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Supreme Court to Examine the Criminalization of Consensual Sodomy

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NEWS

SUPREME COURT TO EXAMINE THE CRIMINALIZATION OF CONSENSUAL SODOMY

By Kevin J. McCloskey

The United States Supreme Court granted certiorari in *Lawrence v. Texas* on December 2, 2002, a case which challenges the criminal sodomy laws of Texas which apply only to same-sex behavior. 123 S. Ct. 661 (2002). The petitioners are seeking to have the Court overrule their 1986 decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986).

The *Lawrence* case stems from a 1998 incident when police were called to the apartment of John Lawrence in Harris County, Texas. Police found nothing illegal besides Lawrence engaging in sexual activity with Tyron Garner. The two men were arrested according to the Texas law against homosexual sodomy and were eventually fined \$200.

The Lambda Legal Defense and Education Fund brought the case on behalf of Lawrence and Garner, and have raised both equal protection and right to privacy arguments to the Court.

Patricia Cain, the Aliber Family Chair in Law at the University of Iowa, explained the importance of this case stating, "*Lawrence* may be the only chance to

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— Patricia Cain, Aliber Family Chair in Law, University of Iowa

overrule *Bowers* because most sodomy challenges in state courts, post-*Bowers*, have resulted in a striking of the sodomy statute under state constitutions. Thus, the federal constitutional question is never reached."

Bowers held that a Georgia sodomy statute did not violate the fundamental rights of homosexuals, and that the right of privacy did not protect individuals from criminal law in their own bedrooms. *Id.*

Relying on *Bowers* for the right to privacy issue raised in the case, the Texas Court of Appeals held that the sodomy statute, section 21.06 of the Texas Penal Code, did not infringe on the Constitution. It also held that the statute did not violate the equal protection clause. *Lawrence v. Texas*, 41 S.W.3d 349 (Tex. Crim. App. 2001).

"Petitioners are attempting to force this country to condone homosexual relationships and to create a universal right, based on those relationships, which has never been recognized in the Constitutional history of the United States," wrote attorneys for the Pro Family Law Center, in an amicus curie brief urging the court to deny the appeal. Charles Lane, *Court to Hear Texas Case on Gay Rights*, WASH POST, Dec. 2, 2002, at A12.

Beyond the legal issue of the right to privacy and equal protection, the case is of the utmost importance to the homosexual community. Ruth Harlow, the legal director at Lambda Legal said, "Texas's law and others like it are widely used to justify discrimination against gay

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