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LAWRENCE V. TEXAS,
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FACTS

Two officers of the Harris County, Texas police department responded to a reported weapons disturbance at the residence of John Lawrence.¹ The officers entered the residence and saw Lawrence engaged in a sexual act with another man, Tyrone Gardner.² The officers arrested Lawrence and Gardner and detained them overnight.³ The two men were charged and convicted before a justice of the peace for violating Texas's anti-sodomy law.⁴ They did not question the right of the police to enter the residence.⁵ Subsequently, Lawrence and Gardner requested a new trial in the Harris County Criminal Court, asserting that the statute violated both the Equal Protection Clause of the Fourteenth Amendment and a similar provision of the Texas Constitution.⁶ The court rejected Lawrence and Gardner's arguments and fined them both after they entered a plea of *nolo contendere*.⁷

Lawrence and Gardner appealed to the Texas Court of Appeals.⁸ The court held the Texas statute constitutional under the Fourteenth Amendment's Equal Protection and Due Process Clauses.⁹ Relying on the decision in *Bowers v. Hardwick*,¹⁰ the court upheld the convictions.¹¹ The United States Supreme Court granted certiorari to consider whether the convictions of Lawrence and Gardner violated either the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment and whether the Court should overrule *Bowers v. Hardwick*.¹²

¹ Lawrence v. Texas, 123 S. Ct. 2472, 2475 (2003).

² *Id.* at 2475–76.

³ *Id.* at 2476.

⁴ *Id.*; see TEX. PENAL CODE ANN. § 21.06(a) (Vernon 2003).

⁵ Lawrence, 123 S. Ct. at 2475.

⁶ *Id.* at 2476; see also TEX. CONST. art. 1, § 3a.

⁷ Lawrence v. Texas, 123 S. Ct. 2472, 2476 (2003).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Bowers v. Hardwick*, 478 U.S. 186 (1986). In *Bowers*, the police arrested two men for violating a Georgia statute that prohibited sodomy, regardless of the participants' gender. *Id.* at 199. Hardwick contested the constitutionality of the statute in federal court, claiming that as a practicing homosexual the statute forbade him from engaging in constitutionally protected acts. *Id.* The Supreme Court did not recognize the Constitution as protecting Hardwick's right to engage in sodomy and upheld the statute. *Id.*

¹¹ Lawrence, 123 S. Ct. at 2476.

¹² *Id.*

HOLDING

The United States Supreme Court reversed the decision of the Court of Appeals for the Texas Fourteenth District and ruled the Texas statute unconstitutional.¹³ The Court held that the Due Process Clause granted Lawrence and Gardener the right to engage in private sexual intimacy without interference from the government.¹⁴ The Court also overturned *Bowers*.¹⁵

ANALYSIS

The Court framed the issue as whether the petitioners were free to engage in private sexual intimacy in the exercise of their liberty under the Due Process Clause of the Fourteenth Amendment.¹⁶ The Court began by examining the substantive reach of liberty under the Due Process Clause in *Griswold v. Connecticut*.¹⁷ In *Griswold*, the Court recognized the right to privacy as a protected interest based on the marital relationship, which guarded the privacy of the marital bedroom.¹⁸ The Court next analyzed *Eisenstadt v. Baird*,¹⁹ which extended that right to privacy to unmarried persons by using the Equal Protection Clause.²⁰ The *Eisenstadt* Court had stated that "if the right of privacy means anything, it is the right of the individual, married or single, to be free from unwanted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."²¹ After *Eisenstadt*, the Court examined *Roe v. Wade*,²² which expanded the protection of the Due Process Clause to protect a woman's right to an abortion as an exercise of her liberty.²³ The Court noted that the three cases extended the reasoning of *Griswold* beyond

¹³ *Id.* at 2484.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 2476.

¹⁷ *Id.* In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Court ruled that a state law, which criminalized the use or assistance in the use of contraceptives, violated a constitutional right of privacy. *Id.* at 485. *Griswold* was based on the traditional values associated with marriage; therefore, the holding did not transfer a right of privacy to personal sexual privacy or non-marital relationships. *Id.*

¹⁸ *Lawrence v. Texas*, 123 S. Ct. 2472, 2477 (2003) (citing *Griswold*, 381 U.S. at 485).

¹⁹ *Eisenstadt v. Baird*, 405 U.S. 438 (1972). In *Eisenstadt*, the Court held that a law that restricted the distribution of contraceptives to only married persons was unconstitutional. *Id.* at 454. The Court decided the case under the Equal Protection Clause, explaining that the law restricted the personal rights of unmarried persons. *Id.*

²⁰ *Lawrence*, 123 S. Ct. at 2477 (citing *Eisenstadt*, 405 U.S. at 454).

²¹ *Id.* (citing *Eisenstadt*, 405 U.S. at 453).

²² *Roe v. Wade*, 410 U.S. 113 (1973). In *Roe*, the Court held that a Texas law banning abortions was unconstitutional. *Id.* at 166. The Court emphasized that the protection of liberty under the Due Process Clause helped to define and protect the rights of the person. *Id.* at 153.

²³ *Lawrence*, 123 S. Ct. at 2477 (citing *Roe*, 410 U.S. at 153).

protecting only the rights of married adults and that the Due Process Clause has a substantive element that protects the fundamental rights of a person.²⁴

The Court next examined *Bowers*, which resembled the case of petitioners, with one notable exception: the Georgia statute in *Bowers* applied equally to both opposite-sex and same-sex sodomy, whereas the Texas statute applied to only same-sex sodomy.²⁵ The Court employed a three-prong attack against the *Bowers* decision. It began by acknowledging that the *Bowers* Court erred in framing the issue.²⁶ The *Bowers* Court had originally framed the issue as a question of whether homosexuals enjoyed a constitutionally protected fundamental right to engage in sodomy.²⁷ The Court stated that framing the issue in this way minimized the liberty at stake.²⁸ Both the purpose behind the statute and the penalty imposed for violating it demonstrated that the consequence of the statute was far more damaging than simply not allowing homosexuals to engage in a specific sexual act.²⁹ The statute regulated "the most private human conduct, sexual behavior, and in the most private of places, the home."³⁰ The Court recognized that the Constitution grants persons the right to engage in homosexual conduct, in expression of their sexuality, in their own private lives and homes, and neither the government nor the courts have the right to control this expression by defining or setting the limits of relationships.³¹

The Court then accused the *Bowers* Court of overstating and simplifying the historical background of sodomy.³² Although the *Bowers* Court had claimed that "proscriptions against [sodomy] have ancient roots,"³³ the Court stated that there is no extensive legislative history directed solely at homosexual conduct.³⁴ The Court further stated that early American law attempted to prohibit any sexual conduct that was not for the purpose of procreation.³⁵ Although there were laws that criminalized sodomy among same-sex and opposite-sex couples,³⁶ the laws were generally not enforced when the act occurred in private between consenting adults.³⁷ Most nineteenth century prosecutions of sodomy involved children, force, persons

²⁴ *Id.* See also *Carey v. Population Servs. Int'l*, 431 U.S. 678 (1977) (invalidating a New York statute that forbade the sale or distribution of contraceptives to persons under sixteen years of age).

²⁵ *Lawrence v. Texas*, 123 S. Ct. 2472, 2477 (2003).

²⁶ *Id.*

²⁷ *Id.* at 2478.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 2480.

³³ *Id.* at 2478 (citing *Bowers v. Hardwick*, 478 U.S. 186, 192 (1986)).

³⁴ *Id.*

³⁵ *Id.* at 2479.

³⁶ *Id.* at 2478.

³⁷ *Id.* at 2479.

of disparate status, or animals.³⁸ It was not until the 1970s that a small number of states began to target homosexual acts for criminal prosecution.³⁹

After establishing that the historical reliance by the *Bowers* Court was unfounded, the Court attacked the moral foundation of the *Bowers* decision.⁴⁰ The *Bowers* Court relied on the longstanding moral condemnation of homosexual sodomy, created by religious beliefs, conceptions of right and acceptable behavior, and respect for the traditional family.⁴¹ In response to this condemnation, the Court referred to the more recent laws and traditions of European countries and the United States, which support the view that liberty provides substantial protection to adult persons in their private sexual choices.⁴² The Court was not convinced that religious beliefs or moral traditions allowed a state to force its moral views upon society through its criminal statutes.⁴³

Subsequent to dismissing the historical and moral foundations of *Bowers*, the Court analyzed two additional cases decided after *Bowers* that further weakened the decision.⁴⁴ The Court first discussed *Planned Parenthood of Southeastern Pennsylvania v. Casey*,⁴⁵ which confirmed the protection of liberty under the Due Process Clause.⁴⁶ The *Casey* Court stated that the Due Process Clause protected personal decisions of marriage, procreation, contraception, family relationships, child rearing, and education.⁴⁷ In explaining the protection afforded by the Due Process Clause for these matters, the *Casey* Court stated,

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the state.⁴⁸

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 2480–81.

⁴³ *Id.* at 2480.

⁴⁴ *Id.* at 2481.

⁴⁵ *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

⁴⁶ *Lawrence v. Texas*, 123 S. Ct. 2472, 2477 (2003) (citing *Casey*, 505 U.S. at 851).

⁴⁷ *Id.* (citing *Casey*, 505 U.S. at 851).

⁴⁸ *Id.* (citing *Casey*, 505 U.S. at 851).

The Court stated that although persons in homosexual relationships should enjoy the same liberty as heterosexual persons for these purposes, *Bowers* had denied this fundamental right to persons engaged in homosexual relationships.⁴⁹

After acknowledging that the constitutional protections confirmed in *Casey* extended to homosexuals, the Court considered *Romer v. Evans*,⁵⁰ which held that the Equal Protection Clause protected the rights of homosexuals.⁵¹ Petitioners had asserted that the Texas statute was unconstitutional under the same reasoning as *Romer*, but the Court reached for a broader ground of decision because *Romer* would allow states to prohibit both same-sex and opposite-sex sodomy, thereby effectively continuing to criminalize private sexual intimacy between homosexuals.⁵² By overruling *Bowers*, the Court eliminated this possibility.⁵³ The Court sought to invalidate *Bowers* because "its continuance as precedent demeans the lives of homosexual persons."⁵⁴ The Court rejected the application of the Equal Protection Clause because deciding the case on substantive due process grounds would advance equal protection interests as well.⁵⁵ The Court explained that a stigma remains when a law that criminalizes protected conduct is overruled on equal protection grounds and not on substantive due process grounds.⁵⁶

The Court then decided that the doctrine of stare decisis did not prevent the overruling of *Bowers*.⁵⁷ The Court reiterated its statement in *Casey* that when the Court is contemplating the invalidation of a holding based on a constitutional liberty interest, it should consider the individual or societal reliance on the liberty interest.⁵⁸ The Court decided that overruling *Bowers* would not destroy any individual or societal reliance.⁵⁹ The Court further stated that *Bowers* itself prevented reliance because prior and

⁴⁹ *Id.* at 2482.

⁵⁰ *Romer v. Evans*, 517 U.S. 620 (1996). In *Romer*, Colorado amended its constitution to deprive homosexuals, lesbians, and bisexuals, who expressed their sexuality either by orientation, conduct, practices, or relationships, of protection under the state's antidiscrimination laws. *Id.* at 624. The Court deemed the amendment unconstitutional because it violated the Equal Protection Clause. *Id.* at 634. The amendment was "born of animosity toward the class of persons affected" without the purpose of any legitimate state interest. *Id.*

⁵¹ *Lawrence v. Texas*, 123 S. Ct. 2472, 2482 (2003).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* This stigma might result from state registration laws for sexual offenders, employment applications that require an applicant's legal history, and the criminal conviction itself. *See id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 2483.

⁵⁹ *Id.*

subsequent cases contradicted its central holding.⁶⁰ Thus, stare decisis, historical traditions, and moral foundations did not prohibit the Court from overruling *Bowers*.⁶¹ Moreover, the fundamental liberty basis of substantive due process encouraged such action.⁶²

Having overruled *Bowers*, the Court reversed the judgment of the Texas Court of Appeals.⁶³ Because of the right to liberty under the Due Process Clause, the Court stated that the petitioners had a constitutional right to engage in private sexual intimacy without intrusion by the government.⁶⁴ The Court further asserted that Texas had no legitimate state interest that would justify intrusion into the petitioners' personal lives.⁶⁵

CONCURRING OPINION

Justice O'Connor concurred in the judgment of the Court to strike down Texas's statute as unconstitutional, but refused to join the Court in overruling *Bowers*.⁶⁶ According to Justice O'Connor, the issue of whether a sodomy law that criminalized both homosexual and heterosexual sodomy violated substantive due process was not in dispute.⁶⁷ Rather, she based her conclusion on the Equal Protection Clause.⁶⁸

Justice O'Connor first cited *Cleburne v. Cleburne Living Center, Inc.*,⁶⁹ which stated that the Equal Protection Clause mandated that all similarly situated persons be treated equally.⁷⁰ She stated that the Court will uphold statutes that treat similarly situated persons differently if there is a rational connection between the disparate treatment and a legitimate state interest.⁷¹ In the petitioners' case, Justice O'Connor concluded that the Texas statute did not treat all similar persons equally because it prohibited homosexual sodomy but allowed heterosexual sodomy. Because she was unable to determine a legitimate state interest that would justify the Texas law, Justice O'Connor concluded that the Texas law violated the Equal Protection Clause and concurred in the Court's judgment.⁷²

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 2484.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 2487.

⁶⁸ *Id.*

⁶⁹ *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985).

⁷⁰ *Lawrence v. Texas*, 123 S. Ct. 2472, 2484 (2003).

⁷¹ *Id.* (citing *Cleburne*, 473 U.S. at 440). See also *Fitzgerald v. Racing Ass'n of Cent. Iowa*, 123 S. Ct. 2156 (2003); *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483 (1955).

⁷² *Lawrence*, 123 S. Ct. at 2488.

DISSENTING OPINIONS

Justice Scalia, with whom Chief Justice Rehnquist and Justice Thomas joined, dissented from the judgment of the Court.⁷³ Justice Scalia criticized the majority's manipulation of stare decisis.⁷⁴ Justice Scalia stated that the majority decision allowed the Court to overrule an earlier opinion if "its foundations have been 'eroded' by subsequent decisions, it has been subject to 'substantial and continuing' criticism, and it has not induced 'individual or societal reliance' that counsels against overturning."⁷⁵ He analyzed both *Bowers* and *Roe* under the majority's conditions and concluded that the Court could have overruled both opinions; because the Court did not overrule both, he opined that the majority applied stare decisis in a manipulative, inconsistent way.⁷⁶

Justice Scalia then stated that the Due Process Clause does not create a right to liberty.⁷⁷ Instead, the Due Process Clause explicitly allows a state to deprive its citizens of liberty when due process of law is provided.⁷⁸ Justice Scalia further stated that although the doctrine of substantive due process prohibited states from infringing upon fundamental liberty interests without a compelling state interest, the scope of fundamental liberties was narrow.⁷⁹ These fundamental rights had to be substantially grounded in the nation's history and tradition.⁸⁰ Justice Scalia stressed that the right of homosexuals to engage in homosexual sodomy was not grounded in the nation's history or tradition; instead, the nation's history and tradition opposed the recognition of such fundamental rights.⁸¹

According to Justice Scalia, the majority overruled the Texas statute solely on the basis that Texas had no rational basis for its law against homosexual sodomy.⁸² Justice Scalia stated that the statute advanced the belief of the citizens that some forms of sexual behavior are immoral and unacceptable.⁸³ Justice Scalia believed that Texas had a legitimate state interest in protecting moral values and that the Court, by disallowing moral bases as legitimate state interests, had de-legitimized criminal laws against "fornication, bigamy, adultery, adult incest, bestiality, and obscenity."⁸⁴

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 2491.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 2492.

⁸¹ *Id.* at 2492-95.

⁸² *Id.* at 2495.

⁸³ *Id.*

⁸⁴ *Id.*

Justice Scalia also dismissed Justice O'Connor's equal protection argument.⁸⁵ Facially, the Texas law applied equally to all persons because the law penalized every person that had deviate sexual intercourse with a member of the same sex, regardless of their gender or sexual orientation.⁸⁶ Although the law attached a penalty to same-sex partners, Justice Scalia believed that the Court could not rule the law unconstitutional because states use the same basis to prohibit same-sex marriage.⁸⁷ Justice Scalia further argued that rational basis review and not heightened scrutiny, was the appropriate test to apply to the law.⁸⁸ Thus, Justice Scalia refused to concur in the majority's opinion because he believed that the statute was rationally related to a legitimate state interest of advancing moral values and that it did not deny any persons equal protection under the laws or encroach upon a constitutionally protected fundamental right.⁸⁹

Justice Thomas filed a separate dissent in which he noted that the Texas law was "uncommonly silly."⁹⁰ He stated that he would vote to repeal the law if he were a member of the Texas legislature, but he acknowledged that, as a Justice of the Court, he did not possess such power.⁹¹ Because he could find no constitutionally granted right of privacy or fundamental right that would deem the law unconstitutional, he dissented.⁹²

CONCLUSION

Society will realize the full impact of *Lawrence* over time as it responds to the expansion of rights for individuals involved in same-sex relationships. Although *Lawrence* mandates that state-enacted anti-sodomy laws criminalizing private consensual sodomy are unconstitutional, the implications for the military's anti-sodomy law, the military's "Don't Ask, Don't Tell" policy, and the prohibition on same-sex marriages are not as clear. Politics will undoubtedly play a major role in the development of the rights extended by *Lawrence*.

In deciding the constitutionality of the Texas statute, the Supreme Court expanded the rights of same-sex couples who engage in private sexual intimacy by employing substantive due process instead of the Equal Protection Clause.⁹³ If the Court had based its opinion on the rationale of the

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 2498.

⁹⁰ *Id.* (citing *Griswold v. Connecticut*, 381 U.S. 479, 527 (1965)).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 2482.

Equal Protection Clause as advanced in Justice O'Connor's concurrence,⁹⁴ states would have retained the ability to discriminate against homosexual activity by engaging in selective and discriminatory applications of opposite-sex sodomy laws. *Lawrence* prevents such targeted actions against persons involved in same-sex relations by deeming both same-sex and opposite-sex sodomy laws unconstitutional.⁹⁵

Although the Supreme Court struck down the Texas law and twelve additional state laws as unconstitutional, the Court only explicitly invalidated the Texas law.⁹⁶ This could present a future problem as states try to get around the *Lawrence* ruling. Because *Lawrence* only invalidates laws that criminalize private sexual intimacy, state legislatures could become more creative in their distinctions between public and private action. For example, the Commonwealth of Virginia maintains that *Lawrence* does not govern its sodomy statute to the extent that it applies to public acts, even though there is no express public provision in the law.⁹⁷

In addition to invalidating state laws, *Lawrence* may also serve to overrule current military law that prohibits both same-sex and opposite-sex sodomy.⁹⁸ The current military law is being challenged in a case involving an airman who engaged in same-sex sodomy with a fellow airman.⁹⁹ The only distinguishing characteristic between this case and *Lawrence* is the airman's military status. Through substantive due process, *Lawrence* protects one's liberty to engage in private same-sex sodomy,¹⁰⁰ and its ruling should cover every member of the military because those who serve and protect our country deserve full constitutional protection. Although the military will argue that repealing the sodomy law will negatively impact unit cohesion and effectiveness, a noted military sociologist and eight other social scientists and military experts filed an amicus brief disputing this claim.¹⁰¹ The sentiment against same-sex sodomy is strong in the military, as evidenced by the discriminatory "Don't Ask, Don't Tell" policy, but the amicus brief in conjunction with *Lawrence* could give the military court the

⁹⁴ *Id.* at 2484–88.

⁹⁵ *Id.*

⁹⁶ See LAMBDA LEGAL, GET THE FACTS ABOUT SODOMY LAWS (2003), at <http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=1231> (last visited Oct. 14, 2003). The Court's ruling affects the laws of Alabama, Florida, Idaho, Kansas, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Puerto Rico, South Carolina, Virginia, and Utah. *Id.*

⁹⁷ Matt Chittum, *Sodomy Law Ruling Sparks VA. Debate; Groups Question Validity of VA. Law*, ROANOKE TIMES & WORLD NEWS, Aug. 18, 2003, at A1.

⁹⁸ LAMBDA LEGAL, LAMBDA LEGAL, ACLU AND SLDN URGE MILITARY'S HIGHEST COURT TO STRIKE DOWN LAW BANNING CONSENSUAL SODOMY (2003), at <http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=1328> (last visited Oct. 14, 2003).

⁹⁹ *Id.*

¹⁰⁰ *Lawrence v. Texas*, 123 S. Ct. 2472, 2484 (2003).

¹⁰¹ LAMBDA LEGAL, *supra* note 98. Noted military sociologist Charles Moskos filed the brief in support of repealing the sodomy law.

impetus to strike down the sodomy law.¹⁰² Because the anti-sodomy law is the basis of the "Don't Ask, Don't Tell" policy,¹⁰³ striking down the anti-sodomy law would also undermine the basis for the military's discrimination.

Even though *Lawrence* dictates that all state anti-sodomy laws prohibiting private sodomy are unconstitutional and has cast serious doubt upon the military's practices and policies, the opinion does not offer as much support to same-sex marriages. At first glance, the opinion does seem to bolster the argument in favor of same-sex marriages. The Court employed the language of *Casey*, stating that "at the heart of liberty is the right to define one's own concept of existence."¹⁰⁴ The Court opined that this right extended to persons engaged in same-sex relationships.¹⁰⁵ Marriage is the ultimate form of defining one's existence and after marriage, society treats persons differently by rewarding them with increased benefits and responsibilities. Although it appears that liberty would allow same-sex couples to define their own existence through marriage, the majority explicitly stated that *Lawrence* offers no opinion on government recognition of same-sex relationships.¹⁰⁶

Justice Scalia further weakened the possibility of legalizing same-sex marriage by using his dissent to rally the politically moderate population. In his dissenting opinion, he announced that the majority's opinion left state laws against same-sex marriage open to attack and then grouped same-sex marriage with "traditional 'morals' offenses" such as adult incest and obscenity.¹⁰⁷ In doing so, Justice Scalia implicitly encouraged the passage of the currently proposed amendment that would limit marriage to heterosexual couples.

Although *Lawrence* does not legalize same-sex marriage, the Court's willingness to consider the international sentiment regarding same-sex relationships is promising. In *Lawrence*, the Court refuted moral and historical arguments in favor of anti-sodomy laws by citing varying international laws that recognize the rights of homosexuals to engage in sexual conduct.¹⁰⁸ The Court's acknowledgement of international law may assist proponents of same-sex marriage in future litigation because many of

¹⁰² If the military does not strike down the anti-sodomy laws, an appeal will likely be made to the Supreme Court. Then the issue will also involve the Court's traditional deference to the Military. SERVICE MEMBERS LEGAL DEFENSE NETWORK, SUPREME COURT SODOMY DECISION IMPLICATES FEDERAL SODOMY STATUTE & "DON'T ASK, DON'T TELL" (2003), at <http://www.sldn.org/templates/press/record.html?record=992> (last visited Oct. 31, 2003).

¹⁰³ *Id.*

¹⁰⁴ *Lawrence*, 123 S. Ct. at 2482.

¹⁰⁵ *Id.* at 2483.

¹⁰⁶ *Id.* at 2484.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 2483.

our international neighbors already recognize civil unions or same-sex marriages.¹⁰⁹

As the Supreme Court and other government entities apply *Lawrence* to different situations, the implications of the opinion will become apparent. At the very least, *Lawrence* overrules all state laws that criminalize private acts of sexual intimacy. With moderate application, the case guarantees rights in the military and offers the support for same-sex marriage if society allows it.

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¹⁰⁹ HUMAN RIGHTS WATCH, NON-DISCRIMINATION IN CIVIL MARRIAGE: PERSPECTIVES FROM INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE 2–3 (2003), <http://hrw.org/backgrounders/lgbt/civil-marriage.pdf> (last visited Oct. 31, 2003).

