of poison cocktails against death penalty victims, the re-imposition of the firing squad or the Obama administration's cover-up for CIA torture. In its present term, the Supreme Court's silence is louder than its actions.