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QUEER-VIEW MIRROR

The U.S. Supreme Court added a fitting capstone to a month of Gay Pride celebrations June 26 when it struck down sodomy laws that remained on the books in 13 states.

Perhaps the most satisfying portion of *Lawrence vs. Texas* was its blunt and complete rejection of the 1986 court decision that had allowed states to regulate sodomy. "Bowers was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. Bowers vs. Hardwick should be and now is overruled," Justice Anthony Kennedy wrote for the majority. "The petitioners are entitled to respect for their private lives. The state cannot demean their existence or control their destiny by making their private sexual conduct a crime."

U.S. Sen. Rick Santorum, R-Pa., generated a firestorm of controversy in April with homophobic remarks. Anticipating the possibility of the Supreme Court striking down sodomy laws, he said: "You [then] have the right to bigamy, you have the right to polygamy, you have the right to incest, you have the right to adultery. You have the right to anything."

The sodomy provision of Article 125 of the Universal Code of Military Justice is perhaps the last standing sodomy law in the United States, and an underpinning of the anti-gay military policy known as "don't ask, don't tell." In a case filed July 7 in the U.S. Court of Federal Claims, Lt. Colonel Loren Stephen Loomis used the *Lawrence* decision to appeal his discharge from the military. That decision is expected in early 2004, though the case may be decided on nonconstitutional grounds.



Michael Stark (left) and Michael Leshner, the first same-sex couple to be legally married in Canada

In Canada, the Ontario Court of Appeals upheld a lower court ruling June 10 to legally allow same-sex marriages, saying, "The existing common law definition of marriage violates the couple's equality rights on the basis of sexual orientation." British Columbia became the second province to legalize same-sex marriage a month later, and Prime Minister Jean Chretien said that his government would introduce similar national legislation in early 2004.

All parties were anxious for the other shoe to drop in the form of a ruling on same-sex marriage by the Massachusetts Supreme Judicial Court. That body has a tradition of rapidly issuing its opinions and most expected the decision by early summer, but the wait stretched out to Nov. 18.

THE AMERICAN GAY

SO MUCH HAPPENED
ON SO MANY FRONTS
IN THIS QUEER YEAR

BY BOB ROEHR



Ruth Harlow of Lambda Legal and Paul Smith, the attorney who argued the *Lawrence* case, outside the U.S. Supreme Court after oral arguments

"The Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second-class citizens...the [state] has failed to identify any constitutionally adequate reason for denying civil marriage to same-sex couples," wrote Chief Justice Margaret H. Marshall in the majority decision.

Reviewing state marriage law and implementation, the court summarized, "In short, for all the joy and solemnity that normally attend a marriage [the law] governing entrance to marriage is a licensing law." Rather than throw out the marriage law as unconstitutional, it remanded the case to the trial court and delayed its implementation for 180 days "to permit the Legislature to take such action as it may deem appropriate in light of this opinion."

Social conservatives had proposed the Federal Marriage Amendment to the U.S. Constitution as far back as July 2001 as the only way ultimately to ban gay marriage, defining marriage specifically as "the union of a man and a woman." It was introduced in the House in May 2002 but not in the Senate until Nov. 25 of this year.

"This amendment has very little to do with marriage as such, and everything to do with homosexuality," opined gay conservative pundit Andrew Sullivan, writing in *The New Republic Online*. "If the social right wanted to shore up marriage, they could propose an amendment tightening up divorce laws...but they haven't."

Former U.S. Rep. Bob Barr, R-Ga., chief author of 1996's anti-gay Defense of Marriage Act, opposes the amendment and has said, "I think that the states ought to be able to make that decision themselves [on gay marriage or civil unions], as long as they do it properly."

Major Democratic candidates for president have performed their own waffling act. They strongly denounce discrimination against gays but just as quickly dismiss the court's remedy for that discrimination and, like President

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