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### Libertarians Join Liberals in Opposing Sodomy Law

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In 1986, when the court decided *Bowers v. Hardwick*, half the states had criminal sodomy laws on their books. Now just 13 do. Texas is one of four, along with Kansas, Oklahoma, and Missouri, with laws that apply only to sexual activity between people of the same sex. The sodomy laws of the other nine states — Alabama, Florida, Idaho, Louisiana, Mississippi, North Carolina, South Carolina, Utah and Virginia — do not make that distinction. The Georgia law that the Supreme Court upheld was later invalidated by the Georgia Supreme Court.

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Associated Press

From left, Tyron Garner, John G. Lawrence and a lawyer, Mitchell Katine, in 1998. Mr. Garner and Mr. Lawrence were arrested when found having sex in Mr. Lawrence's apartment in Houston.

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The Texas law is being challenged by John G. Lawrence and Tyron Garner, who were found having sex in Mr. Lawrence's Houston apartment by police officers who entered through an unlocked door after receiving a report from a neighbor that there was a man with a gun in the apartment. The neighbor was later convicted of filing a false report. The two men were held in jail overnight, prosecuted and fined \$200 each. Represented by the Lambda Legal Defense and Education Fund, they challenged the constitutionality of the law and lost in a middle-level state appeals court. The Texas Supreme Court refused to hear the case.

The United States Supreme Court's decision to take the case has been interpreted on both sides as an indication that the court is likely to rule against the state. Both Texas and the organizations that have filed briefs on its side devote considerable energy in the briefs to trying to convince the justices that granting the case was a mistake, a choice of tactics that is usually an indication of concern that a decision that does reach the merits will be unfavorable.

If the justices do strike down the Texas law, the implications of the decision will depend on which route the court selects from among

#### DID YOU KNOW?

The 2003 Rock and Roll Hall Of Fame sponsored archive contains New York Times articles from the past 20 years about the 2003 inductees, including reviews of vintage performances, profiles and



several that are available. The court could find that by singling out same-sex behavior Texas has violated the constitutional guarantee of equal protection. Because the *Bowers v. Hardwick* decision did not address equal protection, instead rejecting an argument based on the right to privacy, such a decision would not necessarily require the court to overrule the 1986 precedent.

interviews, as well as articles on the Rock and Roll Hall of Fame itself.

The Lambda Legal Defense and Education Fund's brief for the two men urges the court to go further and rule that any law making private consensual sexual behavior a crime infringes the liberty protected by the Constitution's due process guarantee. Several arguments in its brief appear tailored to Justice Sandra Day O'Connor, who voted with the majority in *Bowers v. Hardwick* but is now assumed, on the basis of her later support for abortion rights and her votes in other due process cases, to be at least open to persuasion.

For example, the brief includes a quotation from Jane Dee Hull, then the Republican governor of Arizona, where Justice O'Connor once served in the Legislature, on signing a bill repealing the state's sodomy law in 2001. "At the end of the day, I returned to one of my most basic beliefs about government: It does not belong in our private lives," Governor Hull said.

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