

# THE NAKED AND UNBOUND AMBITION OF KYRSTEN SINEMA

As the kerfuffle over SB-1062 dies down, politics march on here



at ground zero in Arizona. The GOP runs the key Executive Branch offices such as governor and Secretary of State but, more importantly in many respects, also the state legislature, and as long as they do state politics will continue to be dominated by clusterfucks and cleanups. But Arizona has issues with their statewide federal elected officials too. The current manifestation is not McCain, Flake, nor even the Pleistocene era brainfart known as Trent Franks.

No, today's issue is the once and forever self proclaimed liberal Democrat, Kyrsten Sinema. The transformation of Sinema, who aggressively sold herself as progressive liberal when seeking election, to a conservative Blue Dog toadie of the Minority centrist Dem leadership has been nothing short of astounding, especially for those of us who reside in her district and voted for her in 2012. She completely betrayed her base constituents in Arizona District 9. That is mostly a story for another day though, today's story is not about discrete policy issues, but wholesale admission of the deceptive nature of Kyrsten Sinema's incursion into AZ-9 to start with.

The baseline is this: Thursday, longtime Arizona Democratic Congressman Ed Pastor of AZ-7

announced his decision to retire and not seek reelection in 2014. Local politicians, from seemingly forever Maricopa Board of Supervisor's member Mary Rose Wilcox to new and fairly refreshing voices like state legislature member Ruben Gallego, were literally stepping over one another to announce they would be running for Pastor's seat. They are almost all minorities vying to represent a solidly minority district. And this is no small thing, as most all of them have to give up their current position to do so under Arizona's "resign to run" law.

I was asked early on Thursday, not long after Pastor's announcement, by a friend who supports liberal Dems nationwide, about Kyrsten Sinema jumping in. I thought it was a joke question and said so. Because it was crazy talk. The joke, however, was squarely on me and her other constituents in AZ-09. Yeah, Kysten Sinema, who pledged herself to AZ-09, started lusting after AZ-07 the second it was announced available.

Not that Kyrsten Sinema (see her Twitter feed, which is a litany of everything but her contemplated district switch) or her managers/spokespeople will admit it, or even address the subject, but she was ready to walk from second one. How do we know? Because the Arizona Republic/12 News (via the excellent Brahm Resnik) got a copy of an email to Sinema's inside staff proving it.

So, why is this a big deal? Because it shows that, for first term congresswoman Kyrsten Sinema, her own raw narcissistic ambition, in a dynamic situation, immediately trumps loyalty to her constituents and her party.

How it trumps her constituents is easy. Sinema represents AZ-09, which though a new district emanating out of redistricting from the 2010 Census, consists of a significant portion of John Shadegg's old district that was taken over by Ben Quayle after Shadegg's retirement. Sinema did not live in the still leaning conservative district, and explicitly came from an out of district seat in the state legislature to run

for the seat when it opened for the 2012 election. She painted herself as a classic liberal of the old Tucson school, who was a progressive and sexually liberated voice. It was a bill of goods, but Sinema was an extremely aggressive campaigner who worked her ass off thusly selling herself. She eked out a victory over a very weak Republican thanks in part to a helpful diversion of votes by a third party Libertarian candidate.

And, though she has been a disappointment to any liberal, at least we thought we had a Democratic representative of some sort for the foreseeable future. Sinema came here and took our votes, surely she was ours at least until she could run for a Senate seat or something larger, right? Apparently not.

Kyrsten Sinema has proved herself willing to leave her, apparently carpetbagged, home in AZ-09 at a moment's notice before even consummating a whole two year Congressional term.

But Kyrsten Sinema's knee jerk willingness to dally with AZ-07 does not just sell out her constituents in AZ-09, no it is contemplated treachery to her Democratic party and Congressional caucus as well. Why? Because there is no Democratic alternative to replace Sinema in AZ-09. None. Over the last few months, several of us Democrats here in AZ-09 toyed with the idea of finding a primary challenger for Sinema, because she has been so awful as to genuinely progressive ideas and votes in the House. But there simply are none; it was either Sinema or turn the seat back over to the GOP, which was a non-starter. At least for us. So, if Sinema leaves, AZ-09 is going to flip and the House Democrats are going to lose yet another precious seat.

What's worse is that if Kyrsten Sinema takes her big campaign war chest to try to claim AZ-07, she will be trying to suck up a seat that has been held by a member of the Latino minority, Ed Pastor, for over 22 years. Again, Arizona's

Congressional districts have evolved over that time, and AZ-07 is a somewhat a new creation. But the core that Pastor now represents, and has always represented, is well over 60% minority, with the majority of those being Hispanic.

Kyrsten Sinema is not only thinking HARD about abandoning her current constituents that she just came to represent, and abandoning a seat for Democratic caucus to the Republicans, she is thinking hard about trying to pilfer a minority seat away from what would otherwise almost surely be a minority Democratic replacement for Ed Pastor.

Why would Kyrsten Sinema think about doing such a loathsome thing? Raw, naked, selfish ambition is the only explanation. Sinema is an aggressive political climber. And her ability to get her mug in between any scene and the TV camera was clearly learned from the great Chuck Schumer and/or John McCain. She has that skill. What it boils down to is that Sinema is on the move, but a real higher office is not in the offing, either this election or next, as Arizona's two Senate seats are locked up – McCain appears to be running again in 2016, and Jeff Flake is young, just got elected, and may never leave.

So, Kyrsten Sinema is left to ply her trade in the House for the time being. Thing is, AZ-07, once you are in, is a lifetime sinecure for a Democrat. You wouldn't even have to work your ass off to stay elected, like Sinema will have to in the conservative trending AZ-09. In AZ-07, Sinema could kick back and build up her warchest for the future ambition she most surely holds, and if she never gets there, can ride out eternity in the seat easily and safely. That's why Kyrsten Sinema wants it. Oh, and it was effectively where she came from before she so benevolently decided to insincerely grace the good folks in AZ-09 with her naked ambition.

What Kyrsten Sinema does at this point is anybody's guess, and she is certainly not telling even top political reporters here in Phoenix (see: [here](#) and [here](#)). She is, however,

push polling aggressively in AZ-07 over the weekend. Whatever it may be, the real Kyrsten Sinema has been exposed, and it is not a pretty sight for whatever lucky duckies that may be her future district constituents. Blue dogs are going to hunt I guess.

[UPDATE: I was negligent in my attribution. I have been discussing, on Twitter and off, the Pastor/Sinema dynamic since news of Ed Pastor's retirement broke last Thursday. A lot of us were talking about Sinema from the start, but the actual first to go to print with the speculation was Rebekah Sanders of the Arizona Republic, who had this report Friday night, the 28th of February.]

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## **OPERATION BALLSACK LABOR DAY FOOTBALL TRASH TALK**

Hello. Is there anybody in there? Just nod if you can hear me.

I am not sure how well the Trash Talk Machine is greased after such egregious neglect. But, we can only do what we do, and carry on. And those skilz have NOT been forgotten jack. So saddle up cowboys and cowgirls.

You would think being a blogger is an easy, Cheetos filled, lifestyle. Not the case. It is hard work, hard work I tell ya. I have suffered the indignation of Marcy and Jim yammering about wanting "trash this" and "trash that".

Weeeeellllll that is so much SPAM! So, as I said earlier, it's not easy, you know. I get no respect!

To make a quick comment on the title of this 2013 football season opening trash, shit is truly fucked up and bullshit. We have Mr.

Constitutional Nobel Scholar President agitating to make unilateral bizarrely unnecessary war on Syria...apparently because he screwed up and drew a moronic "red line" in the sand and now has to prove he actually has balls, in addition to stupidity and hubris. The man who when seeking votes to be elected in 2007-2008 claimed war without Congressional assent was wrong, and whose Vice-President called such unsanctioned war bullshittery and an "impeachable offense", now insists without the UN, without the Brits, and with a coalition of effectively one (one who were previously described as "cheese eating surrender monkeys" not that long ago in American lore). But that is where we are now. Which is why the best name for this clusterfuck is "Operation Ballsack". Yes, it is all about Obama's balls, and his desperate need to prove he actually has a primordial pair.

Huh? Oh, wait! This was supposed to be football Trash Talk wasn't it?!?!

Yikes, better get to that then. Last night was a pretty exciting open to the NCAA 2013 schedule. The 'Ole Ball Coach Spurrier and the 'Cocks did not seem all that animated, but still clocked a fairly solid NC Tarheel team. Looked like Vady was gonna take a bite off the 'Ole Miss Rebels, but Ole Miss tailback Jeff Scott let loose with a 75 yard TD romp with 1:07 left, giving the Rebels a 39-35 last minute win. Good stuff. In other news, Lane Kiffin proves the question of why he has not been fired yet is still very salient by coaching a narrow win for Tommy Trojan over the Rainbows. Mighty Troy barely made it over the Rainbows. Yay. If that is all USC has, even the Sun Devils are going to wax them this year (a game I will be attending by the way). also, from Friday night, let me just say that Sparty has some VERY sticky fingered defenders. Look out BIG.

Well, what else is up I wonder? Hmmm, appears some fella named "Manziel" was suspended half a game for something. Guess it wasn't anything bad, cause Dez Bryant got suspended a whole

season for eating dinner with Neon Deion Sanders. I sign my name on things a lot too. I get paid to do so. Not sure who would sign thousands of items for zip, nuthin, free. Apparently the crack investigators and accountability specialists at the NCAA found no problem though. And you KNOW how sane they are, cause they banned Penn State from all bowls for four years without having any NCAA violation whatsoever present. Ugh.

Alright. Games. Real ones are being played this weekend. Battle manufactured where it should be. Naturally. By a nerd at ESPN instead of that fake Operation Obama Ballsack baloney.

The game of the weekend looks to be Georgia at Clemson. These are two top ten worthy teams, if not potential national championship contenders. Special players abound everywhere on both teams, including Sammy Watkins the super receiver for the Tigers, and Tajh Boyd his quarterback. For the Bulldogs, Aaron Murray may be the best QB in the conference, and that includes Johnny Football. Awesome game to have so early. Alabama hosting Virginia Tech is another unusual one to start off with. The Tide will roll them, but there could be a struggle. should be a way better game than the Tide expected.

Honorable mentions goes to TCU and LSU in neutral Texas, Boise State/Washington and Cal versus Northwestern. Tell us what you have and why!

The one other thing I want to address is the noggins of the NFL. As you may have heard, there was a settlement this week, and it heavily favored the NFL. The craven plantation owners admitted nothing, gave up no liability findings, and gave up a ridiculously cheap total sum as hard settlement. By the time lawyer's fees and mandatory testing etc. is deducted, it is criminal how little was gotten for a class of at risk humans. Down the road, if these class members live, they and their representatives will be screaming bloody murder. Here is an outrageously great article laying out the

factors, and doing so with the tart and sarcastic truth it deserves

This long Labor Day weekend's music is from the one, the only, Ms. Linda Ronstadt. I have a real affinity for Linda, and have seen her numerous times including a couple of very special ones. If there has ever been a better pure female vocal talent, I am not sure I have seen it. Pure, and with a range to die for. The singing voice may be silenced, but Linda is rocking on and fighting for the causes she believes in. And they are, and always have been, great, and the right, ones. Oh, also, in case you didn't notice, she had a backup band on the first video. Chuck Berry, Keith Richards, Robert Cray and some other chaps. The second is the band she normally toured with (including Waddy Wachtel – but with Mike Botts on drums instead of Russ Kunkel, who I always saw) and, trust me, they were absolutely killer, and very cool people to boot.

That's it for now. Let Willis, and one and all, rock this joint. We are Livin In The USA. All things considered, it is still pretty fucking grand. Enjoy the holiday weekend my friends.

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## **JOHN KERRY FINALLY MEETS A CLOSE ELECTION HE WANTS TO RECOUNT**

The other day, Hugo Chavez' successor Nicolás Maduro beat opposition leader Henrique Capriles Radonski by 2% of the vote. In the days since, opposition figures have sown violence, claiming vote fraud.

Yesterday, Secretary of State Kerry encouraged a recount.



Mr. Kerry, in comments to a House committee, said, "We think there ought to be a recount." He added that he had not yet evaluated whether Washington would recognize Mr. Maduro's victory.

This, in spite of a leaked recording of a close Capriles advisor admitting that this result was a political triumph but an electoral defeat.

This, in spite of the fact that when Bush beat Kerry with precisely the same percentage of the vote in 2004 amid reports of (limited) electoral oddities, Kerry chose not to demand a recount.

On November 2, 2004, George W. Bush beat John Kerry 50.7 percent to 48.3 percent. Venezuela's foreign minister immediately (either that night or the day after) recognized the results: "we will hope that in this second mandate we can improve our relations."

Fast forward nine years, and Nicolás Maduro beats Henrique Capriles with 50.7% of the vote and the US refuses to recognize the result. "Look, we're just not there yet," said a State Department spokesman (who now works for—wait for it— John Kerry). "Obviously, we have nearly half the country that had a different view. And so we'll continue to consult, but we're not there yet."

Most interesting of all is something James Clapper just said in a Senate Armed Services Committee hearing. In response to a question from Richard Blumenthal about whether there had been fraud in the election, Clapper said (my rough transcription):

There may have been some, but it's unclear whether it was of sufficient magnitude to merit recount. Right now it doesn't appear to be.

In other words, even the intelligence says, whatever fraud there was, it wasn't enough to affect the outcome.

At this point, the Administration's hesitation at recognizing Maduro and Kerry's support for a recount do nothing but stoke violence.

Which I can only assume is the point.

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## DOMA'S DAY AT THE SUPREMES

UPDATE  
: HERE  
IS THE  
AUDIO  
OF  
TODAY'S  
S  
ARGUMENT



HERE IS THE TRANSCRIPT OF TODAY'S ARGUMENT

I am going to do something different today and put up a post for semi-live coverage – and discussion – of the DOMA oral arguments in the Supreme Court this morning. First, a brief intro, and then I will try to throw tidbits in here and there as I see it during and after the arguments.

The case at bar is styled *United States v. Windsor, et al.* In a nutshell, Edith Windsor was married to Thea Spyer, and their marriage was recognized under New York law. Ms. Spyer passed away in 2009 and Windsor was assessed \$363,000.00 in inheritance taxes because the federal government, i.e. the IRS, did not recognize her marriage to Spyer in light of the Defense of Marriage Act, or DOMA. Litigation

ensued and the 2nd Circuit, in an opinion written by Chief Judge Dennis Jacobs, struck down DOMA as unconstitutional and ruled in favor of Edith Windsor. Other significant cases in Circuit Courts of Appeal hang in the lurch of abeyance awaiting the Supreme Court decision in *Windsor*, including *Golinski v. Office of Personnel Management*, *Gill v. OPM* and *Pedersen v. Office of Personnel Management*.

As an aside, here is a fantastic look at the restaurant where Edith Windsor and Thea Spyer met nearly 50 years ago.

Arguing the case will be Solicitor General Donald B. Verrilli again for the United States, Paul Clement for the Bi-Partisan Legal Advisory Group (BLAG) on putative behalf of Congress, because the Obama Administration ceased defending DOMA on the grounds it was discriminatory and unconstitutional, and Robbie Kaplan for Edith Windsor. Clement and Verrilli are well known by now, but for some background on Robbie Kaplan, who is making her first appearance before the Supremes, here is a very nice article. Also arguing will be Harvard Law Professor Vicki Jackson who was "invited" by SCOTUS to argue on the standing and jurisdiction issue, specifically to argue that there is no standing and/or jurisdiction, because the Obama Administration quit defending and BLAG will argue in favor of standing and jurisdiction.

Here is a brief synopsis of the argument order and timing put together by Ed Whelan at National Review Note: I include Whelan here only for the schedule info, I do not necessarily agree with his framing of the issues).

Okay, that is it for now, we shall see how this goes!

Live Updates:

10:39 am It appears oral arguments are underway after two decisions in other cases were announced.

10:51 am RT @SCOTUSblog: #doma jurisdiction arg

continues with no clear indication of whether majority believes #scotus has the power to decide case.

11:00 am By the way, the excellent SCOTUSBlog won a peabody award for its coverage of the Supreme Court.

11:05 am @reuters wire: 7:56:34 AM RTRS – U.S. SUPREME COURT CONSERVATIVE JUSTICES SAY TROUBLED BY OBAMA REFUSAL TO DEFEND MARRIAGE LAW

11:15 am Wall Street Journal is reporting: Chief Justice John Roberts told attorney Sri Srinivasan, the principal deputy solicitor general, that the government's actions were "unprecedented." To agree with a lower court ruling finding DOMA unconstitutional but yet seeking the Supreme Court to weigh in while it enforces the law is "has never been done before," he said.

11:20 am Is anybody reading this, or is this a waste?

11:32 am @SCOTUSblog Kennedy asks two questions doubting #doma validity but nothing decisive and Chief Justice and Kagan have yet to speak.

11:40 am Wall Street Journal (Evan Perez) Chief Justice Roberts repeatedly expressed irritation at the Obama administration, telling Ms. Jackson, the court-appointed lawyer, and without specifically mentioning the administration, that perhaps the government should have the "courage" to execute the law based on the constitutionality rather instead of shifting the responsibility to the Supreme Court to make a decision.

11:45 am Wall Street Journal (Evan Perez) Paul Clement, attorney for lawmakers defending the law, argued that the went to the very heart of Congress's prerogatives. Passing laws and having them defended was the "single most important" function of Congress, he argued.

11:52 am Wall Street Journal (Evan Perez) Justice Scalia and Mr. Srinivasan parried on

whether Congress should have any expectation that laws it passes should be defended by the Justice Department. Mr. Srinivasan said he wouldn't give an "algorithm" that explained when Justice lawyers would or wouldn't defend a statute, but ceded to Justice Scalia's suggestion that Congress has no "assurance" that when it passes a law it will be defended. That's not what the OLC opinion guiding the Justice Department's actions in these cases says, Justice Scalia interjected.

11:56 am Associated Press (Brent Kendall) One of the last questions on the standing issue came from Justice Samuel Alito, who asked whether the House could step in to defend DOMA without the Senate's participation, given that it takes both chambers to pass a law.

11:59 am Bloomberg News During initial arguments today on the 1996 Defense of Marriage Act, Justice Anthony Kennedy suggested that a federal law that doesn't recognize gay marriages that are legal in some states can create conflicts. "You are at real risk of running in conflict" with the "essence" of state powers, Kennedy said. Still, he also said there was "quite a bit" to the argument by backers of the law that the federal government at times needs to use its own definition of marriage, such as in income tax cases.

Justice Ruth Bader Ginsburg said that when a marriage under state law isn't recognized by the federal government, "One might well ask, what kind of marriage is this?"

12:05 pm @SCOTUSblog Final update: #scotus 80% likely to strike down #doma. J Kennedy suggests it violates states' rights; 4 other Justices see as gay rights.

12:07 pm The argument at the Court is well into the merits portion of the case now

12:09 pm Wall Street Journal (Brent Kendall) Justice Kennedy, however, jumped in with federalism concerns, questioning whether the federal government was intruding on the states'

territory. With there being so many different federal laws, the federal government is intertwined with citizens' day-to-day lives, he said. Because of this, DOMA runs the risk of running into conflict with the states' role in defining marriage, he said.

12:12 pm It is pretty clear to me, from a variety of sources I am tracking, that the Court has serious problems with DOMA on the merits. Clement is getting pounded with questions on discrimination, conflict with state laws and federalism concerns. Pretty clear that if standing is found, DOMA is going down.

12:15 pm Wall Street Journal (Brent Kendall) Justice Ginsburg again says the denial of federal benefits to same-sex couples pervades every area of life. DOMA, she said, diminished same-sex marriages to "skim-milk" marriages. Justice Elena Kagan (pictured) follows a short time later saying DOMA did things the federal government hadn't done before, and she said the law raised red flags.

12:19 pm @reuters wire: U.S. SUPREME COURT CONCLUDES ORAL ARGUMENTS ON FEDERAL LAW RESTRICTING SAME-SEX BENEFITS

12:30 pm @AdamSerwer Con Justices contemptuous of Obama decision not to defend DOMA but still enforce law. Kennedy said "it gives you intellectual whiplash"

Okay, as I said earlier, if the Justices can get by the standing issue, it seems clear that DOMA is cooked. I *think* they will get by standing and enter a decision finding DOMA unconstitutional as to Section 3, which is the specific part of the law under attack in *Windsor*. That effectively guts all of DOMA.

That is it for the "Live Coverage" portion of the festivities today. It should be about an hour and a half until the audio and transcript are available. As soon as they are, I will add them as an update at the top of the post, and will then put this post on the top of the blog for most of the rest of the day for further

discussion. It has been both a fascinating and frustrating two days of critical oral argument; please continue to analyze and discuss!

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## THE CASE AGAINST MARRIAGE EQUALITY BACKLASH



One of the relentless memes that keeps cropping up in the marriage equality battle is that, were the Supreme Court to grant full broad based and constitutionally protected marriage equality in the *Hollingsworth v. Perry* Prop 8 case, there would be a destructive backlash consuming the country on the issue.

A good example of the argument was propounded by Professor Eric Segall at the ACSBlog in a piece entitled “Same-Sex Marriage, Political Backlash and the Case for Going Slow”:

There may be a better way. The Court could strike down DOMA under heightened scrutiny making it clear that government classifications based on sexual orientation receive heightened scrutiny. The Court could dismiss the Proposition 8 case on standing grounds (there are substantial standing arguments which the Court asked the parties to brief). This combination would leave all state laws (except perhaps California’s) intact but subject to likely successful challenges. Obviously, this would be a slower and more expensive route to marriage equality, but it might make the right more secure over time while decreasing

the chances of serious backlash.

I know that it is easy for a straight male like me to suggest that the Court should refrain from quickly and forcefully resolving the same sex marriage issue on a national basis. But issues that some gays care deeply about are not limited to marriage equality, just like feminists face many challenges other than abortion such as equal pay, equality in the military, and glass ceiling barriers. Where gender equality would be without Roe is unknowable but even Justice Ruth Bader Ginsburg has observed that the right to choose today might be more secure if the Court hadn't decided it "in one fell swoop." I don't know what will happen if the Court announces a national rule on same-sex marriage but history strongly suggests that a more incremental approach might better serve the long term interests of people who identify themselves as liberals and progressives, including gays and lesbians.

I like and respect Eric quite a lot, but I cannot agree with him, nor other advocates of this position (for further discussion of the "Roe backlash" theory, see Adam Liptak in the New York Times). I have long strongly advocated for a full, broad based, ruling for equality for all, in all states, most recently here. But the issue of "backlash" has not previously been specifically addressed in said discussions that I recall.

Fortunately, there are already superb voices who have addressed this issue. The first is from Harvard Law Professor Michael Klarman in the LA Times:

What sort of political backlash might such a decision ignite?

...

Constitutionalizing gay marriage would



have no analogous impact on the lives of opponents. Expanding marriage to include same-sex couples may alter the institution's meaning for religious conservatives who believe that God created marriage to propagate the species. But that effect is abstract and long-term. The immediate effect of a marriage equality ruling would be that the gay couple already living down the street would become eligible for a marriage license – and nothing would change in the daily lives of gay-marriage opponents. That is why strong initial support for a state constitutional amendment to overturn the Massachusetts court ruling rapidly dissipated once same-sex couples began to marry.

...

Thus, while a broad marriage equality ruling would undoubtedly generate some backlash, its scope would be far less than that ignited by Brown or Roe. A majority of Americans would immediately endorse such a decision, and support would increase every year. Opposition would be far less intense than it was to school desegregation or abortion because the effect of same-sex marriage on others' lives is so indirect. Some politicians would roundly condemn the ruling, though many Republicans and most Democrats would not. State officials would have no way to circumvent such a decision, nor would many same-sex couples be intimidated out of asserting their right to marry. Outright defiance is conceivable, though it seems unlikely that any state governor would be willing to go to jail for contempt of court.

The likeliest scenario, in the event of a pro-equality ruling, is immediate, strident criticism from some quarters, followed by same-sex couples marrying in states where they previously could not.

Very little will change in the day-to-day lives of opponents, and the issue will quickly fade in significance.

Klarman's article goes through pretty much every facet of the "backlash" theory, and knocks them all down in order. It is an excellent read, and I suggest you do so as there is much more there.

And Professor Scott Lemieux writing at his blog *Lawyers, Guns & Money*, opines:

The specific, oft-cited argument made by Ginsburg is, I think, wrong in two crucial respects. First of all, Ginsburg's argument that the decision would have been more broadly accepted had it rested on equal protection grounds is **almost certainly wrong**. The public evaluates decisions based on results, not reasoning, and essentially nobody without a professional obligation to do so reads Supreme Court opinions. Second, I don't understand the argument that a "minimalist" opinion just striking down the Texas law wouldn't have generated a backlash. The Texas law, while extreme in terms of its language and implications, wasn't "extreme" in the sense of being an outlier; more than 30 states substantively identical abortion statutes that also would have been struck down. And following that, of course, would have been additional rounds of litigation to determine whether arbitrary panels of doctors and other "reform" laws were constitutional. That's not a formula for lesser conflict.

In terms of application to the same-sex marriage cases, then, liberals shouldn't be hoping to win by losing or whatever. There's no reason to believe that a broad opinion invalidating same-sex marriage would produce any more backlash

than legislative repeals would. There would be more “backlash” only if you (plausibly) assume that absent Supreme Court decisions many states would maintain their bans on same-sex marriage for a long time. In other words, you can avoid backlash by just not winning, an argument I consider self-refuting.

For a much longer explication on the false premise of the “*Roe* backlash” phenomenon, see Lemieux’s law review length article “*Roe* and the Politics of Backlash: Countermobilization Against the Courts and Abortion Rights Claiming” which opens up with a discussion of the backlash created by a case directly analogous to the Prop 8 situation, *Lawrence v. Texas*. Suffice it to say that, as Scott notes, there was some early collateral backlash, but there was not anything like predicted and, almost exactly a decade later, it seems like a distant memory that hardly happened.

This is important, because *Lawrence v. Texas* was a broad sweeping decision invalidating a single state’s (Texas) anti-sodomy law, but giving a full mandate that settled the issue once and for all, for all citizens nationwide. Despite many commenters having opined before the decision that the *Lawrence* court must rule narrowly and “go slow”. Sound familiar? It should. Same goes mostly for the *Loving* decision on interracial marriage. There was some grousing, but then people moved on.

Marriage equality is more popular, and trending ever more so at nearly light speed, than interracial marriage and invalidation of anti-sodomy laws were at the time of *Loving* and *Lawrence* respectively. Even the conservatives are figuring out that many of their sons, daughters, sisters, brothers and friends are gay. Not all may personally accept gay marriage, but the air is out of the hate against it. Even Chief Justice John Roberts’ niece is out and gay. And she will be sitting in the Roberts family section today at the oral argument on

*Hollingsworth v. Perry/Prop 8.*

As one of Scott Lemieux's commenters, "Just Dropping By" succinctly, and quite correctly, noted:

To put it another way, opposing same-sex marriage once such marriages start happening makes you look like a monster who wants to break up other people's marriages. Opposing abortion makes you look like someone who wants to save cute babies from being killed. People don't like imagining themselves as monsters; they do like imagining themselves as heroes. This is why millions of hours, and billions of dollars, have been spent fighting *Roe v. Wade*, while there's no major national group devoted to overturning *Loving v. Virginia*.

Exactly right. That is the case against the "backlash". The fear is overstated, and the time is now for equality for all, in all the states. For the Supreme Court to do less would be nothing less than a direct sanction for continued regional and state based bigotry and discrimination. That is not American, it is not constitutional, and it is no longer tolerable.

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**R.I.P. SENATOR  
SPECTER, YOU WILL BE  
MISSED**



The Snarlin has  
ceased; via CBS News:

US Senator Arlen Specter, whose political career took him from Philadelphia City Hall to the US Congress, died Sunday morning at his home in Philadelphia at the age of 82 from complications of non-Hodgkins Lymphoma. He was born February 12, 1930.

His career was marked by what the pundits and Specter himself called "fierce independence." But long before Specter ever stepped onto the Senate floor in Washington DC, he made it into national prominence by serving as assistant counsel for the Warren Commission, which investigated the 1963 assassination of Pres. John F. Kennedy.

Specter postulated the controversial "single-bullet theory" that was eventually embraced by the panel and still stands to this day, despite the cry of conspiracy theorists who say there was more than one gunman in Dallas that November day.

"Admittedly a strange path for a bullet to take, but sometimes truth is stranger than fiction," Specter said.

We have had a complicated relationship with Arlen Specter here at Emptywheel, sometimes castigating him, sometimes praising him, sometimes laughing at him, sometimes laughing

with him. Specter engendered all those things. But I always sensed a very decent heart beating underneath Specter's surface, even if it was all too often masked by his votes for, and often vociferous support of, ever more destructive policies of the right.

For this, Specter earned the nickname "Scottish Haggis" here in the annals of Emptywheel. The term had its root in Mr. Specter's predilection for Scottish Law, and goes all the way back to the original incarnation at The Next Hurrah. For a number of reasons, offal and otherwise, it was a nickname that stuck and seemed appropos and seemed to reflect the complicated nature of Senator Specter.

On a personal note, I did not have an abundance of interaction with Sen. Specter and his office, but in that which I did have, I found him and his office to be beyond both kind and professional. One instance stands head and shoulders above the others, and surrounded the Obama scuttled nomination of Dawn Johnsen to be head of the Office of Legal Counsel (OLC). It was my contention from the outset that the whip count votes were there to confirm Professor Johnsen for the job she was perfect for. And, in the roiling aftermath of the Bush/Cheney unitary executive excesses, the country desperately needed Johnsen's intellectual sense of honesty and Constitutional integrity.

The only reason Dawn Johnsen did not get confirmed as OLC head was Barack Obama used her as false bait and cat nip for the more noisy progressive liberals. It was a glaring sign of depressing things to come from the not nearly as Constitution minded Barack Obama as had been pitched in his election run. Not only could Johnsen have been confirmed, as I pointed out before, she could also have been recess appointed by Obama. Despite all the ridicule I took at the time, that point has been proved conclusively by the later recess appointment of Richard Cordray to be head of the CFPB (another instance of Obama using a supremely qualified

progressive, Elizabeth Warren, as bait and then hanging her out to dry).

The point was never that Dawn Johnsen couldn't be confirmed, it was that Barack Obama and the insiders of his White House did not want her confirmed into leadership of the OLC. I knew that from talking to several inside the DOJ and Senate Judiciary Committee, but that was all off the record. When I found an obscure old comment from Arlen Specter indicating he was willing to support a cloture vote for Johnsen as far back as his second meeting with Dawn Johnsen on or about May 12, 2009, it was by then an old, and quite obscure comment. Specter could have walked it back or dissembled on the subject.

Arlen Specter didn't walk it back or dissemble, instead he personally confirmed it to me. With the already in the bag vote of Sen. Richard Lugar, that was the 60 votes for Dawn Johnsen at OLC. Specter knew it would infuriate both the GOP and the Obama White House, and he knew exactly what story I was writing. He stood up. Oh, and, yes, he knew about "Scottish Haggis" too. The man had a sense of humor.

For the above vignette, and several others, I will always have a soft spot in my heart for Snarlin Arlen Specter. His life and work in government spanned over five decades, he has got my salute today.

Sen. Specter repeatedly had to fight off serious cancer, and he did so with aplomb, courage and his good humor. He also was a tireless champion for the NIH and funding of cancer and stem cell research. When confronted with the last battle, the one which finally took him, Specter was upbeat, defiant and determined to get back to his part time hobby of stand up comedy. May the Scottish Haggis have many laughs wherever he may travel.

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# NATION-BUILDING, 12 YEARS LATER

[youtube]GGDwvAbx\_fg[/youtube]

Remember how central to the 2000 Presidential campaign nation-building was?

It was all in the context of the Kosovo effort, of course, an intervention that elicited horrified cries about Executive overreach from the likes of John Yoo. But at that time, the Republican opposed using our troops for nation-building and the Democrat reservedly spoke in favor of it.

BUSH: Somalia. It started off as a humanitarian mission then changed into a nation-building mission and that's where the mission went wrong. The mission was changed. And as a result, our nation paid a price, and so I don't think our troops ought to be used for what's called nation building. I think our troops ought to be used to fight and win war. I think our troops ought to be used to help overthrow a dictator when it's in our best interests. But in this case, it was a nation-building exercise. And same with Haiti. I wouldn't have supported either.

[snip]

LEHRER: Vice President Gore, do you agree with the Governor's views on nation-building, the use of military, our military for nation-building as he described it then defined it?

GORE: I don't think we agree on that. I would certainly also be judicious in evaluating any potential use of American troops overseas. I think we have to be very reticent about that.

But look, Jim, the world is changing so rapidly. The way I see it, the world's



getting much closer together. Like it or not, we are now – the United States is now the natural leader of the world. All these other countries are looking to us.

[snip]

During the years between World War I and World War II, a great lesson was learned by our military leaders and the people of the United States. The lesson was that in the aftermath of World War I we kind of turned our backs and left them to their own devices and they brewed up a lot of trouble that quickly became World War II. And acting upon that lesson, in the aftermath of our great victory in World War II, we laid down the Marshall Plan, President Truman did; we got intimately involved in building NATO and other structures there. We still have lots of troops in Europe.

And what did we do in the late 40's and 50's and 60's? We were nation building. And it was economic. But it was also military. And the confidence that those countries recovering from the wounds of war had by having troops there, we had civil administrators come in to set up their ways of building their towns back.

[snip]

LEHRER: Some people are now suggesting that if you don't want to use the military to maintain the peace, to do the civil thing, it's it time to consider a civil force of some kind that comes in after the military that builds nations or all of that? Is that on your radar screen?

BUSH: I don't think so. I think what we need to do is convince people who live in the lands they live in to build the nations. Maybe I'm missing something here. I mean we're going to have kind of a nation-building corps from America?

Absolutely not. Our military is meant to fight and win war. That's what it's meant to do and when it gets overextended, morale drops.

And then, after being elected, Bush launched an optional war against Iraq. His Defense Department aggressively undercut State's mandate to rebuild Iraq, and as a result we had chaos for years. We failed, miserably, at nation-building in Iraq and Afghanistan. Today, there are still more Al Qaeda members in Iraq than there were in Afghanistan on 9/11, and a recent report predicts collapse in Afghanistan after we withdraw.

One of the things we saw in today's Oversight hearing on the Benghazi attack was a difference of opinion about where the balance between security and openness, and where the balance between DOD and State capacities should be.

While I don't think anyone believes she made the right decision in this particular case, the reason State Department Deputy Assistant Secretary for International Programs Charlene Lamb did not approve requests to extend Temporary Duty military officers as part of the security team was because of a commitment to develop a security capacity at State, in this case by training Libyans to take on that role. Eric Nordstrom, who had been Regional Security Officer in Libya, made a compelling argument that the Libyans State was training into the task were not yet ready to take on that security role, and former Special Forces guys would better defend the mission. In the most damning document released by the committee—a July 9 memo requesting an extension of the Temporary Duty personnel—Nordstrom explained:

While post has made a number of procedural enhancements and physical security upgrades, our efforts to normalize security operations have been hindered by the lack of host nation security support, either static or

response, an increase in violence against foreign targets, and GoL delays in issuing firearms permits for our LES state protection/bodyguard units. Despite field expedient physical security upgrades to improve both the temporary Embassy and Villas compound [in Tripoli] neither compound meets OSPB standards. Recognizing the growing challenges to Libya's fragile environment the Department increased Post's danger pay allowance from 25 percent to 30 percent on July 1.

[snip]

Post anticipates supporting operations in Benghazi with at least one permanently assigned RSO employee from Tripoli,, however, would request continued TDY support to fill a minimum of 3 security positions in Benghazi.

(Though his argument to support the claim that it would have made much difference in this case wasn't entirely convincing.)

Other documents released—including the September 11 one I unpacked indirectly in this post (turns out I was even more right than I imagined)—make it clear that the problem was that there is simply no state in Libya yet. Libya has more going for it than, say, Afghanistan when we took over, but it's at a crucial time where it could tip to extremism or start to flourish.

And we can't decide whether to respond by barricading ourselves in, abandoning the effort altogether, or allowing the Libyans to build their capacity alongside us.

We're still over nation-building, 12 years later. But we appear to have no better idea of how to accomplish it than we did then.

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# **WILL CYRUS VANCE TURN HIS HEAD & WALK AWAY FROM DSK?**

The case against DSK, Dominique Strauss-Kahn, is disintegrating at the seams. It never seemed to be quite the closed case it was portrayed as, and now we are left to ask what lies beneath the messy and complicated incident.

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# **EGYPTIAN TRASH TALK**

Time to get the lead out and get America's youth into an American Tahrir Square because the United States needs a revolution as much as anywhere in the world right now. Time for some real hope and change instead of the disingenuous drivel we were conned with in 2008.

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# **BALLOTS AND THE BENCH: THE IOWA JUDGES**

In a devastating night for Democrats, there was a notable and disturbing loss that did not draw enough attention, that of the so called "Iowa Judges". From NPR:

Iowa voters decided to remove three State Supreme Court justices who'd overturned an Iowa ban on same sex marriage last year. Out are Iowa Chief

Justice Marsha Ternus and Justices David Baker and Michael Streit. The full seven member panel unanimously rejected the law but not all members faced a retention vote.

No, not all seven Iowa Supreme Court judges were removed, but of the only three that were up for retention votes, all were ousted. Last year, all seven members of the Iowa Supreme Court voted unanimously to overturn the Iowa law restricting marriage to between a man and a woman as violative of the constitutional right of equal protection. The conservative effort to remove the judges who had the courage to protect equality under the Constitution was an astounding result in what are normally perfunctory state judicial retention votes. So perfunctory, in fact, that no Supreme Court justice had ever been removed in Iowa since the advent of the retention vote system in 1962.

The effort to oust the Iowa Judges was heavily financed, to the tune of approximately a combined million dollars, by aggressive national anti-marriage equality groups such as the American Family Association. The Campaign for Working Families and the Washington-based Family Research Council, as well as a plethora of local fundamentalist and religious groups in Iowa.

Sadly, this is probably one of the least discussed, yet most pernicious, aspects of monetary influence in political campaigns in the wake of the much discussed *Citizens United* decision by the US Supreme Court. Although judicial retention elections, being non-partisan in nature, were not directly affected by the *Citizens United* decision to the degree normal partisan elections were, the sheer scope of large money injected will clearly have an increasing impact on them, as will this remarkable result in Iowa.

Courtooms, especially those of the appellate level, should be places where constitutions, both state and federal, reign supreme and the

rights of all citizens are respected and protected without regard to the vagaries and whims of interest groups and fundamentalist bigots of any stripe. The wild success of the conservative effort to remove the Iowa Judges signals a disturbing trend in the wrong direction.