

v

## The U.S. Supreme Court

# Gay sex ban is struck down

1986 decision  
in similar case  
is also reversed

By **JOEL BRINKLEY**  
The New York Times

WASHINGTON — The Supreme Court struck down a Texas law yesterday that forbids homosexual sex and reversed its own ruling in a similar Georgia case 17 years ago, thus invalidating anti-sodomy laws in the states that still have them.

Justice Anthony Kennedy, writing for the majority in the 6-3 Texas decision, said homosexuals "are entitled to respect for their private lives," adding that "the state cannot demean their existence or control their destiny by making their private sexual conduct a crime."

Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer agreed with Kennedy. Justice Sandra Day O'Connor sided with the majority in its decision, but in a separate opinion disagreed with some of Kennedy's reasoning.

Justice Antonin Scalia wrote the dissent and took the unusual step of reading it aloud from the bench, saying "the court has largely signed on to the so-called homosexual agenda." Joining Scalia's dissent were Chief Justice William Rehnquist and Justice Clarence Thomas.

Scalia said he believed the ruling paved the way for homosexual marriages. "This reasoning leaves on shaky, pretty shaky, grounds state laws limiting marriage to opposite-sex couples," he wrote.

The court's actions yesterday would also seem to overturn any law forbidding sodomy, no matter whether it deals with homosexual or heterosexual activity.

It also could help homosexuals in legal disputes

See **GAY**  
Page 4, column 4, this section



ASSOCIATED PRESS

Yesterday's decision stemmed from the 1998 arrests of Tyrone Garner, left, and John Lawrence, of Houston.

## U.S. Supreme Court

# Gay sex ban struck down

Continued from Page One

that arise from moral disapproval of them, whether on the job, in situations involving child custody, or over inheritance claims.

The anti-sodomy laws in Texas and 12 other states overturned yesterday rarely were enforced. But they — and the 1986 ruling — have been cited by courts to deny homosexuals custody of their children or to reject bias claims by homosexual workers.

In a rare reversal of a past ruling, the majority concluded that the court's backing of anti-sodomy laws 17 years ago "was not correct when it was decided, and it is not correct today."

Kennedy cited "an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in (sexual) matters."

The case was an appeal of a ruling by the Texas Court of Appeals, which had upheld the law barring "deviate sexual intercourse." The plaintiffs, John G. Lawrence and Tyron Garner of Houston, were arrested in 1998 after police, responding to a false report of a disturbance, discovered them having sex in Lawrence's apartment. Lawrence and Garner were jailed overnight and fined \$200 each after pleading no

contest to sodomy charges.

In its ruling in the Texas case and its revisiting of the 1986 Georgia case, the Supreme Court made a sharp turn.

In 1986, the justices upheld an anti-sodomy law in Georgia, prompting protests from gay-rights advocates and civil-liberties groups. But in the 17 years since, the social climate in the United States has changed, broadening public perceptions of homosexuals and eroding the legal and social sanctions that once confronted them. Until 1961, all 50 states banned sodomy. By 1968, that number had dwindled to 24 states, and by yesterday's ruling, it stood at 13.

Even though the court upheld the Georgia anti-sodomy statute — which had applied to heterosexual as well as homosexual conduct — Georgia lawmakers later rescinded it. But the justices' ruling on the legal principle behind the Georgia statute continued to stand, so yesterday the court, voting 5-4, issued a new ruling overturning its 1986 decision in the Georgia case.

The Lambda Legal Defense and Education Fund, which works on behalf of homosexuals, brought the appeal of the Texas ruling to the court, arguing that it violated equal protection and due process laws. It described sexual intimacy in the home as an as-

pect of the "liberty" protected by the constitutional guarantee of due process.

"This is a historic decision. The court closed the door on an era of intolerance," said Ruth Harlow, Lambda's legal director.

Tom Minnery, vice president of the conservative group Focus on the Family, disagreed. "While it may feel good to some that a stigma is lifted from a particular group, something else has been lifted: the boundaries that prevent sexual chaos in our culture."

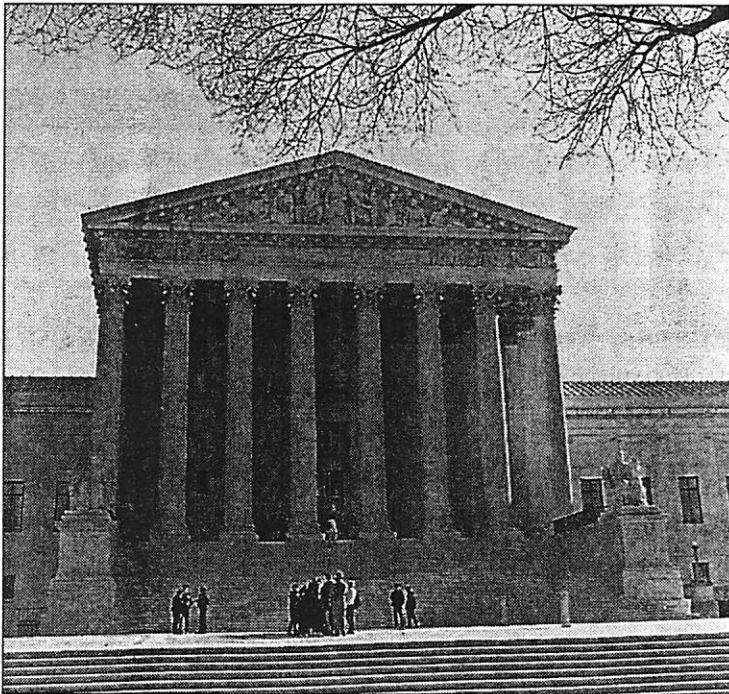
Some conservatives reacted angrily to the court's actions, particularly regarding the prospect that they could open the legal door to gay marriages.

"If there's no rational basis for prohibiting same-sex sodomy by consenting adults, then state laws prohibiting prostitution, adultery, bigamy and incest are at risk," Jan LaRue, chief counsel for Concerned Women for America, a conservative group, said. "No doubt, homosexual activists will try to bootstrap this decision into a mandate for same-sex marriage. Any attempt to equate sexual perversion with the institution that is the very foundation of society is as baseless as this ruling."

USA TODAY contributed to this story.



John Lawrence and Tryon Garner: defendants in the sodomy case.



Outside the U.S. Supreme Court Building in Washington.

Excerpts from Supreme Court's decision on sodomy  
**'RESPECT FOR PRIVATE LIVES'**



Excerpts from the Supreme Court's decision yesterday on sodomy:

**Justice Anthony M. Kennedy, writing for the majority:**

Liberty protects the person from unwarranted government intrusions into a dwelling or other private places. In our tradition the state is not omnipresent in the home. And there are other spheres of our lives and existence, outside the home, where the state should not be a dominant presence. Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression and certain intimate conduct.

Adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons. When sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice. . . .

Laws prohibiting sodomy do not seem to have been enforced against consenting adults acting in private. A substantial number of sodomy prosecutions and convictions for which there are surviving records were for predatory acts against those who could not or did not consent, as in the case of a minor or the victim of an assault. . . .

When homosexual conduct is made criminal by the law of the state, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres. . . . The stigma this criminal statute imposes, moreover, is not trivial. The offense, to be sure, is but a class C misdemeanor, a minor offense in the Texas legal system. Still, it remains a criminal offense with all that imports for the dignity of the persons charged. The petitioners will bear on their record the history of their criminal convictions. . . .

The present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter. The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle. The petitioners are entitled to respect for their private lives. The state cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government. It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter. . . . the Texas statute furthers no legitimate state in-

terest which can justify its intrusion into the personal and private life of the individual.

**Justice Sandra Day O'Connor, concurring with the majority:**

The statute at issue here makes sodomy a crime only if a person "engages in deviate sexual intercourse with another individual of the same sex." Sodomy between opposite-sex partners, however, is not a crime in Texas. That is, Texas treats the same conduct differently based solely on the participants.

The Texas statute makes homosexuals unequal in the eyes of the law by making particular conduct — and only that conduct — subject to criminal sanction. . . . And the effect of Texas' sodomy law is not just limited to the threat of prosecution or consequence of conviction. Texas' sodomy law brands all homosexuals as criminals, thereby making it more difficult for homosexuals to be treated in the same manner as everyone else. . . .

A law branding one class of persons as criminal solely based on the state's moral disapproval of that class and the conduct associated with that class runs contrary to the values of the Constitution and the equal protection clause, under any standard of review.

**Justice Antonin Scalia, writing in dissent:**

We have held repeatedly, in cases the Court today does not overrule, that only fundamental rights qualify for this so-called "heightened scrutiny" protection — that is, rights which are "deeply rooted in this nation's history and tradition." . . . All other liberty interests may be

abridged or abrogated pursuant to a validly enacted state law if that law is rationally related to a legitimate state interest. . . .

Not once does it describe homosexual sodomy as a "fundamental right" or a "fundamental liberty interest," nor does it subject the Texas statute to strict scrutiny. Instead, having failed to establish that the right to homosexual sodomy is "deeply rooted in this nation's history and tradition," the Court concludes that the application of Texas' statute to petitioners' conduct fails the rational-basis test. . . .

*Roe v. Wade* recognized that the right to abort an unborn child was a "fundamental right" protected by the Due Process Clause. . . . The *Roe* Court, however, made no attempt to establish that this right was "deeply rooted in this nation's history and tradition"; instead, it based its conclusion that "the 14th Amendment's concept of personal liberty . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy" on its own normative judgment that anti-abortion laws were undesirable. . . .

States continue to prosecute all sorts of crimes by adults "in matters pertaining to sex": prostitution, adult incest, adultery, obscenity and child pornography. Sodomy laws, too, have been enforced "in the past half century," in which there have been 134 reported cases involving prosecutions for consensual, adult, homosexual sodomy. . . .

Let me be clear that I have nothing against homosexuals, or any other group, promoting their agenda through normal democratic means. Social perceptions of sexual and other morality change over time, and every group has the right to persuade its fellow citizens that its view of such matters is the best. That homosexuals have achieved some success in that enterprise is attested to by the fact that Texas is one of the few remaining states that criminalize private, consensual homosexual acts. But persuading one's fellow citizens is one thing, and imposing one's views in absence of democratic majority will is something else. . . .

The matters appropriate for this Court's resolution are only three: Texas' prohibition of sodomy neither infringes a "fundamental right" (which the Court does not dispute), nor is unsupported by a rational relation to what the Constitution considers a legitimate state interest, nor denies the equal protection of the laws. I dissent.

**LOCAL REACTION**

# Activists hail ruling as victory for gays

By **CHRIS POYNTER**

cpoynter@courier-journal.com  
The Courier-Journal

Although Kentucky's high court struck down the state's sodomy law more than a decade ago, local gay and lesbian groups applauded yesterday's U.S. Supreme Court decision extending that ban nationwide, hailing it as a significant victory that will have a ripple effect on society.

"What the Supreme Court says today is what all Americans really know in their gut: that government has absolutely no business whatsoever peering into the bedroom windows of consenting adults," said Eric Graninger, an attorney who volunteers for the Fairness Campaign, a Louisville group that lobbies for gay rights.

But gay-rights opponents chided the Supreme Court for its decision, saying it sets a bad moral example in a nation founded on Christianity.

Albert Mohler Jr., president of The Southern Baptist Theological Seminary, called the decision "tragic" and predicted that it could lead to the legalization of same-sex marriage.

Peter Hayes, who lobbied against Louisville's passage of its gay-rights ordinance in 1999, said the decision erodes marriage and family and further "ruins the moral fabric of our country."

Hayes said he agreed with Justice Antonin Scalia, who wrote the dissent-



BY ARZA BARNETT, THE COURIER-JOURNAL

**Carla Wallace, left, Eric Graninger and Darnell Johnson of the Fairness Campaign in Louisville celebrated the ruling yesterday. The decision should be "a victory for all Americans, gay or straight," Graninger said.**

ing opinion, which said the court had "largely signed on to the so-called homosexual agenda" and had "taken sides in the culture war."

The Fairness Campaign used yesterday's ruling to call for the Kentucky General Assembly to adopt a statewide law banning discrimination on the basis of sexual orientation and gender identity.

Less than two hours after the court's ruling was released, 13 Fairness Campaign leaders stood inside their office on Frankfort Avenue and called on the Louisville Metro Council to reaffirm the gay-rights laws passed by the former Louisville Board of Aldermen and Jefferson County Fiscal Court.

These measures, like all laws enacted before merger, will be void in five years unless the Metro Council re-adopts them.

Jeff Rodgers, a Fairness Campaign leader, said the court's ruling on sodomy laws is more than symbolic and will have legal implications.

Sodomy laws "have been used to paint gay and lesbian parents as criminals and to deny gays and lesbians jobs," he said.

Rodgers and others at yesterday's news conference noted that the Supreme Court's decision comes on the heels of other significant gay-rights victories in Kentucky.

Earlier this month, Gov. Paul Patton issued an executive order banning discrimination on the basis of sexual orientation and gender identity in state government.

And the Covington City Council recently passed a gay-rights law.

The timing of the Supreme Court's decision is significant to many homosexuals because June is considered Gay Pride Month worldwide.

The decision should be "a victory for all Americans, gay or straight," Graninger said, because "government must not and cannot criminalize who we choose to love and whom we love."

# GAY MARRIAGE GETS A BOOST

BY MICHELANGELO SIGNORILE

The writer is a former editor of *The Advocate*, a national gay magazine.

ONE OF the most exciting and pivotal events to happen in years to the gay rights movement in the United States just occurred — in another country entirely.

Canada, soon expected to legalize same-sex marriage, is hardly the first nation to recognize gay and lesbian unions. But, for Americans, the decision is monumental for the simple reason that Canada is right in our own back yard.



Michelangelo Signorile

It remains to be seen, of course, whether such marriages would be legally recognized here, and litigation will likely ensue for years to come. But the cultural impact from Canada's action will release a blast a hundred times stronger than

any Arctic air mass our neighbor to the north regularly sends down.

What seemed like something very far off — legal sanction of same-sex relationships in America at the federal level — suddenly looks much closer. That's thrilling and hugely significant because marriage rights are among the last bastions of inequality between gays and straights, encompassing everything from tax laws and inheritance to adoption and immigration rights.

There is no logical reason to keep gays from getting married. All that opponents can come up with are emotion-charged moralistic arguments. They may make some people feel good, but in the end they just don't wash. The spectrum of legal recognition of gay relationships includes marriage rights for gays, Vermont-style civil unions (which confer many of the benefits of marriage without recognition on the federal level, where hun-

dreds of benefits are conferred upon married individuals) and domestic partnership laws.

Just a few years ago, domestic partnership laws — piecemeal items that often offer gay couples some very basic rights, such as hospital visitation, funeral leave and health coverage — were seen by many as radical, while civil unions and same-sex marriage were completely unheard of.

For Democratic politicians today, supporting domestic partnership laws is the safest, most conservative concession regarding recognition of gay relationships. Several Democratic presidential nominees support civil unions.

With the Canadian decision, the edge of the debate will shift even further to full marriage rights, accelerating the legal recognition of same-sex relationships in the United States, simply because of Canada's proximity.

The only countries that currently recognize gay relationships nationally are in Europe, which to most Americans may as well be a million miles away. Denmark, France, Iceland, Norway and Sweden offer similar legal status to civil unions. Both Belgium and the Netherlands offer full marriage rights for gays and lesbians but don't allow non-citizens to marry without being residents for a specified period of time.

Canada, however, is a country with which we share culture — from the English language to Austin Powers (Mike Myers), "Baywatch" (Pamela Anderson) and Celine Dion. And unlike the other countries that recognize same-sex marriage, Canada's proposed law will allow Americans or citizens of any other country to marry in Canada, with no specific residency requirements.

Lesbian and gay Americans may enter Canada one day and come back as husband and husband or wife and wife the next, even if they may face

discrimination and opposition once they get home. The Canadian side of Niagara Falls, for instance, with its gambling casinos and hotels, could very well become a gay Las Vegas, with quickie weddings for lesbian and gay Americans.

As the battle for same sex marriage continues in the United States — The Supreme Judicial Court of Massachusetts is currently deciding a case while a new one has been launched in New Jersey on behalf of seven gay and lesbian couples — Canada could also provide a stunning example of how same-sex marriage works. All of the apocalyptic warnings about same-sex marriage from Christian right leaders will be proved false simply by our looking to a giant experiment up north, up close.

The dire predictions, claiming that allowing gays to marry will destroy the institutions of marriage and the family, will likely be laughed off as time goes on. American public opinion will continue to change in favor of marriage rights for gays as people see that the threats to heterosexual marriage — which has its own problems these days that have nothing to do with gays — were completely bogus.

That doesn't mean there aren't big roadblocks ahead. Religious conservatives in Congress have been trying to build up steam to pass an amendment to the Constitution that expressly forbids recognition of same-sex marriage, further solidifying the 1996 Defense of Marriage Act. The U.S. Supreme Court yesterday overturned sodomy laws targeting gays, but the longtime impact of that decision remains unclear.

The United States is embarrassingly behind other democracies on the issue of equal rights for gays and lesbians. Still, legal recognition of gay relationships in America is only a matter of time. And this month, it inched a lot closer.

Special to Newsday



“Many Americans do not want persons who openly engage in homosexual conduct as partners in their business, as scoutmasters for their children, as teachers in their children’s schools or as boarders in their home. They view this as protecting themselves and their families from a lifestyle that they believe to be immoral and destructive.”

— Justice Antonin Scalia in his dissent in the Texas sodomy case (see below)

