US Supreme Court strikes down anti-gay laws

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The U.S. Supreme Court ended its current 2002 term on June 26 with a dramatic ruling striking down a Texas law prohibiting homosexual sodomy. Finding that the law infringes upon individual liberty, the Court affirmed a line of precedent recognizing that the concept of "liberty," as identified in the Constitution, encompasses private sexual behavior between consenting adults.

Many commentators were surprised last December when the High Court agreed to review *Lawrence v. Texas*, which challenged the criminal convictions of two Houston men discovered engaging in sex in their bedroom by a police officer responding to a false report of a weapons disturbance. Only 17 years ago, the Supreme Court, in *Bowers v. Hardwick*, confronted a similar set of facts and upheld a Georgia law prohibiting sodomy. Because of the doctrine of *stare decisis*, justices normally follow such precedents, especially recent ones, and only on very rare occasions do they expressly overrule a prior decision on a specific issue.

Associate Justice Anthony Kennedy, who generally sides with the Court's right wing, wrote the majority decision. In unusually blunt language, Kennedy declared "*Bowers* was not correct when it was decided, and it is not correct today." He wrote that the two men "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. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government." The four High Court moderates, associate justices John Paul Stevens, Ruth Bader Ginsburg, Stephen Breyer and David Souter, joined Kennedy's opinion.

Associate Justice Sandra Day O'Connor, who voted to uphold anti-sodomy laws in *Bowers*, concurred in a separate opinion, stating that she was voting with the majority only because the Texas law singled out homosexuals, unlike the statute in *Bowers*, which applied to sodomy by heterosexuals as well.

Associate Justice Antonin Scalia, the ideological leader of the High Court's right wing, wrote a vitriolic dissent joined by Chief Justice William Rehnquist and Associate Justice Clarence Thomas, which he read from the bench, clearly annoying the majority justices. Sounding like a right-wing talk show host, Scalia falsely claimed that the decision called into question "laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity."

It might come as a surprise to many that three members of the Supreme Court—including the chief justice and the two associate justices Bush said best reflect his own views—would uphold criminal convictions for "adultery" and "fornication" (that is, sexual relations between adults outside of marriage), as well as masturbation.

The Court's action reflected prevailing public opinion. According to one recent poll, the public favors eliminating such anti-homosexuality legislation by a margin of 2-1. Only three states besides Texas have similar laws on their books prohibiting gay sex. This trend obviously disturbs Justice Scalia, who accused the majority justices of taking "sides in the culture war," creating "a massive disruption of the current social order" and having "signed on to the so-called homosexual agenda."

The decision triggered denunciations from the *Wall Street Journal*, which threatened that "the cultural victors in *Lawrence* would be well advised to understand that judicial whimsy swings both way." Generally, however, the decision was well received by bourgeois media outlets. An ensuing cover story of *Newsweek* magazine suggests that the decision might extend to sanctioning gay marriages, although

Kennedy's opinion makes clear that the decision "does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter."

The *Lawrence* decision presented a tricky proposition for Bush and the Republican Party, anxious not to alienate either those who support sexual privacy or their ultra-right and Christian fundamentalist base, which wants to use the government to combat their notions of "sin." Pandering to such neo-fascist elements is Bill Frist, the Bush administration's selection to replace Trent Lott as Senate majority leader, who is backing the absurd proposal that the Constitution be amended to prohibit gay marriages,

Bush himself has so far ducked the issue, saying, in relation to the proposed amendment, "I don't know if it's necessary yet. Let's let the lawyers look at the full ramifications of the recent Supreme Court hearing [*sic*]."

While by overruling *Bowers* the Court has eliminated a reactionary precedent and affirmed basic personal privacy rights, it was essentially a "no-cost" decision, neither requiring any action by the government nor posing any challenge to the power and privilege of the ruling elite. Given the Court's recent track record, including its unprincipled hijacking of the 2000 presidential election for Bush, however, there is little reason to believe that it will similarly recognize democratic rights when more fundamental questions of executive power come before it after working their way through the court system. Such questions, from the so-called "war on terrorism," include provisions of the "Patriot Act," and the Bush administration's summary imprisonment of persons it deems "enemy combatants."