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This article addresses the Supreme Court's 2003 decision in *Lawrence v. Texas* and its implications for the rights of gay and lesbian public school teachers. The authors provide a context by reviewing the teacher role-model theory, traditional standards used in dismissals for immoral conduct, and pre-*Lawrence* cases regarding public employees' privacy rights. Then they analyze *Lawrence v. Texas,* which struck down a Texas law imposing criminal penalties for persons of the same sex engaging in certain sexual conduct. The final section explores implications of the expanded liberty right announced in *Lawrence* for public school teachers and their lifestyle choices.

Introduction

> There cannot be two sets of ethical principles, or two forms of ethical theory, one for life in the school and the other for life outside of the school, as conduct is one, the principles of conduct are also one. (Hooker, 1995, p. 3)

Throughout history, teachers have been dismissed for immoral conduct that occurs both in and out of school. In the past, school authorities tried to discharge teachers because of pregnancy or even divorce (*Littlejohn v. Rose*, 1985; *Ponton v. Newport*, 1986). School districts have also attempted to dismiss teachers because of their sexual orientation (*Gaylord v. Tacoma*, 1977; *Rowland v. Mad River School*, 1984). Most states have statutes regulating the grounds for teacher dismissal, under which teachers may be dismissed for "immorality" or for the conviction of a crime including "moral turpitude." To the extent these statutes attempt to regulate teachers' private conduct, however, some questions remain as to whether these statutes violate

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a teacher's constitutional right to privacy (Trebilcock, 2000). The Supreme Court's recent decision in *Lawrence v. Texas* (2003), although not specifically addressing the issue of teacher dismissal, may provide some insight and guidelines regarding a teacher's privacy rights.

This article addresses the potential impact of the *Lawrence v. Texas* decision on gay and lesbian public school teachers. First, it provides a brief overview of how public school teachers have been considered role models for students and thus could be disciplined or dismissed for immoral conduct. Next, the paper explores pre-*Lawrence* cases regarding public employees' right to privacy. Finally, the article provides an analysis of the *Lawrence v. Texas* decision and discusses implications the decision may have for public school teachers.

The Teacher as a Role Model for Students

Throughout history, "the school teacher has traditionally been regarded as a moral example for the students" (*Board of Education v. Wood*, 1986, p. 839). One court noted that "We are aware of the special position occupied by a teacher in our society. As a consequence of that elevated stature, a

teacher's actions are subject to much greater scrutiny than that given to the activities of the average person" (*Chicago Board of Education v. Payne*, 1981, p. 748). As such, public school teachers are generally held to a higher standard of behavior than the general public because of their close relationships with students (*Adams v. State Professional Practices Council*, 1981). In 1979, the Supreme Court observed:

> A teacher serves as a role model for his students, exerting a subtle but important influence over their perceptions and values. Thus, through both the presentation of course materials and the example he sets, a teacher has an opportunity to influence the attitudes of students toward government, the political process, and a citizen's social responsibilities. This influence is crucial to the continued good health of a democracy. (*Ambach v. Norwick*, 1979, p. 77)

The standards to judge a teacher's private behavior have always varied across jurisdictions. Courts have taken the position that, although schools are designed to prepare students to participate in the national political and democratic process, they should also be a reflection of their communities. That is, the values a school chooses to embrace may very well depict the community in which the school is situated. Of course, this means that there is no single standard for assessing teacher conduct. It is also important to note that a community's standard cannot violate an individual's constitutional rights (*Ambach v. Norwick*, 1979). In other words, while a public school teacher may serve as a role model, it is well-settled law that the government may not require a teacher to shed his or her constitutional rights to retain a government position (*Perry v. Sinderman*, 1972). Immorality is a legitimate cause for dismissing a teacher, and in the past, gay and lesbian teachers' conduct has been considered immoral under some community standards (Walden & Culverhouse, 1989).[1] The key issue in such cases is how far teachers' privacy rights extend.

The Right To Privacy

The individual's right to privacy has been recognized as far back as 1890. Samuel Warren and Louis Brandeis acknowledged the existence of a right to privacy when they helped to establish that each individual has a cognizable legal interest in a private life. For example, while on the Supreme Court, Justice Brandeis argued that the Fourth Amendment insures that the government does not intrude into the "privacy of the individual" (Trebilcock, 2000, p. 450). Justice Brandeis consistently took

the position that one's private life should be free from government intrusion.

In addition to the Fourth Amendment argument supported by Justice Brandeis, the Fourteenth Amendment requires that "no person be deprived of life, liberty or property without due process of law" (U.S. Const. Amend. XIV, 1). Although the Constitution makes no direct reference to the existence of a right to privacy, it is a right implied in the concept of personal liberty embodied in the Fourteenth Amendment (*Planned Parenthood v. Casey*, 1992).[2] The Fourteenth Amendment Due Process Clause's substantive component derives mainly from the interpretation of the term "liberty." As a result, certain types of government limits on individual conduct have been held to unreasonably interfere with important individual rights to the extent that they amount to an unreasonable denial of "liberty." Accordingly, there are certain protected zones of privacy where the government should not interfere, regardless of the government interest asserted.

The U.S. Supreme Court has extended this zone of privacy in several cases. In 1965, the Court in *Griswold v. Connecticut* allowed married couples access to contraception, and in 1972 it extended the ruling to unmarried couples in *Eisenstadt v. Baird.* In both *Griswold* and *Eisenstadt*, the Court recognized constitutional protection of a privacy right in private sexual activity. In 1973, the right of privacy was also articulated to protect a woman's right to have an abortion in *Roe v. Wade.* In contrast, a 1986 decision, *Bowers v. Hardwick*, did not extend this privacy right to include all private sexual activity when the Supreme Court upheld a Georgia anti-sodomy statute.

Given this zone of privacy, the courts have attempted to balance the school board's interests in safeguarding the welfare of students and the teacher's right to privacy. For example, a teacher can be terminated based on evidence that would not be sufficient to support criminal charges, but teacher discipline or dismissal cannot occur solely because school officials disapprove of teachers' personal and private conduct (*Montefusco v. Nassau County*, 1999). Also, teachers cannot be dismissed for unsubstantiated rumors about their private activities (*Peaster Independent School District v. Glodfelty*, 2001). However, restrictions can be placed on unconventional behavior that is detrimental to job performance or harmful to students.

Despite the guidance provided by the Supreme Court regarding privacy rights, public school teachers' privacy rights have not been clearly delineated, so teacher lifestyle cases have been decided on a case-by-case

basis. As such, school boards have continued to discipline or dismiss teachers for actions pertaining to their lives outside of the classroom, and in response, teachers have challenged school officials' authority to restrict personal lifestyle choices.

Pre-*Lawrence* Decisions

Prior to 2003, lower courts rendered a range of opinions regarding public employees' privacy rights. The recent trend has been to require a nexus between the lifestyle choice and ability to perform the job, but courts have differed in defining the type of nexus required.

Cases Regarding Marriage and Pregnancy

Lower courts have been reluctant to support dismissal actions based on marital status and pregnancy. The courts' reluctance has been based on their recognition that decisions pertaining to marriage and parenthood involve constitutionally protected privacy rights. To illustrate, the Fifth Circuit found a Mississippi school district's rule of prohibiting the employment of unwed parents to promote a "properly moral scholastic environment" to be a violation of equal protection and due process despite the school district's argument that unwed parents were improper communal role models (*Andrews v. Drew*, 1975, p. 614). Similarly, compelled leaves of absence for pregnant, unmarried employees have been invalidated as violating constitutional privacy rights. For example, at least one court has held that offering a teacher parental leave without guarantee of her position upon return violates the teacher's constitutional and statutory rights (*Ponton v. Newport News School Board*, 1986).

Courts generally have also reasoned that public employees have a privacy right to engage in consenting sexual relationships regardless of their marital status; such relationships would have to impair teaching effectiveness to be the basis for dismissal. For example, the Supreme Court of Iowa held that a teacher's adulterous relationship provided insufficient grounds to justify revocation of his teaching certificate because the relationship did not severely impact his employment (*Erb v. Iowa*, 1974). The court noted that the mere fact that a teacher admitted adultery was not enough to prove his inability to teach. Specifically, the court reasoned that "the personal moral views of the board members cannot be relevant" (p. 343). Similarly, a Florida court overturned a school board's termination of a teacher for lacking good moral character based on a personal romantic relationship (*Sherburne v. School Board*, 1984). The court held that the

teacher's cohabitation did not have an adverse effect on her ability to teach. Also, the Sixth Circuit ruled that a school board's nonrenewal of a teacher's contract based on her involvement in a divorce violated her constitutional privacy rights (*Littlejohn v. Rose*, 1985). In this case, the court disagreed with the parents who argued that there was disruption because there were too many divorced teachers teaching in the public school. In finding for the teacher, the court relied on the constitutional right to privacy that precludes dismissal of a teacher seeking divorce.

Some courts, however, have upheld dismissals or other disciplinary actions based on public employees' adulterous relationships. In a nonschool case, the Fifth Circuit upheld disciplinary action against two police officers for their off-duty dating and alleged cohabitation (*Shawgo v. Spradlin*, 1983). The court reasoned that the officer's conduct could bring public attention that could result in unfavorable criticism of the police department. Also, the Texas Supreme Court held that constitutional rights were not violated when a police officer was denied promotion for having an affair with another officer's wife (*City of Sherman v. Henry*, 1996).

Cases Regarding Homosexuality

When determining employment decisions based on a teacher's sexual orientation, the courts will generally consider the notoriety surrounding the conduct, whether the homosexual conduct was public or private in nature, and its overall impact on teaching abilities. Specifically, courts will require a nexus between private homosexuality and impaired teaching effectiveness in order justify dismissal. Of course, if teachers engage in public sexual activity whether homosexual or heterosexual, they can be dismissed for immorality (*Morgan v. State Board of Education*, 2002).

Dismissals of public school employees based solely on sexual orientation, in the absence of criminal charges, have evoked a range of judicial interpretations (*Boy Scouts of American v. Dale*, 2000). The *Morrison v. Board of Education* (1969) and the *Gaylord v. Tacoma* (1977) decisions provide a particularly good illustration of the range of judicial interpretations in this area of law. In *Morrison*, a male teacher (Morrison) had a homosexual relationship with another public school teacher, Schneringer. A year after the consensual sexual relationship, Schneringer informed the district of their one-week long sexual relationship. Morrison resigned from his position and the State Board of Education later determined that the sexual incident "constituted immoral and unprofessional conduct, and an act involving moral turpitude, all of which warrant revocation of life diplomas" (p. 219). The Board's decision was

later overturned by the Supreme Court of California, which held that under the statute teachers could only be dismissed for immorality or moral turpitude if it rendered the individual unfit to teach. In so doing, the court ordered that Morrison's certificate be restored because the school board failed to demonstrate that Morrison was unfit to teach. The Supreme Court of California laid out the following set of guidelines to help determine when a teacher is unfit to teach:

1. The likelihood that the conduct would adversely affect students or fellow teachers;
2. The degree of such adversity anticipated;
3. The proximity or remoteness in time of the conduct;
4. The type of teaching certificate held by the party involved;
5. The extenuating circumstance surrounding the conduct;
6. The praiseworthiness or blameworthiness of the motives resulting in the conduct;
7. The likelihood of the recurrence of the conduct; and
8. The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

As such, the *Morrison* court held that when immorality is "used in a statute it is inseparable from 'conduct'" (p. 224) and that the conduct must adversely affect the teacher's fitness to perform.

Contrary to the Supreme Court of California's decision in *Morrison*, the Supreme Court of Washington upheld a dismissal of a homosexual teacher based on mere knowledge of the teacher's sexual orientation in *Gaylord v. Tacoma* (1977). Gaylord had been a teacher for 12 years in Tacoma where he had received superior teaching evaluations. After his homosexuality became public knowledge, the school board argued that the students' knowledge of his sexual orientation would impair his ability to teach. The school cited fear, confusion, suspicion, and parental concern as justification of the dismissal. The *Gaylord* court agreed, holding that school boards need not wait for "overt expressions of homosexual conduct before they act to prevent harm" (p. 1347). Although the school failed to provide any evidence that the teacher's homosexuality would be disruptive in the classroom, the court reasoned that homosexuality is inherently immoral. Based on this conclusion, the court reasoned that public knowledge of a teacher's homosexual conduct could lead to notoriety of such a nature that the teacher could no longer perform classroom activities.

Similar to *Gaylord*, other courts have upheld dismissals based on mere knowledge of a teacher's homosexuality, which suggests that such knowledge is sufficient to establish an impairment of teaching effectiveness that overrides any protected privacy interest. Specifically in Sixth Circuit and Ninth Circuit cases, sexual orientation appeared to be the reason public educators were dismissed, despite the inability to show the required nexus of notoriety and classroom disruption. In *Rowland v. Mad River Local School District* (1984), a guidance counselor's contract was not renewed after she revealed her sexual orientation to adult employees at the school. The Sixth Circuit found that because she did not have tenure, there was no expectancy of employment and her dismissal was upheld. In an earlier case, *Burton v. Cascade School District* (1975), a non-tenured teacher was dismissed after adult school employees learned of the teacher's sexual orientation. The Ninth Circuit did not reinstate Burton for the same reason mentioned in *Rowland.*

The Tenth Circuit upheld an Oklahoma statute that allowed school boards to terminate teachers for engaging in public homosexual activity (*National Gay Task Force v. Board of Education*, 1984). The court, however, did find the part of the statute that allowed "punishment" of teachers for public homosexual conduct to be unconstitutional. Additionally, the court struck down the portion of the law authorizing the dismissal or nonrenewal of teachers for *advocating* public or private homosexuality; this part of the statute was found overbroad because it sought to regulate free speech rights. Finally, the court noted that under the statute, the school district would be required to show a connection between the teacher's ability to teach and the teacher's speech. In another case, a New York federal court upheld the termination of a teacher for actively participating in the North American Man/Boy Love Association (NAMBLA), a group supporting consensual sexual activity between men and boys. The court reasoned that the teacher's activities in NAMBLA were likely to impair his effectiveness as a teacher and would cause internal disruption in the classroom (*Melzer v. Board of Education*, 2002).

Likewise, in other recent lower court cases, the judicial decisions have been mixed. For example, the Utah Federal District Court held that the community's negative reaction to a teacher's homosexuality did not justify the removal of the teacher as the girl's volleyball coach. The court also held that the school district could not instruct her not to mention her "homosexual orientation or lifestyle" to students, parents, or staff (*Weaver v. Nebo School District*, 1998, p. 1285). The Court noted that the teacher's homosexuality and the community's negative response to it did not furnish

a rational job-related basis for her removal. Also, when an Ohio federal court found that a teacher was not renewed because of his sexual orientation rather than for his teaching deficiencies as the school board asserted, the court awarded the teacher reinstatement, back pay, and damages (*Glover v. Williamsburg*, 1998).

In contrast, the Eleventh Circuit upheld revocation of a public employee's job offer after her employer, the Attorney General of the State of Georgia, learned of the employee's upcoming same-sex marriage. The employment action was based on her illegal wedding ceremony rather than the fact that she was a lesbian. The attorney general contended that the same-sex marriage would interfere with the inability to enforce the state's sodomy law and would create an appearance of conflicting interpretations of state law. The employee brought an action claiming violation of her rights of intimate and expressive association, freedom of religion, equal protection and substantive due process. The court found that the interests of the employer outweighed the employee's constitutional interests (*Shahar v. Bowers*, 1997). Specifically, the court reasoned that the position required that the attorney exercise good judgment and needed to maintain her employer's trust. The attorney general argued that the plaintiff's intimate associational rights were subordinate to the employer's interest in the effective functioning of the government office.

As mentioned, prior to 2003, the Supreme Court had rendered only one decision pertaining to private sexual activity involving sodomy. In *Bowers v. Hardwick* (1986), a Georgia law criminalizing public or private consensual sodomy resulted in a widely publicized decision. In this case, an individual challenged the law's constitutionality after being criminally charged for committing sodomy with an adult male in the privacy of his home. The Court in a five-to-four ruling found a rational basis in legislation reflecting the citizenry's view that sodomy is immoral and unacceptable. Declaring that homosexuals have no constitutional right to engage in sodomy, the Court majority focused its opinion on the homosexual nature of the conduct at issue, even though the law's prohibition applies to heterosexual sodomy as well. In upholding sodomy laws, the Court also noted that there is no American tradition of accepting homosexual conduct. In so doing, the Court did not hold that homosexuality was a crime or that homosexuality was immoral, only that the sexual conduct could be prohibited. Given this holding, states could continue to use certain conduct, such as sodomy, as a ground for dismissal of public employees, including teachers (Walden & Culverhouse, 1989).

This decision was relied on as precedent until 2003, even though criminal sanctions for private sodomy have not generally been enforced.

Lawrence v. Texas: Increased Privacy Rights for Homosexuals

In 2003 the Supreme Court rendered a significant decision in *Lawrence v. Texas,* striking down a Texas law that imposed criminal penalties if two persons of the same sex engage in certain sexual conduct. The state appeals court had found *Bowers* controlling in rejecting a Fourteenth Amendment challenge to the law by two men who were arrested and convicted of deviate sexual intercourse in violation of the Texas law.

The Supreme Court reversed, reasoning that the law violated the Due Process Clause of the Fourteenth Amendment. Disagreeing with the conclusion of the *Bowers* Court and its failure to comprehend the scope of the individual liberty interest involved, the *Lawrence* majority (2003) noted that the Texas law touches on the most private area of human behavior—sexual conduct—in the most private place, one's home. In overturning *Bowers*, the Court clearly enunciated that private, consensual sexual behavior in the privacy of the home is constitutionally protected and cannot be the basis for a crime. The Court found that "adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons" (*Lawrence v. Texas*, 2003, p. 2478). The Court declared that "*Bowers* was not correct when it was decided, and it is not correct today" (p. 2484).

The Court majority reviewed the *Griswold*, *Eisenstadt*, and *Roe* cases which, as discussed, found protected liberty rights under the Due Process Clause in areas such as marriage, procreation, and child rearing. Specifically, the Court noted that the "pertinent beginning point" for its holding in *Lawrence* was *Griswold v. Connecticut* (1965) and recognized that after *Griswold*, the right to make decisions regarding sexual conduct extends beyond the marital relationship. In discussing *Eisenhardt*, the Court reiterated that "if the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child" (*Lawrence v. Texas*, 2003, p. 2477). The *Lawrence* majority noted that these cases provided the context for the widely publicized decision legalizing abortions, *Roe v. Wade* (1973). The Court also cited its 1977 ruling striking down a New York law forbidding the distribution of contraceptives to persons under 16 years of

age as support for the principle that Fourteenth Amendment liberty rights extend beyond the rights of married adults (*Carey v. Population Services International*, 1977).

In 2003, only 13 states had laws criminalizing sodomy, whereas 25 states had such laws at the time of *Bowers*, and all 50 states outlawed sodomy as late as 1961 (*Lawrence v. Texas*, 2003, p. 2474). Yet, at the time of the *Lawrence* ruling, just four states enforced their laws solely against homosexual conduct.

The *Lawrence* majority cited two post-*Bowers* cases as eroding the foundation of the *Bowers* holding. Reaffirming the right to have an abortion, the Court observed in *Planned Parenthood v. Casey* (1992) that "matters involving the most intimate and personal choices a person may make in a lifetime . . . are central to the liberty protected by the Fourteenth Amendment" (p. 851). The Court subsequently struck down an amendment to Colorado's Constitution that deprived a class of citizens who were homosexuals, lesbians, or bisexual any protections under state antidiscrimination laws (*Romer v. Evans,* 1996). The *Lawrence* majority also noted that the European Court of Human Rights had invalidated laws proscribing private, consensual homosexual conduct under the European Convention on Human Rights.

In addition to relying on prior case law regarding privacy rights, the Court also discussed the historical evolution of sodomy prohibitions when it overruled *Bowers*. In so doing, the *Lawrence* Court concluded that the Court in *Bowers* overstated the historical grounds for prohibiting homosexual conduct. The Court reasoned that there was no prohibition of sodomy during colonial times and that it was not until the late Nineteenth Century that the concept of homosexuality became a distinct category. From a historical perspective, American sodomy law was used to prohibit nonprocreative sexual activity generally rather than only homosexual activity. The Court further noted that laws prohibiting sodomy do not seem to have been enforced against consenting adults in private. This historical perspective is contrary to the *Bowers* holding, which indicated that there was no American tradition of accepting sodomy.

Justice O'Connor concurred that the Texas law should be invalidated, but she disagreed that *Bowers* should be overruled (*Lawrence v. Texas*, 2003). She based her conclusion that the Texas law should be struck down on the Equal Protection Clause, since the Texas law banned only same-sex sodomy. She concluded that moral disapproval is not a legitimate state interest to justify bans on homosexual, but not heterosexual, sodomy. Although indicating support for a "more searching form of rational basis

review" under the Equal Protection Clause, she found that the Texas law could not withstand scrutiny under the lenient rational basis standard (p. 2485). She noted that when the state criminalizes conduct that is part of the homosexual lifestyle, homosexual persons become vulnerable to government discrimination in all aspects of their lives. While the *Lawrence* majority recognized that the equal protection argument was tenable, it chose Due Process grounds. If the Court deemed homosexuality a suspect class, the protections would be very broad in that any governmental action based on an individual's sexual orientation would be subject to the highest level of judicial scrutiny.

Justice Scalia, joined by Chief Justice Rehnquist and Justice Thomas, devoted much of his lengthy dissent to arguing that if the majority's reasoning is valid in overturning *Bowers*—this justification should be applied to overturn *Roe v. Wade* as well. Indeed, he argued that overturning *Bowers* is a "massive disruption of the current social order," whereas overruling *Roe* would not be as it would simply return the decision on legalizing abortions to the states where it was prior to *Roe* (*Lawrence v. Texas*, 2003, p. 2491). He further noted that all laws reflect essentially moral choices, and asserted that laws against bigamy, same-sex marriages, prostitution, and many other crimes would be vulnerable to attack under the majority's reasoning. According to Justice Scalia, only fundamental rights "deeply rooted in the nation's history and tradition" (p. 2489) should be subjected to more than rational basis scrutiny under the substantive due process doctrine. Like many other laws regulating sexual behavior, Justice Scalia argued that the Texas law had a rational basis and should have been upheld.

He contended that the *Lawrence* ruling cannot be reconciled with federal policy requiring the discharge of members of the armed forces that engage in homosexual acts or with the Supreme Court's decision holding that the Boy Scouts have a constitutional right to prohibit homosexuals from becoming Scout leaders (10 U.S.C. § 654(b)(1), 2003; *Boy Scouts of American v. Dale*, 2000). Interestingly, in lamenting the far reaching implications of the *Lawrence* ruling, Justice Scalia built a strong case to support the future use of the majority's rationale to legalize same-sex marriages. He asserted that if moral disapproval of homosexual conduct cannot justify the Texas law, then what justification could there possibly be for denying the benefits of marriage to homosexual couples exercising "the liberty protected by the Constitution" (p. 2498)?

Justice Thomas endorsed Justice Scalia's dissent, but wrote separately. He felt that the Texas legislature should repeal the "silly" law (*Lawrence v.*

Texas, 2003, p. 2498). However, without such legislative action, he found nothing in the Constitution that created a general right of privacy that would invalidate the Texas law.

Implications

The *Lawrence* decision has recognized a new zone of privacy. Before *Lawrence*, engaging in sodomy was illegal in some states, so arguably a teacher's conduct in this regard could be considered immoral. Thus, the most obvious implication of the *Lawrence* decision would be that because it is no longer illegal for consenting adults to engage privately in sodomy, teachers will no longer be dismissed for such "criminal conduct." Before *Lawrence*, schools would attempt to strike a balance between the teacher's privacy rights and the interests of the school. As such, a less obvious implication relates to the question of whether the employers' interests can outweigh constitutional privacy rights of homosexual employees after *Lawrence*?

In lower court teacher lifestyle cases, the courts have required schools to demonstrate a "nexus" in that the teacher's behavior must adversely affect the school or reduce teaching effectiveness in the classroom before sanctions can be imposed (*Golden v. Board of Education*, 1981; *Jefferson Union v. Jones*, 1972; *Waugh v. Board of Cabell County*, 1986). Courts have found a nexus to justify adverse action if the two following circumstances are met: (a) the conduct directly affects the performance of the responsibilities of the teacher; or (b) if, without contribution on the part of school officials, the conduct becomes the subject of such notoriety as to significantly impair the ability of the teacher to discharge the responsibilities of the teaching position (*Jerry v. Board of Education*, 1974). Under this standard, evidence of a substantial 'community outcry' can provide the required nexus to dismiss the teacher if the notoriety impacts teaching abilities (*Sullivan v. Meade*, 1976).

The *Lawrence* ruling raises questions about the continued vitality of these earlier decisions, given the Court's recognition of increased privacy rights. In other words, could a teacher still be dismissed if the school demonstrates this causal nexus? For example, if a teacher appears on a national talk show promoting her lesbian lifestyle and her community believes that she is unfit to teach because of her recent notoriety—what would be the result in light of *Lawrence*? Justice Kennedy wrote for the *Lawrence* majority that the "central holding in *Bowers* . . . demeans the lives of homosexual persons" (p. 2482). Arguably, after *Lawrence*, even if

a nexus exists, the teacher should not be dismissed in this situation, as it would demean the life a lesbian teacher and invade her privacy.

Yet, the Court in *Lawrence* did not directly address the issue of a nexus and disruption in the workplace, so additional litigation will be necessary to identify the type of impact on teaching effectiveness and school operations necessary to justify disciplinary action. Despite this silence in *Lawrence*, perhaps lower courts will be reluctant to support dismissal actions based on notoriety involving sexual orientation in the same way the courts have been reluctant to support dismissal actions based on marital status and pregnancy. Gay and lesbian teachers are more optimistic than they were prior to *Lawrence* regarding the potential success of legal challenges to employment decisions based on their sexual orientation, but it remains to be seen how lower courts will interpret the scope of their constitutionally protected privacy rights.

Notes

[1] In a 1999 public opinion poll parents were asked if "school boards ought to have the right to fire teachers who are known homosexuals." Twenty percent of the parents completely agreed, 12% mostly agreed, 26% agreed, 36% completely disagreed, and 6% did not know (Public Opinion Online, 1999).

[2] After *Casey*, a woman still has a constitutionally protected privacy interest in choosing to have an abortion; however, the state has the right to regulate the abortion process. Such regulations may not place an undue burden on the woman.

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