

Why Our Enemies Fear *Lawrence v. Texas*

By Susan Sommer, Senior Counsel

06/27/2008

June 26, 2003, was a high point in American constitutional history. Millions of Americans rejoiced following the Supreme Court's landmark *Lawrence v. Texas* decision — a shining example of our nation at its best, and a demonstration of our commitment to the dignity and inalienable rights of every American.

For all the credit owed the Court that day for striking down the remaining sodomy laws, *Lawrence* was far from revolutionary. By the time *Lawrence* was decided, only 13 states still had criminal sodomy prohibitions, and just four targeted — as Texas' did — same-sex couples exclusively. Polls at the time showed that a majority of Americans did not support criminalizing private sexual intimacy between same-sex partners. Among the friend-of-the-court briefs calling for the court to hold the Texas law unconstitutional were the libertarian Cato Institute and Institute for Justice, as well as the Republican Unity Coalition. For all *Lawrence's* power and majesty, its day certainly was due.

Yet all did not see June 26 as a day to rejoice. Following the decision, the *New York Times* reported that social conservatives were reacting with “white-hot fury.” That “fury” was flamed by Justice Scalia, whose scathing *Lawrence* dissent reads as a calculated effort to incite not only anger but action among conservative constituencies. Justice Scalia derided the majority opinion's stirring invocation of shared universal values of liberty and equality as “the product of a Court, which is the product of a law-profession culture, that has largely signed on to the so-called homosexual agenda.” Justice Scalia's dissent was heard as a rallying cry to mobilize right-wing political resistance to the Court's ruling and, more broadly, to the “agenda” of those seeking fairness and equality for LGBT people.

And rally they did. Within hours of its announcement by the Court, conservative opponents condemned *Lawrence* as an endorsement of moral decay by an activist judiciary. They issued dire predictions that child abuse, bestiality and incest were just around the corner. According to Focus on the Family, “With today's decision, the court continues pillaging its way through the moral norms of our country.” Evangelical minister Jerry Falwell proclaimed, “this is probably as bad a day as the court has had on social issues since *Roe v. Wade*.” The Family Research Institute decried *Lawrence's* disregard of so-called “empirical data” that gay people “are disturbed, anti-social, and dangerous.” Reverend Lou Sheldon threatened that “[p]eople of faith are not going to lie down and allow their faith to be trampled because a politically correct court has run amok.”

Calling the *Lawrence* decision “treasonous,” radical right-wing activists demanded impeachment proceedings against the six justices who had voted to strike down the Texas law. Short of insisting on outright impeachment, “cooler” heads among the conservative wing renewed the cry to make the litmus test for judicial appointments a commitment to an anti-LGBT, anti-civil rights agenda, and the litmus test for political candidates a commitment to appoint only conservative judges who could be counted on to vote down civil liberties.

Conservative groups wasted no time channeling their “moral” outrage into fundraising campaigns to build war chests in their fight against LGBT equality. The right-wing religious legal advocacy group Alliance Defense Fund (ADF) called on supporters to help its mission to “limit the impact” of *Lawrence*. The Liberty Counsel, yet another anti-LGBT religious legal group, promised its donors that “every time . . . Lambda Legal Defense Fund files suit to destroy our culture, we will be there.”

It is no coincidence then that we have seen in the years since *Lawrence* a steady rise in attacks in the courts on LGBT liberties by well-funded religious-based legal organizations. Nor, given the history of other civil rights movements in our country, should this come as a surprise. No civil rights movement succeeds overnight. Backlash and struggle have always been part of the process that leads to equality. Inevitably anti-LGBT forces will score some temporary points along the way. But we are successfully fighting their efforts on many fronts. So far, for example, the right-wing groups have been defeated in efforts:

- to stop governments from adhering to laws and policies treating LGBT people with fairness and equality
- to stop LGBT parents from enforcing their rights to their children
- to intervene as opponents in cases seeking the right to marry

Without question, *Lawrence* was a major milestone for LGBT people and for our nation. The right wing correctly recognized this, along with the dramatic shifts in our culture over the past decades that brought us to June 26, 2003. . We, meanwhile, continue our work where the *Lawrence* decision left off: “As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.” *Lawrence* opened the door far wider for LGBT Americans to claim the same liberties our Constitution guarantees us all. We have the Constitution on *our* side.