FREE TO BE

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Chief Justice William Rehnquist and Justice Clarence Thomas. He even read portions of it from the bench, a supreme anomaly.

Scalia lamented that the decision "effectively decrees the end of all morals legislation. If, as the court asserts, the promotion of majoritarian sexual morality is not even a legitimate state interest." He accused the majority of promoting "the so-called homosexual agenda…[of] eliminating the moral opprobrium that has traditionally attached to homosexual conduct."

He warned, "Today's opinion dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition in marriage is concerned," and opens the way to gay marriages.

Thomas, while joining in the dissent because he does not believe the Constitution contains a right to privacy, broke tradition by issuing a separate one-page dissent. He called the Texas law "uncommonly silly" and said that if he was a member of the state Legislature, he would vote to repeal because it "does not appear to be a worthy way to expend valuable law enforcement resources."

'A LANDMARK RULING'

"This is an historic, transformative decision. It sweeps away one of the court's gravest mistakes, Bowers vs. Hardwick, and it sweeps away the 13 remaining consensual sodomy statutes that still exist…that have been used as excuses for discrimination against gay men and lesbians," Ruth Harlow said at a Washington, D.C., news conference. She was lead attorney on the appeal with Lambda Legal. Paul Smith, a gay attorney in private practice with extensive experience before the court, presented the oral arguments.

"What Justice Kennedy replaced it with is a resounding celebration of all of our liberties, all of our privacy. Gay Americans and straight Americans alike now have the right, made explicit by this court, to make their own private decisions about how they express their love for their partners," Harlow said. "It was a statement that the state does not belong in anyone's bedroom.

"It was also a recognition of gay people's humanity," she said. "This is constitutional rights in our real lives, in our homes, in our relationships. This is a great statement that the Constitution means something for all Americans."

Kevin Cathcart, Lambda Legal executive director, added: "We have a great new day here in America. Not just a great new day for GLBT people but for everyone who values privacy, who values liberty under the United States Constitution." He called it "a landmark ruling; it recognizes the rights of all of us."

Elizabeth Birch, Human Rights Campaign executive director, thanked Lambda for leading the effort and plaintiffs John Lawrence and Tyron Garner "for giving up their privacy so that we might have ours."

"The court has moved to heal a great wound that was imposed by the court almost two decades ago," she said. "It will shift dramatically the discourse on gay people and about gay life for years to come."

Harlow said the ruling "changes the landscape. It sends a signal to not only courts but also to legislatures that we deserve equality and full respect." It is "not a replacement" for measures such as the Employment Nondiscrimination Act. Legislation is still necessary to protect against private discrimination in employment and other areas.

Harlow noted that Scalia's dissent in 1996's Romer vs. Evans—the case that struck down Colorado's anti-gay Amendment 2—"predicted that Bowers would not stand, and he was correct." In his Lawrence dissent, he predicted that gay marriage was the logical outcome of the majority decision.

Harlow called him "a great predictor of future developments" and hoped that this, too, comes true. "We do not believe that the states have a compelling interest in regulating gay lives." That includes marriage.

Cathcart found it "very interesting that the court cited European courts and roles, which is not a common thing to do." He suggested that they were looking to those courts for leadership on gay issues.

"Today's historic victory marks a new chapter for gay and lesbian civil rights in America. We are one step closer to realizing fairness and equality for gay and lesbian members of the American family," said Patrick Guerriero, executive director of Log Cabin Republicans, which filed an amicus brief in the case.

"There is no realm of lesbian or gay life—public or private—that has not been devastated by the existence of laws that criminalize adult, consensual,

THE CASE


John Lawrence


Tyron Garner

The Texas sodomy case began in 1998 when police, responding to what ultimately turned out to be a false "weapons disturbance" report by a neighbor, entered the apartment of John G. Lawrence in the Houston suburbs.

They didn't find any weapons, but they did observe him and Tyron Garner engaging in sex. The pair were arrested for violating a state law that prohibits sodomy between members of the same sex but not between people of the opposite sex. They were held overnight in jail, convicted and fined $200 each.

The case rattled around the state's legal system. A panel of judges on the Texas Court of Appeals declared the law unconstitutional on grounds of equal protection and privacy, but the full court reversed that by a vote of 7-2. They ruled that the statute "advances a legitimate state interest, namely preserving public morals."

The court at the next level of appeals eventually declined to accept the case. Judges are elected in Texas.

In 1986, by a vote of 5-4, the U.S. Supreme Court ruled in Bowers vs. Hardwick that consenting adults had no constitutional right to private homosexual conduct and that states may enact sodomy laws. The decision was highly controversial, and Justice Louis Powell later told friends he regretted having joined the majority.

U.S. society's attitude toward gay men and lesbians has changed significantly during the 17 years since the Bowers decision. Half of the states had some kind of sodomy law on the books in 1986. Today they remain in only 13, as state courts have struck them down as unconstitutional and state legislatures have repealed them.

The U.S. Supreme Court agreed to hear the Lawrence appeal in December 2002, oral arguments were presented at the end of March, and the decision came down June 26.

In a telephone news conference, Lawrence read a statement from him and Garner saying that they were "pleased" with the decision. "It opens the door for gay people all across the country to be treated equally." Neither of them had sought to be public figures, and now they are happy to get on with their lives.

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