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Sarah M. Miller

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Lawrence v. Texas: Texas Homosexual Sodomy Statute Violated the Fourteenth Amendment Due Process Clause

By: Sarah Miller

The United States Supreme Court held a Texas homosexual sodomy statute violated the Fourteenth Amendment Due Process Clause. *Lawrence v. Texas*, 123 S.Ct. 2472, 2484 (2003). In so holding, the Court overruled its controversial decision in *Bowers v. Hardwick*. *Id.* (citing *Bowers*, 478 U.S. 186 (1986)). *Id.*

Houston police, responding to a reported weapons disturbance, were dispatched to the private residence of John Geddes Lawrence ("Lawrence"). Upon entering the premises, officers encountered Lawrence and another man, Garner, engaging in sexual intercourse. Both men were arrested and charged for violation of Texas Penal Code Annotated § 21.06(a) (2003), which prohibits "deviant sexual intercourse with another individual of the same sex."

Lawrence and Garner challenged the statute's validity under the Fourteenth Amendment Equal Protection Clause and a similar Texas Constitutional provision at a *de novo* trial in Harris County Criminal Court. The claims were rejected and both men were convicted. They appealed to the Court of Appeals for the Texas Fourteenth District, which consid-

ered the constitutional arguments under the Fourteenth Amendment Equal Protection and Due Process Clauses. The court, sitting *en banc*, affirmed the convictions after applying the *Bowers* analysis. The United States Supreme Court granted certiorari.

The issue was whether the Court should overrule *Bowers*, which upheld a similar statute under due process analysis. *Id.* at 2475. In its analysis, the Court divided the issue into three questions: whether the Texas statute violated 1) the Fourteenth Amendment Equal Protection Clause; 2) the Fourteenth Amendment Due Process interests in liberty and privacy; and 3) whether *Bowers* should be overruled. *Id.* at 2476.

Equality of treatment and the due process right to demand respect for conduct protected by the substantive guarantee of liberty are linked in important respects, and a decision on the latter point advances both interests. *Id.* at 2482. The Court turned immediately to a discussion of due process cases that set the stage for *Bowers*, in which a Georgia statute prohibiting homosexual sodomy was upheld. *Id.*, 123 S.Ct. at 2476-77.

The first case leading to the *Bowers* decision was *Griswold v.*

Connecticut, which held the right to make certain decisions regarding sexual conduct is confined to the marital relationship. *Id.* at 2476-77. (citing *Griswold*, 381 U.S. 479 (1965)). *Eisenstadt v. Baird* extended this right beyond the marital relationship, granting an individual, married or not, freedom from unwarranted governmental intrusion into fundamentally private matters. *Id.* (citing *Eisenstadt*, 405 U.S. 438 (1972)). Additionally, *Roe v. Wade*, 410 U.S. 113 (1973) and *Carey v. Population Servs. Int'l*, 431 U.S. 678 (1977), "confirmed that the reasoning of *Griswold* could not be confined to the protection of rights of married adults." *Id.* at 2477.

In the *Bowers* substantive decision, the Court did not continue with the liberal trend of the aforementioned cases, but used a conservative approach that purported to have historical support in Judeo-Christian morality. *Id.* at 2478, 2481. The *Bowers* Court considered only the specific sexual conduct prohibited by the statute, showing no concern for the far-reaching emotional consequences of a statute criminalizing homosexual sodomy. *Id.* at 2478. The Court, in the instant case, feared the

Bowers Court failed to “appreciate the extent of the liberty at stake.” *Id.* at 2478. The sexual conduct was only one element of a more enduring bond created by a personal relationship. *Id.*

In response to the *Bowers* oversight, the Court discussed at length the history of sodomy laws in this country and demonstrated the historical premises relied upon in *Bowers* were overstated and inaccurate. *Id.* at 2480. Sodomy laws are not often enforced against consenting adults in private. *Id.* at 2479. Furthermore, sodomy laws were understood to include relations between heterosexuals as well as homosexuals. *Id.* at 2478. Finally, laws targeting same-sex couples did not develop until the last third of the twentieth century and are nearly abolished today. *Id.* at 2479-80. The Court reasoned the moral rationale that brought about laws targeting same-sex couples should not be forced on society. *Id.* at 2480.

In *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), the Court stated, “[o]ur obligation is to define the liberty of all, not to mandate our own moral code.” *Id.* at 2480. The Court, in the instant case, followed this rationale and cited many post-*Bowers* authorities that concur as well. *Id.* at 2481. Also, the Court noted that five years prior to *Bowers*, the European Court of Human Rights considered a case similar to *Bowers* and the instant case. *Id.* The European court invalidated laws proscribing sexual

conduct, acknowledging societal change. *Id.*

The foundation of *Bowers*, weak from the beginning, “has sustained serious erosion” in intervening years. *Id.* at 2482-83. The Court held States can no longer demean a person’s existence by criminalizing private consensual sexual conduct. *Id.* at 2484. Private citizens’ rights “to liberty under the Due Process Clause gives them the full right to engage in conduct without intervention of the government.” *Id.*

By overruling *Bowers*, the Court has once again expanded the scope of liberties granted under the Fourteenth Amendment Due Process Clause. This decision affords homosexuals the ability to freely engage in all aspects of consensual sexual relationships without fear of criminal prosecution.

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