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## Landmark gay ruling may put Bush in bind

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**Washington** -- The Supreme Court will decide within the next two weeks one of the most important cases in the history of civil rights for lesbian and gay Americans, reigniting a battle in the Republican Party that President Bush has delicately sought to avoid.

At issue in *Lawrence and Garner vs. Texas* is a state sodomy law that strikes the most fundamental chords within the GOP and threatens to split two party blocs pivotal to Bush's re-election.

The case involves two gay men, John Lawrence and Tyron Garner, who were arrested Sept. 17, 1998, in their home in Harris County, Texas, for having consensual sex after a neighbor falsely reported a "weapons disturbance." Police entered their home, discovered them "engaged in deviate sexual intercourse" and jailed them under the Texas homosexual conduct statute.

A decision for the plaintiffs would -- for the first time -- guarantee equal protection for gays and lesbians under the 14th Amendment, much as *Brown vs. Board of Education* did for African Americans nearly a half-century ago. Depending on its decision, the court could also guarantee for lesbians and gays a constitutional right to privacy.

Gay Republicans contend that not just equality but the decriminalization of their existence is at stake. Allied with Republican moderates who want to reach out to socially tolerant swing voters, they contend that the case concerns violations of core American values of privacy and equal protection.

### WARY OF GAY MARRIAGE

On the other side are those who back the Texas law based on their religious and moral convictions. Members of these groups, which make up a big chunk of the conservative GOP base, warn that equal protection for sodomy is a giant step toward gay marriage -- still unacceptable to most Americans -- and that no politician, including Bush, a former Texas governor, will be allowed to abide it.

Republicans generally, and the White House specifically, largely avoid the topic for fear of alienating either side. But that tactic may not work when the Supreme Court issues its ruling either this Monday or next.

"The implications of this case are difficult to overestimate," said Patrick Guerriero, executive director of the Log Cabin Republicans, a gay Republican group. "It would be a grave mistake for the White House to say in the year 2003 that laws should allow police to enter homes of consensual adults. . . . It's out of the mainstream, it's a politically losing point and would only cater to the fringe, radical-right elements of our party."

Ken Connor, president of the conservative Family Research Council, insisted that if the high court rules against Texas, Republicans will be expected to muster a vigorous defense of heterosexual marriage and traditional family values.

"Regardless of their desires to the contrary, Republicans will not be able to duck-and-cover on this issue," Connor said. "The debate will elevate to a white-hot temperature about what the role of marriage is in society."

If the court rules against Texas, Connor said, the precedent will open the door to gay marriage, destroy the foundation of heterosexual marriage and "all policy-makers at every level, from the White House to the statehouse, will be called upon to register their views."

### **'LIVE AND LET LIVE' HAS LIMITS**

Whatever the high court decision, both sides predict it will further inflame the fight over Bush judicial nominees, particularly to potential Supreme Court vacancies, adding gay rights to an already explosive political mix.

"Most Americans have gotten to the point where they're willing to live and let live, but they're a long way from the point where they will accept gay marriage," said GOP pollster Whit Ayres, noting that former President Bill Clinton signed the Defense of Marriage Act in 1996, which forbids federal recognition of gay unions. "Given that fact, it's dangerous for any political party to do anything that sounds like they're endorsing gay marriage."

The administration has not weighed in on Lawrence and Garner, which is not unusual. The case has been overshadowed by an imminent University of Michigan affirmative action decision. But its potential to split the party was made clear by the firestorm over Sen. Rick Santorum's remarks in late April.

The Pennsylvania Republican and member of the Senate leadership said that a ruling favorable to gays would threaten the right of states to prohibit bigamy,

polygamy, incest and adultery, or "man on child, man on dog or whatever the case may be."

The comments sparked calls for Santorum's resignation but Bush defended him as "an inclusive man," and Republicans rallied to his defense.

### **TAKEN TO TASK**

Mary Matalin, a former aide to Vice President Dick Cheney and a close ally of the Republican Unity Coalition, a group aiming to make the party more inclusive of gays, went so far as to rebuke the RUC's condemnation of Santorum,

shocking RUC officials and publicly embarrassing the group.

Matalin said the RUC was "parroting" Democrats, adding that calling Santorum a bigot would be like calling "the pope a bigot."

Social conservatives raised another storm when Republican National Committee Chairman

Marc Racicot met in March with the Human Rights Campaign, the nation's largest gay lobbying group. Nearly a dozen top conservative leaders later held a stormy private meeting with Racicot in which they warned that Bush was endangering his re-election by "flirting" with gay activists.

"We urged party leaders not to put President Bush's re-election at risk in 2004 by shrinking from the cultural wars now," said Gary Bauer, a former presidential candidate.

Attorney General John Ashcroft came under fire from the other side recently when gay organizations said the Justice Department had banned a gay pride event.

"I think right now the GOP is wrestling with how much to accommodate homosexual activists within the party," said Robert Knight, director of the Culture and Family Institute, adding that social conservatives "will react strongly to an adverse decision" in Lawrence and Garner.

Gay Republicans and social conservatives alike predict the Bush administration will try to avoid comment on the high court's ruling, however it comes out.

"They are very disciplined in their message and in their priorities, and they would probably rather avoid getting mired in this issue, but I'm not certain they'll be able to avoid it," said a leading gay Republican close to the administration.

## PLYING MIDDLE GROUND

So far, the administration has plied a middle course on gay issues generally.

"The president himself has been disciplined at not engaging in the marginalizing rhetoric of the radical right since he took office, and he has clearly not taken the steps backward that had been threatened by the left in the 2000 election," said Guerriero, the Log Cabin Republicans director.

Guerriero noted that Bush surprised the gay and lesbian community with his support for global AIDS funding, nondiscrimination against gays in federal employment and his appointment of Michael Guest as ambassador to Romania, a higher profile position than Clinton's controversial appointment of San Franciscan James Hormel as ambassador to Luxembourg.

Guerriero also cited Bush's support of lesbians and gay relationships in compensating victims of the Sept. 11, 2001, terrorist attacks under the Mychael Judge Act.

But all agree the pending Supreme Court ruling and its legal aftermath will take the gay issue to a new level.

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