

# Justices to review Texas sodomy law

## Measure affects same-sex couples

ASSOCIATED PRESS

The Supreme Court said yesterday that it would consider whether states can punish homosexuals for having sexual relations, a case that tests the constitutionality of sodomy laws in 13 states.

The justices will review the prosecution of two men under a 28-year-old Texas law making it a crime to engage in same-sex intercourse.

The Supreme Court has struggled with how much protection the Constitution offers in the bedroom. The court ruled 5-4 in 1986 that consenting adults have no constitutional right to private homosexual sex, upholding laws that ban sodomy.

"Gay men and lesbians have been waiting for the opportunity to convince the court it should take a different view of their constitutional rights," Ruth E. Harlow, legal director of the New York-based Lambda Legal Defense and Education Fund, said yesterday.

The court faces several questions in the latest case. Among them: Is it an unconstitutional invasion of privacy for couples to be prosecuted for what they do in their own homes? Is it unconstitutional for states to treat homosexuals differently by punishing them for having sexual relations while allowing heterosexual couples to engage in the same acts without penalties?

Sodomy is defined as abnormal sex, and in some states that includes anal and oral sex. Nine states ban consensual sodomy for everyone: Alabama, Florida, Idaho, Louisiana, Mississippi, North Carolina, South Carolina, Utah and Virginia. In addition, Texas, Kansas, Missouri and Oklahoma punish only homosexual sodomy.

States argue that the laws, some dating back more than 100 years, are intended to preserve public morals. The laws are rarely enforced.

Lawyers for John Geddes Lawrence and Tyron Garner said the men were bothering no one in 1998 when they were arrested in Mr. Lawrence's apartment, jailed overnight and later fined under Texas' Homosexual Conduct Law, which classifies anal or oral sex between two men or two women as deviant sexual intercourse.

The men's lawyers said the convictions would prevent them from getting certain jobs and would in

some states require them to register as sex offenders.

In other actions yesterday, the court:

- Rejected an appeal from a Mississippi death-row inmate who was 17 when he used his bike as a getaway vehicle in a fatal convenience store robbery. Lawyers for Ronald Chris Foster wanted the court to use the case to decide whether it is unconstitutional for states to execute juvenile defendants. Four justices said this fall that the court should ban the practice.

- Ended an effort to block specialty car license plates in Louisiana with the slogan "Choose Life."

Louisiana is one of seven states that have authorized such car tags, and abortion rights supporters argued that the state was giving a forum to only anti-abortion views. Justices refused without comment yesterday to review the appeal.

- Announced it will decide whether inmates have constitutional rights to jailhouse visits from young relatives and others in a case that could have far-reaching implications for prisons around the country.

The high court over the years has upheld restrictions on books, packages and visitors at prisons.

Justices will consider whether Michigan went too far in banning visits by some children and former prisoners, and stripping visitation privileges from drug-using inmates. An appeals court sided with inmates, ruling earlier this year that imprisonment doesn't erase a person's First Amendment right to associate with others.

- Refused to stop a lawsuit that accused FBI officials of punishing an investigator in another agency for criticizing the Clinton administration's national security.

Justices declined without comment to consider whether former FBI Director Louis Freeh and others were protected from the lawsuit, filed by an Energy Department employee who said Chinese spies had penetrated U.S. weapons laboratories.

Notra Trulock III wrote about his concerns in a July 2000 edition of National Review. That same month, FBI agents searched his home computer files and confiscated his computer hard drive.

TUESDAY, DECEMBER 3, 2002

The Washington Time

# Criminal

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## Is Sodomy Statute Constitutional?

Is a state statute making homosexual sex between consenting adults a crime constitutional?

The U.S. Supreme Court has agreed to answer this question.

The court will review a Texas Court of Appeals decision that said the statute didn't violate the equal rights amendment to the state's constitution, which provides that "[e]quality under the law shall not be denied or abridged because of sex."

The defendants were two men convicted of engaging in homosexual conduct. They argued that the state sodomy statute un-

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constitutionally discriminated against gays because it only applied to same-sex conduct.

But the Texas Court of Appeals said that prohibiting homosexual sex was rationally related to a legitimate state interest.

"[W]e agree with the state's general contention that it has always been the legislature's prerogative to deem some acts more egregious than others...Accordingly, we find that the legislature could have concluded that deviant sexual intercourse, when performed by members of the same sex, is an act different from or more offensive than any such conduct performed by members of the opposite sex...While the legislature is not infallible in its moral and ethical judgments, it alone is constitutionally empowered to decide which evils it will restrain when enacting laws for the public good."

A decision from the U.S. Supreme Court is expected this term.

*U.S. Supreme Court. Lawrence v. Texas, No. 02-102. Certiorari granted December 2, 2002. Ruling below: 41 S.W.3d 349 (Tex. Ct. App. 2001).*

The Supreme Court has agreed to answer the following questions:

## Small-Firm Focus

### CRIMINAL LAW

Is a state statute making homosexual sex between consenting adults a crime constitutional? [See the article on page 8.]

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would contravene the attorney's primary  
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and that the client understands the avail-  
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# U.S. Supreme Court

## Certiorari Granted

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*2002. Ruling below: 41 S.W.3d 349 (Tex. Ct.*  
*App. 2001).*

#### STATUTE OF LIMITATIONS

Can a state statute allowing an exemp-

tion from a three-year statute of limitations  
for certain cases involving "substantial  
sexual conduct" be applied retroactively  
to child molestation that allegedly oc-  
curred over 25 years ago?

*U.S. Supreme Court. Stogner v. Califor-*  
*nia, No. 01-1757. Certiorari granted De-*  
*cember 2, 2002. Ruling below: 93 Cal.App.*  
*4th 1229 (Cal. Ct. App. 2001).*

#### AFFIRMATIVE ACTION

Are a university's undergraduate and  
graduate school affirmative action poli-  
cies constitutional?

*U.S. Supreme Court. Grutter v. Bolinger,*  
*No. 02241; Gratz v. Bollinger, No. 02-516.*

*Certiorari granted December 2, 2002. Rul-*  
*ing below: 288 F.3d 732 (6th Cir.).*

#### PRISON RIGHTS

Do restrictions on prisoners' visitation  
rights violate the Constitution?

*U.S. Supreme Court. Overton v. Bazzetta,*  
*No. 02-94. Certiorari granted December 2,*  
*2002. Ruling below: 286 F.3d 311 (6th Cir.).*

#### INDIAN LAW

Does sovereign immunity bar a county  
from searching tribal employee records?

*U.S. Supreme Court. Inyo County v.*  
*Paiute-Shoshone Indians, No. 02-281. Cer-*  
*tiorari granted December 2, 2002. Ruling be-*  
*low: 275 F.3d 893 (9th Cir. 2001).*

however, in no way did the stipulation pro-  
vide or even suggest that the parties had  
agreed to allocate to plaintiff *pre-retirement*  
*death benefits*, and we cannot read the stipu-  
lation as if it had...

"We therefore conclude that [the attor-  
ney's] failure to include pre-retirement  
death benefits in either the stipulation or the  
judgment...was the cause of the plaintiff's  
injury...Because [the attorney] was negli-

from their bankruptcy estates, the 4th Cir-  
cuit has ruled in reversing a U.S. Bank-  
ruptcy Court.

The debtors were a husband and wife  
who jointly filed for bankruptcy. Aside from  
the mortgage on their home, which they  
held as tenants by the entirety, they had no  
joint debts. They claimed the house was ex-  
empt under §522(b)(2)(B) of the Bankrup-  
cy Code, which allows a debtor to exempt  
property held as a tenancy by the entirety