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Mark Your Calendars: June 26 Is Banner Day for LGBT Rights at SCOTUS

Lawyer Paul Smith, who argued the landmark "Lawrence v. Texas" case decided 15 years ago today, talks about the "poetic coincidence" of June 26 for gay rights.

By **Angela Morris** | June 26, 2018

It's poetic coincidence that the biggest U.S. Supreme Court rulings in the LGBT civil rights movement bore the date June 26, said high court litigator Paul Smith, who argued the landmark case that laid the foundation for same-sex marriage equality.



Paul Smith

In *Lawrence v. Texas*, John Lawrence and Tyron Garner were arrested in Lawrence's Houston home for alleged "deviant sexual intercourse" that violated the Texas criminal sodomy statute. Fifteen years ago on June 26, 2003, the high court ruled in *Lawrence* that criminal sodomy statutes were

unconstitutional. It paved the way for the high court on the same date—June 26—nine years later in *Windsor v. United States* to strike down the Defense of Marriage Act's definitions of "marriage" and "spouse" as limited to opposite-sex couples. And in 2015, again on June 26, the Supreme Court legalized same-sex marriage nationwide in *Obergefell v. Hodges*.

Smith, formerly of Jenner & Block, has argued before the U.S. Supreme Court 21 times and now works as vice president of litigation and strategy at The Campaign Legal Center in Washington, D.C., and as a distinguished visitor from practice at Georgetown University Law Center. We asked Smith to reflect on his work in *Lawrence*, a case referred to Smith and his firm from Texas attorney Mitchell Katine, and the impact it made for LGBT equality. Here are his answers, edited for clarity and brevity.

Why did you get involved in the first place in the fight for LGBT equal rights?

We were contacted by the lawyers representing Lawrence and Garner when they lost in the highest court in Texas, and were considering taking the case to the U.S. Supreme Court. That was my main first involvement in the movement. We were Supreme Court lawyers, and happy to help with what we thought was the most historic case to come along in a long time.

When criminal sodomy statutes were widespread, how did it impact LGBT people?

In most cases the harm was that you had to stay in the closet. You had to be hidden, because to be open and proud of your relationship with another person of the same sex was to admit you were a criminal. What that meant was you had to stay quiet to not

lose your job working for the government, not to lose custody of children if there were a custody fight. It was a way to make the LGBT community stay in second-class citizenship and stay invisible.

When *Lawrence* came down, what was the significance for the LGBT community?

It got rid of the sodomy laws, which were an instrument of oppression, which kept people in second-class citizenship. It got rid of *Bowers*, the barrier to progress, because it was hard to make any plausible civil rights arguments under the Constitution with *Bowers* in place. [In *Bowers v. Hardwick*, the high court in 1986 upheld a Georgia criminal sodomy law.] What could the government do to gay people worse than putting them in jail? The third thing *Lawrence* did is talk about it in terms of relationships, not just sexuality. It talked about gay relationships [being] equally as valuable as straight relationships, and the government doesn't have power to make decisions about who you form a family with.

How did *Lawrence* impact the future of the LGBT equality movement?

It left the opponents of marriage equality with little argument to deny the protections and recognition of marriage to same-sex couples, many of whom were out there raising children. They struggled for the next 10 years to come up with some nonmoral justification for the difference between opposite-sex and same-sex couples, often trying to make arguments about children, which didn't make sense—it only hurt children being raised by same-sex couples. The logic of *Lawrence* led directly to marriage equality. It took a while, but was a very important foundation for the whole effort.

Why did the *Lawrence*, *Windsor* and *Obergefell* rulings all come out on June 26?

I think it's a coincidence. The court hands down its biggest decisions of the year the last week of June. I don't think they were thinking about the date of the *Lawrence* decision. But it's not a big coincidence, because these are the types of decisions that come out in the end of June. It's kind of a nice, poetic thing.

What's next for the movement? There's been a kind of pushback from the opponents of equality since *Obergefell*. They focused on creating various arguments for religious exemptions from nondiscrimination requirements, and have made a concerted attack on the trans community. Those were things they saw as vulnerabilities. Those fights will continue for some time, until we find the line where you can discriminate based on your personal views. The *Masterpiece Cake* case was an example. The other things the movement still needs to accomplish and someday hopes to is meaningful federal anti-discrimination protections against discrimination in employment and housing and the like.

Looking back at the progress since *Lawrence*, how do you think and feel about your role in it?

I don't think all the progress is about *Lawrence*—it was one important piece. I do think it's one of the great examples of civil rights progress in the history of the country, how far we've come from where we stood before *Lawrence*. It's nice to have had a really significant role in the beginning. It also led me to be somewhat involved in the Defense of Marriage Act litigation, and the marriage litigation. It's been a very fulfilling part of my career—something I'm very proud of.

As a gay man yourself, how did it impact you personally?

I married my partner in 2010 when they passed marriage equality in the District of Columbia, well before the Supreme Court decision, but it was nice to see that right extended to the rest of the country five years later.