

National News

Court strikes down Montana's sodomy law

by Lisa Keen

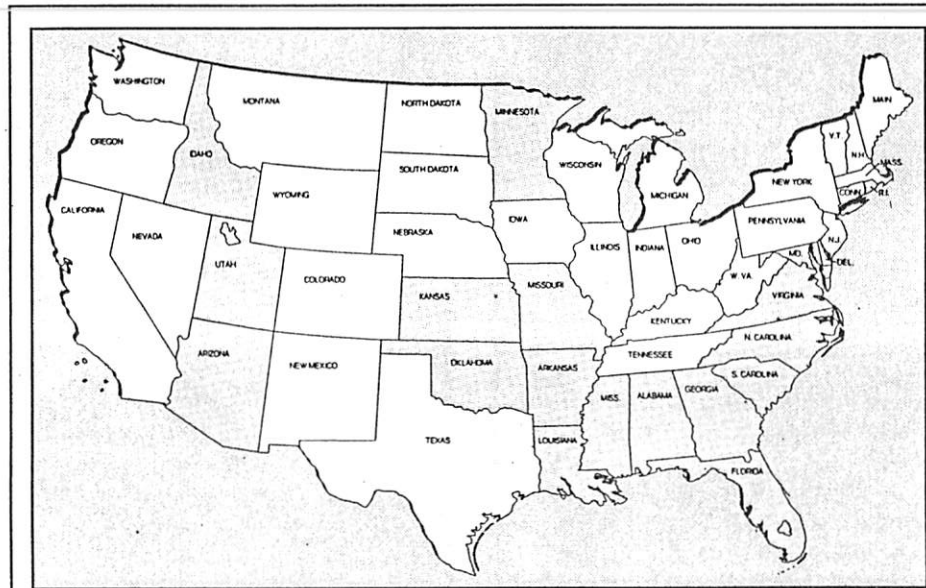
The Montana Supreme Court this month struck down that state's sodomy law, one of the harshest in the nation, leaving only 18 states with clearly enforceable sodomy laws.

In a unanimous decision July 2, the court ruled that Montana's 24-year-old law against consensual sex violated the right to privacy guaranteed under the state's constitution and that the state had no compelling reason to so violate a citizen's privacy.

"With few exceptions not at issue here, all adults regardless of gender fully and properly expect that their consensual sexual activities will not be subject to the prying eyes of others or to governmental snooping or regulation," wrote Judge James Nelson for the seven-member bench. "... [W]hile society may not approve of the sexual practices of homosexuals, or, for that matter, sodomy, oral intercourse or other sexual conduct between husband and wife or between other heterosexuals, that is not to say that society is unwilling to recognize that all adults ... at least have a reasonable expectation that their sexual activities will remain personal and private.

"... [I]t is hard to imagine any activity that adults would consider more fundamental, more private and, thus, more deserving of protection from governmental interference than non-commercial, consensual adult sexual activity."

The decision came in *Gryczan v. Montana*, a case brought by three Gay men and three Lesbians represented by the Northwestern Women's Law Center and



States with sodomy laws

- 18 states have enforceable sodomy laws.
- The enforceability of sodomy laws in 3 states is considered unclear.

attorney Holly Franz. Briefs filed by Lambda Legal Defense and Education Fund and the ACLU's Lesbian and Gay Rights Project attacked the law as one of the harshest sodomy laws in the nation.

The Montana sodomy law made "any touching" of a sexual nature between persons of the same sex into a felony punishable by up to 10 years in prison and/or a \$50,000 fine.

The court rejected the state's contention that the sodomy law helps protect the public health against AIDS, noting, among other things, that the law was

passed in 1973 — "almost ten years before the first AIDS case was detected in Montana." The court also rejected the state's argument that the sodomy law protected "public morals." While laws may "reflect majority will and prevailing notions of morality," noted the court, the state constitution explicitly protects privacy, not morality.

"Quite simply, while legislative enactments may reflect the will of the majority, and, arguably, may even respond to perceived societal notions of what is acceptable conduct in a moral sense, there

are certain rights so fundamental that they will not be denied to a minority no matter how despised by society. In Montana, the right of privacy is such a right."

The state also attempted to defend the law by arguing that there was no "credible threat" that the law would be used against any Gay person. But the court rejected that line of reasoning, noting that there is nothing to prevent a county attorney from enforcing the law and that the mere existence of the law "creates a fear of prosecution sufficient" to warrant the legal challenge.

The court also noted that the sodomy law inflicts "psychological injuries" on Gay people by forcing them to repress "their desires for sexual expression" and by depriving them of "their personal autonomy."

"In addition, there is evidence to show that there is a correlation between homosexual sodomy laws and homophobic violence" and that the sodomy law could be used to deprive a Gay professional of his or her license and a Gay parent of his or her child.

At their peak in 1961, there were enforceable sodomy laws in all 50 states plus the District of Columbia. Many of those began to fall in the 1970s. In 1986, when the U.S. Supreme Court upheld the Georgia sodomy law, there were 24 plus D.C. With the demise of the Montana sodomy law this month, there are now only 18 states with enforceable sodomy laws; some legal experts consider the enforceability of sodomy laws in three other states — Texas, Michigan, and Massachusetts — to be unclear. ▼