



Legislation Text

File #: Res 0755-2003, **Version:** *

Res. No. 755

Resolution in support of the Supreme Court's recent decision to review *Lawrence v. Texas*, a case which challenges the constitutionality of Texas's Homosexual Conduct law, and urging the Court to reconsider and reject its ruling in *Bowers v. Hardwick* by extending to gays and lesbians the same Constitutional protections afforded to heterosexual couples.

By Council Members Quinn, Lopez, Reed, Clarke, Gerson, Jackson, Koppell, Sanders, Seabrook, Sears, Serrano, Yassky and Brewer

Whereas, On December 2nd, 2002 the Supreme Court set the stage for a re-examination of its approach to gay rights by accepting a gay couple's challenge to a Texas law that criminalizes same-sex couples for engaging in consensual sexual practices that are considered legal between a man and a woman; and

Whereas, In *Lawrence v. Texas*, the couple argued that Texas's Homosexual Conduct law violates their right to privacy and their constitutional right to equal treatment by the state because it penalizes certain private sex acts when they are committed by same-sex couples, but not by heterosexuals; and

Whereas, However, a Texas appeals court, relying in part on the Supreme Court's 1986 *Bowers v. Hardwick* ruling, rejected their arguments, stating that there is no fundamental right to engage in homosexual conduct and that the legislature had passed the law based on its rational belief that homosexuality is immoral; and

Whereas, By granting review of *Lawrence v. Texas*, the Supreme Court is at last acknowledging the need for a reevaluation and reassessment of the constitutional rights of gay citizens; *Lawrence* offers an ideal opportunity for the Court to redefine the legal landscape by redefining its position on the issue for the first time since its ruling in *Bowers v. Hardwick*; and

Whereas, In this precedent-setting case, the Supreme Court addressed the question of whether states may criminalize private consensual sexual conduct by members of the same sex by ruling 5 to 4 that the Constitution did permit Georgia to punish a gay man for violating its sodomy statute, declaring that the right to privacy did not include a right to homosexual sex; and

Whereas, Although the Georgia law that the high court upheld in 1986 was eventually overturned by a state court in 1998, the *Hardwick* decision continues to have a "terrible impact across the country," according to Harvard Law Professor Lawrence H. Tribe; even today, Kansas, Oklahoma and Missouri, in addition to Texas, continue to have laws that criminalize only homosexual sex, while 13 states still have laws banning all sodomy; and

Whereas, The ruling in *Hardwick* effectively opened the door to the potential for state-sanctioned persecution, providing an excuse and rationale for denying basic rights and equal treatment to members of the gay community; and

Whereas, The *Hardwick* ruling and the logic supporting it provided just the justification needed to pave the way for years of disparate treatment that harmed gays in countless ways, even potentially costing them jobs and income; for instance, those convicted of homosexual sodomy under the Texas Homosexual Conduct law are guilty of a "crime of moral turpitude" which could easily be used to disqualify an individual from obtaining a job in a number of professions; and

Whereas, The law sends a powerful signal by condemning homosexuals; thus, it is not surprising that such laws are often used to justify discrimination against gays and lesbians in parenting, employment, access to civil rights laws, and many other aspects of everyday life; and

Whereas, Recent high-profile cases that specifically relied at least in part on such laws as the Texas Homosexual Conduct law include: two lesbian foster mothers in Texas whose foster child was taken from their home, and a North Carolina man whose two sons were taken away from him; and

Whereas, As stated by Professor Tribe, the *Hardwick* decision serves "as a ready excuse for much discrimination against gay men, lesbians and bisexuals- especially in matters of employment, family law and immigration- on the ground that individuals who are not heterosexuals are by definition inclined to commit acts that remain crimes in many states of the union"; and

Whereas, Since 1986, society's knowledge about gay people, gay families and gay lives has dramatically increased, and this awareness should be reflected in the Supreme Court's decision so that an informed and enlightened view of constitutional protections for gays and lesbians can prevail; now, therefore, be it

Resolved, That the Council of the City of New York supports the Supreme Court's recent decision to review *Lawrence v. Texas*, a case which challenges the constitutionality of Texas's Homosexual Conduct law, and urging the Court to reconsider and reject its ruling in *Bowers v. Hardwick* by extending to gays and lesbians the same Constitutional protections afforded to heterosexual couples.

LS # 1577 - TMQ