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Court test of gay rights vs. traditional values

Landmark sodomy case holds implications for privacy rights and definition of marriage.

By [Warren Richey](#) | Staff writer of The Christian Science Monitor

WASHINGTON - Responding to a report of a possible gunman, Houston police burst into an apartment and discover, instead, two men engaged in a sex act.

The activity is consensual, and within the privacy of one of the men's own home. Nonetheless, the two are charged with violating Texas' homosexual-conduct statute that outlaws "deviate sexual intercourse with another individual of the same sex."

Both men, John Lawrence and Tyron Garner, are held overnight in jail and fined \$200.

The matter might have ended there, but the men decided to appeal their case. They argued that Texas was violating the constitutional rights of gays by prosecuting them for engaging in behaviors that are not illegal under Texas law if practiced by heterosexual couples.

In a potential landmark case, the US Supreme Court will examine Wednesday whether the Texas law violates the equal protection and privacy rights of homosexuals, or whether the law is, instead, a legitimate attempt by the state to uphold its view of sexual morality, family values, and traditional marriage.

Supporters of the law say there is no fundamental right in the Constitution to engage in certain homosexual acts. To strike down the Texas law, they say, could create such a right and lay the legal groundwork for recognition of same-sex marriages.

Opponents of the law say among the most fundamental of rights guaranteed in the Constitution is the right to be let alone. The government does not enjoy the unfettered power to intrude into the most intimate and private aspects of what happens in American bedrooms, they say.

"What we are asking for is to not have the police prosecute you for choosing one particular way to express your love for someone else in private," says Ruth Harlow of Lambda Legal Defense and Education Fund, a gay-rights legal group representing the two men.

Some groups promoting family values and traditional marriage see in the case the thin edge of a wedge that could undermine favored treatment of male-female marriage by state lawmakers.

"[This case] could have broad implications not just for the 13 states that have sodomy

laws, but for the marriage laws in every state," says Joshua Baker of the Marriage Law Project at Catholic University Law School.

In addition to Texas, three other states - Kansas, Missouri, and Oklahoma - make it a crime for gays to engage in sodomy. Nine other states make those same acts illegal for both gays and heterosexuals. The states are: Alabama, Florida, Idaho, Louisiana, Mississippi, North Carolina, South Carolina, Utah, and Virginia.

The justices can take one of three actions to resolve the case. They can uphold the Texas law, stating that it is up to elected lawmakers to grapple with such difficult social issues.

Second, they could declare that the law violates equal-protection principles by treating gays differently. Such a ruling would invalidate homosexual-conduct laws in four states, but might leave intact similar, but broader, laws in the nine other states.

Finally, the court could issue a much broader ruling that American bedrooms are off limits to state scrutiny because they are protected by fundamental concepts of liberty and privacy that earlier courts have identified in the Constitution. Such a ruling would invalidate all 13 homosexual-conduct laws nationwide, and would overturn a 1986 court precedent upholding Georgia's sodomy law.

The court's current case, *Lawrence v. Texas*, is significant because it could mark a turning point for gay rights in the US, helping to eliminate laws that in many cases have been used to discriminate against homosexuals in employment and parenting disputes.

From a libertarian perspective, the case is important because it offers the court an opportunity to make clear that certain areas should be off limits to government.

To supporters of sodomy laws, the case is an assault on morality and the rule of law. It offers the court an opportunity to state that local elected officials are in the best position to resolve such issues, they say. "Nothing in this court's ... jurisprudence supports recognition of a constitutional right to engage in sexual misconduct outside the venerable institution of marriage," says William Delmore III, an assistant district attorney in Harris County, in his brief on behalf of Texas.

In the past, the high court has recognized that individuals enjoy a "liberty" interest in being free from government interference in matters involving marriage, having children, raising children, marital privacy, use of contraception, bodily integrity, and abortion. "The conduct at issue in this case has nothing to do with marriage or conception or parenthood and it is not on a par with those sacred choices," Mr. Delmore writes.

Lawyers for Mr. Lawrence and Mr. Garner disagree. "The law's discriminatory focus sends the message that gay people are second-class citizens and lawbreakers, leading to ripples of discrimination throughout society," says Ms. Harlow in her brief to the court.

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