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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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LAWRENCE ET AL. *v.* TEXAS

CERTIORARI TO THE COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

No. 02–102. Argued March 26, 2003—Decided June 26, 2003

Responding to a reported weapons disturbance in a private residence, Houston police entered petitioner Lawrence's apartment and saw him and another adult man, petitioner Garner, engaging in a private, consensual sexual act. Petitioners were arrested and convicted of deviate sexual intercourse in violation of a Texas statute forbidding two persons of the same sex to engage in certain intimate sexual conduct. In affirming, the State Court of Appeals held, *inter alia*, that the statute was not unconstitutional under the Due Process Clause of the Fourteenth Amendment. The court considered *Bowers* v. *Hardwick,* 478 U. S. 186, controlling on that point.

Held: The Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violates the Due Process Clause. Pp. 3–18.

(a) Resolution of this case depends on whether petitioners were free as adults to engage in private conduct in the exercise of their liberty under the Due Process Clause. For this inquiry the Court deems it necessary to reconsider its *Bowers* holding. The *Bowers* Court's initial substantive statement—"The issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy . . . ," 478 U. S., at 190—discloses the Court's failure to appreciate the extent of the liberty at stake. To say that the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim the individual put forward, just as it would demean a married couple were it said that marriage is just about the right to have sexual intercourse. Although the laws involved in *Bowers* and here purport to do not more than prohibit a particular sexual act, their penalties and purposes have more far-reaching consequences, touching upon the most private human con-

duct, sexual behavior, and in the most private of places, the home. They seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals. The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons. Pp. 3–6.

(b) Having misapprehended the liberty claim presented to it, the *Bowers* Court stated that proscriptions against sodomy have ancient roots. 478 U. S., at 192. It should be noted, however, that there is no longstanding history in this country of laws directed at homosexual conduct as a distinct matter. Early American sodomy laws were not directed at homosexuals as such but instead sought to prohibit nonprocreative sexual activity more generally, whether between men and women or men and men. Moreover, early sodomy laws seem not to have been enforced against consenting adults acting in private. Instead, sodomy prosecutions often involved predatory acts against those who could not or did not consent: relations between men and minor girls or boys, between adults involving force, between adults implicating disparity in status, or between men and animals. The longstanding criminal prohibition of homosexual sodomy upon which *Bowers* placed such reliance is as consistent with a general condemnation of nonprocreative sex as it is with an established tradition of prosecuting acts because of their homosexual character. Far from possessing "ancient roots," *ibid.,* American laws targeting same-sex couples did not develop until the last third of the 20th century. Even now, only nine States have singled out same-sex relations for criminal prosecution. Thus, the historical grounds relied upon in *Bowers* are more complex than the majority opinion and the concurring opinion by Chief Justice Burger there indicated. They are not without doubt and, at the very least, are overstated. The *Bowers* Court was, of course, making the broader point that for centuries there have been powerful voices to condemn homosexual conduct as immoral, but this Court's obligation is to define the liberty of all, not to mandate its own moral code, *Planned Parenthood of Southeastern Pa.* v. *Casey,* 505 U. S. 833, 850. The Nation's laws and traditions in the past half century are most relevant here. They show an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex. See *County of Sacramento* v. *Lewis*, 523 U. S. 833, 857. Pp. 6–12.

(c) *Bowers'* deficiencies became even more apparent in the years following its announcement. The 25 States with laws prohibiting the conduct referenced in *Bowers* are reduced now to 13, of which 4 enforce their laws only against homosexual conduct. In those States,

including Texas, that still proscribe sodomy (whether for same-sex or heterosexual conduct), there is a pattern of nonenforcement with respect to consenting adults acting in private. *Casey, supra,* at 851—which confirmed that the Due Process Clause protects personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education—and *Romer* v. *Evans,* 517 U. S. 620, 624—which struck down class-based legislation directed at homosexuals—cast *Bowers'* holding into even more doubt. The stigma the Texas criminal statute imposes, moreover, is not trivial. Although the offense is but a minor misdemeanor, it remains a criminal offense with all that imports for the dignity of the persons charged, including notation of convictions on their records and on job application forms, and registration as sex offenders under state law. Where a case's foundations have sustained serious erosion, criticism from other sources is of greater significance. In the United States, criticism of *Bowers* has been substantial and continuing, disapproving of its reasoning in all respects, not just as to its historical assumptions. And, to the extent *Bowers* relied on values shared with a wider civilization, the case's reasoning and holding have been rejected by the European Court of Human Rights, and that other nations have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct. There has been no showing that in this country the governmental interest in circumscribing personal choice is somehow more legitimate or urgent. *Stare decisis* is not an inexorable command. *Payne* v. *Tennessee*, 501 U. S. 808, 828. *Bowers*' holding has not induced detrimental reliance of the sort that could counsel against overturning it once there are compelling reasons to do so. *Casey, supra*, at 855–856. *Bowers* causes uncertainty, for the precedents before and after it contradict its central holding. Pp. 12–17.

(d) *Bowers'* rationale does not withstand careful analysis. In his dissenting opinion in *Bowers* JUSTICE STEVENS concluded that (1) the fact a State's governing majority has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice, and (2) individual decisions concerning the intimacies of physical relationships, even when not intended to produce offspring, are a form of "liberty" protected by due process. That analysis should have controlled *Bowers,* and it controls here. *Bowers* was not correct when it was decided, is not correct today, and is hereby overruled. This case does not involve minors, persons who might be injured or coerced, those who might not easily refuse consent, or public conduct or prostitution. It does involve two adults who, with full and mutual consent, engaged in sexual practices common to a homosexual lifestyle. Petitioners' right to liberty under the

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Due Process Clause gives them the full right to engage in private conduct without government intervention. *Casey*, *supra*, at 847. The Texas statute furthers no legitimate state interest which can justify its intrusion into the individual's personal and private life. Pp. 17–18.

41 S. W. 3d 349, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C. J., and THOMAS, J., joined. THOMAS, J., filed a dissenting opinion.