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Texas sodomy law goes to high court this week

Houston-area case could become landmark

By PATTY REINERT

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WASHINGTON -- When police descended on John Lawrence's Houston-area home one night in 1998 and found him having sex with another man, they hauled the couple off to jail and charged them with violating Texas' little-known Homosexual Conduct Law.

Lawrence and his partner, Tyron Garner, pleaded no contest, paid \$200 fines and then decided to fight back. This week, their case will be argued before the U.S. Supreme Court, setting the stage for what observers on both sides of the issue say is the most significant gay rights decision in two decades.

"Americans value privacy in their bedrooms," said Ruth Harlow, an attorney with New York's Lambda Legal Defense and Education Fund who is representing Lawrence and Garner. "We should all be able to take for granted that the police cannot burst in and tell us how we can express love and affection for another consenting adult in private."

The state of Texas disagrees and will argue that there is no reason for the high court to recognize a constitutional right to engage in sex outside of "monogamous heterosexual marriage," said Harris County District Attorney Chuck Rosenthal.

"Reasonable people can disagree about whether something is moral or amoral, such as sexual intimacy between people of the same sex," Rosenthal said last week. "But the Supreme Court has said in the past that those issues should be resolved in the legislature."

In the state's brief to the court, Rosenthal wrote that the state has an interest in discouraging its citizens from engaging in "what is still perceived to be immoral conduct."

Texas Gov. Rick Perry has called Texas' sodomy law "appropriate," and 70 Texas lawmakers have filed a "friend-of-the-court" brief supporting the state's position. They have been joined by political and religious groups who are concerned that any bolstering of gay rights by the court could lead to more acceptance of gays marrying and rearing children, which they consider immoral.

Weighing in on the side of Lawrence and Garner are the American Bar Association, several religious groups, historians, psychologists and a broad range of Democrats, Republicans and libertarians who

believe sodomy laws amount to the government snooping where it was not meant to intrude.

The Bush administration has not taken sides in the case.

Sodomy laws, which ban oral or anal sex, existed in every U.S. state as recently as the 1960s, but have since been thrown out in most. The high court last considered such laws in 1986 when it upheld Georgia's law, ruling that there is no constitutional right to engage in homosexual sex, even in private.

Georgia has since repealed its law, but Texas and 12 other states kept theirs. Punishments range from fines to 20 years in prison.

Nine of the states that still have the laws on their books -- Louisiana, Mississippi, Alabama, Florida, South Carolina, North Carolina, Virginia, Idaho and Utah -- consider sodomy a crime for heterosexuals as well as homosexuals.

Texas, which used to outlaw sodomy for everybody, rewrote its law in 1973 and renamed it the Homosexual Conduct Law. Same-sex couples engaging in oral or anal sex can be charged with a Class C misdemeanor, punishable by a maximum \$500 fine. Opposite-sex couples can engage in the same acts without breaking any law.

Lawrence and Garner argue that such unequal treatment of gay and straight people violates the U.S. Constitution's guarantee of equal protection under the law. Texas disagrees, saying states can make the call as to what citizens consider acceptable behavior. In this case, lawyers for the state will argue, Texans consider it immoral for people of the same gender to have sex.

The nine justices, who decided last December to hear the case, could use it to rule on the constitutionality of all sodomy laws, or they could limit their decision to laws that target homosexuals. The case will be argued Wednesday and should be decided by July.

The case before the court began in 1998, when Harris County deputies responding to a "weapons disturbance" tip burst into Lawrence's Pasadena apartment. The officers quickly determined that the gun report was bogus, but they found Lawrence, then 55, and Garner, then 31, having sex in Lawrence's bedroom. The men were arrested and taken to jail, where they spent the night.

Lawrence and Garner, who were "outed" as gay when their jailhouse mugshots hit the press, have declined all requests for interviews.

Harlow said that while Texas' sodomy law is rarely used as it was in her clients' case, it has been cited by people trying to deny gays jobs or housing, the right to meet in public libraries and schools, to adopt children, serve as foster parents, or gain custody of their children after a divorce. It also has been used by opponents of gay and lesbian candidates running for public office, who sometimes try to paint gay candidates as lawbreakers.

Former Texas Rep. Glen Maxey, an openly gay Democrat from Austin who retired in January after six terms in office, said he faced "a steady drumbeat" of opposition among his fellow lawmakers who used the law as a license to belittle him and treat him as a criminal.

"People would ask me, 'How can you legally be here? How can you be a member of the Legislature if you have taken an oath to uphold the law,'" he said.

The Texas Legislature has repeatedly considered, and declined, to repeal the state's sodomy law. This session, with the issue pending before the Supreme Court, gay rights supporters have not filed a bill.

Chronicle reporter Andy Netzel contributed to this story.



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