

# AFRAID OF WHO YOU ARE: NO PROMO HOMO LAWS IN PUBLIC SCHOOL SEX EDUCATION

This is an era when harassment of lesbian, gay, bisexual, and transgender students is being addressed by public school systems throughout the country. Rarely, however, do educators or policy-makers acknowledge that LGBT discrimination may be legislated into public school curricula. This Article looks at No Promotion of Homosexuality provisions-known as "no promo homo" laws-as they exist in American public school sexual education. The laws of seven states (Alabama, Arizona, Mississippi, Oklahoma, South Carolina, Texas, and Utah) are compared and contrasted, including discussion of lingering sodomy laws and analysis of attempts at repeal or amendment. Particular attention is given to the current state of the law in Texas where, nine years after the landmark Supreme Court decision in Lawrence v. Texas, the defunct sodomy law remains on the books and is a mandated element of public school sex education. This Article advocates updating these antiquated laws to reflect both the culture of equality promised in American public schools and the unconstitutionality of laws prohibiting homosexual conduct.

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**Publication: Texas Journal of Women and the Law**

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Date published: April 1, 2013

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INTRODUCTION

In the world of law students, attorneys, judges, and justices, there are many landmark cases. The significance of cases like *Erie* or *McDonnell-Douglas*<sup>2</sup> cannot be overstated. But, in the wider world, cases such as these are unknown. The cases that become household names—*Brown v. Board of Education*,<sup>3</sup> *Roe v. Wade*<sup>4</sup>—are controversial, but they are also more than that. They present issues that search the heart. They ask what it means to be human. *Lawrence v. Texas* is one of these cases.<sup>5</sup>

John Lawrence and Tyron Garner had been convicted, in 1998,<sup>6</sup> of "deviate sexual intercourse."<sup>7</sup> They were two consenting adult men who, in the privacy of Mr. Lawrence's apartment, engaged in a non-commercial intimate act. They had sex. Houston police officers, responding to a false weapons disturbance report, burst into Lawrence's residence, observed the two men, and arrested them.<sup>8</sup>

Lawrence and Garner were charged and convicted under § 21.06 of the Texas Penal Code.<sup>9</sup> This statute, titled "Homosexual Conduct," states: "A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex."<sup>10</sup> In Texas, deviate sexual intercourse includes "any contact between any part of the genitals of one person and the mouth or anus of another person."<sup>11</sup> Texas's § 21.06 is a sterling example of a sodomy law.

Sodomy laws have been in place in the United States for generations.<sup>12</sup> Although many of these laws purport to criminalize certain acts of heterosexual sex,<sup>13</sup> their limited application makes it clear that "states [have] used sodomy laws to construct a criminal class comprised [sic] of gay men and lesbians."<sup>14</sup> The mere existence of these laws, even if they are rarely enforced, has a devastating and far-reaching effect on persons who identify as lesbian, gay, bisexual, or transgender.<sup>15</sup> The presumed criminal status of homosexuals has been used to justify police harassment, employment discrimination, and refusals to award custody of minor children.<sup>16</sup> The risks associated with being openly homosexual have forced countless individuals to remain "in the closet."<sup>17</sup>

This pervasive anti-homosexual sentiment has engendered an ideology known as "no promotion of homosexuality," or "no promo homo," which has found expression in public education legislation.<sup>18</sup> An early attempt by the Oklahoma legislature to allow the dismissal of public school teachers who were found guilty of "advocating . . . encouraging or promoting" homosexuality<sup>19</sup> was invalidated by the United States Court of Appeals for the Tenth Circuit as facially overbroad.<sup>20</sup> Other broad no promo homo education laws have met similar fates.<sup>21</sup> But in the eggshell-strewn realm of public school sex education, no promo homo statutes remain rarely challenged and rarely discussed.

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This Article will evaluate the no promo homo elements in sex and health education laws in seven states. It will consider the interaction between these no promo homo laws and the largely unenforceable sodomy laws that remain on the books in six of the seven states. It will also analyze the attempts that have been made—or that have not been made—to amend these laws. Particular focus will be placed on the current state of the law in Texas, where John Geddes Lawrence and Tyron Garner were born, raised, and arrested.

## I. No Promo Homo Elements in Sex and Health Education Laws

The no promo homo approach can take many forms, all along the spectrum from subtle to overt. The Northeast and the West Coast, perhaps not surprisingly, do not seem to mandate this philosophy. However, throughout the rest of the country, no promo homo requirements persist in public school sex education and health education laws.<sup>22</sup> This Article will consider the laws in Alabama, Arizona, Mississippi, Oklahoma, South Carolina, Utah, and Texas.

### A. Alabama

In 1992, the Alabama legislature enacted a law entitled "Minimum contents to be included in sex education program or curriculum."<sup>23</sup> The law emphasizes abstinence outside of marriage.<sup>24</sup> It calls for presentation of statistical information about teenage pregnancy and sexually transmitted infections.<sup>25</sup> It addresses peer pressure, harassment, and sexual exploitation.<sup>26</sup> It also requires "[a]n emphasis, in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under the laws of the state."<sup>27</sup>

It hardly bears observing anymore that reference to homosexuality as a "lifestyle" is demeaning to persons who identify as sexual minorities.<sup>28</sup> Also, one might reasonably wonder about the strength of the correlation between "a public health perspective" and what is "not . . . acceptable to the general public."<sup>29</sup> The former may appear to be merely a flimsy justification for the latter. There is no question, however, that this no promo homo law resides at the overt end of the spectrum. It states its topic openly.<sup>30</sup> It also goes beyond lack of promotion, demanding an active denouncement of homosexuality.<sup>31</sup>

In addition to instructing students that homosexuality is not "acceptable," teachers in Alabama public schools are required to teach that "homosexual conduct is a criminal offense."<sup>32</sup> This is a reference to an Alabama Sexual Offenses statute, entitled "Sexual Misconduct."<sup>33</sup> It reads, in pertinent part: "A person commits the crime of sexual misconduct if. . . [h]e or she engages in deviate sexual intercourse with another person under circumstances other than those covered by [non-consensual intercourse statutes]. Consent is no defense to a prosecution under this subdivision."<sup>34</sup>

Deviate sexual intercourse, in Alabama, is defined as "any act of sexual gratification between persons not married to each other involving the sex organs of one person and the mouth or anus of another."<sup>35</sup> A basic understanding of human anatomy tells us that homosexual conduct may have been at the forefront of the legislators' minds when they drafted this definition. However, the commentary to the "Sexual Misconduct" statute eliminates any doubt:

In the original draft, [this provision] covered deviate sexual intercourse without lawful consent. . . . If both actors were adult and both consented, there was no offense; but this subdivision was changed by the legislature to make all homosexual conduct criminal, and consent is no defense.<sup>36</sup>

Alabama's Sexual Misconduct statute is a sodomy law.<sup>37</sup> Unlike Texas's § 21.06, Alabama's law ostensibly targets both heterosexual and homosexual acts. But the commentary makes clear that the intent of the legislature was to criminalize homosexual conduct.<sup>38</sup> Regardless, the portion of the law that applies to consensual acts was invalidated by Lawrence nearly a decade ago.<sup>39</sup> Yet this unenforceable law remains on the books in Alabama. No attempt is being made to repeal or amend it.

This invalidated law does not simply loom in the background. It is not a ghost of paradigms past. Rather, it continues to shape the education provided to youths in public schools across Alabama. Students are taught that homosexuality is a "lifestyle" that is "unacceptable."<sup>40</sup> And they are still taught that it's a crime.<sup>41</sup>

### B. Arizona

In 1991, the Arizona legislature enacted a law entitled "Instruction on acquired immune deficiency syndrome; department assistance."<sup>42</sup> The statute requires that information provided in public school sex education be medically accurate and that it promote abstinence.<sup>43</sup> Course materials are supposed to "dispel myths regarding transmission of the human immunodeficiency virus."<sup>44</sup> The statute further mandates:

C. No district shall include in its course of study instruction which:

1. Promotes a homosexual life-style.
2. Portrays homosexuality as a positive alternative life-style.
3. Suggests that some methods of sex are safe methods of homosexual sex.<sup>45</sup>

Here, again, we see homosexuality referred to as a "life-style."<sup>46</sup> The notion of homosexuality as a choice, and an inferior one, is conveyed clearly by the term "alternative life-style" and by the legislature's determination that such a "life-style" cannot be depicted as "positive."<sup>47</sup> As with the Alabama sex education statute,<sup>48</sup> the Arizona law makes no attempt to disguise its topic; it refers specifically and intentionally to homosexuality.<sup>49</sup> However, Arizona's version, rather than being a requirement, is a prohibition. It does not demand that teachers say anything, provided they refrain from saying certain things.<sup>50</sup> The wording of the statute indicates that Arizona legislators took the spirit of "no promo homo" literally. It is worth noting that the law does not preclude all discussion of homosexuality. A teacher who chose to denigrate the "homosexual life-style" or who chose to depict homosexuality as a negative "alternative life-style" would be safely within the confines of this law."

Unlike the Alabama statute that covers many aspects of sex education,<sup>52</sup> the Arizona law purports to address, specifically, AIDS education. It demands that the information provided to students be "medically accurate" and "dispel myths" about HIV.<sup>53</sup> It is difficult to reconcile these instructions with the command to avoid indicating "that some methods of sex are safe methods of homosexual sex."<sup>54</sup> Including no promo homo elements in an AIDS education statute effectively mandates the spread of misinformation and the perpetuation of stigmas.

The Arizona statute does not require teachers to instruct their students on the criminality of homosexual conduct. Arizona repealed its sodomy law in 2001.<sup>55</sup> The provision stated: "A person who knowingly and without force commits the infamous crime against nature with an adult is guilty of a class 3 misdemeanor."<sup>56</sup> The repeal was signed by then-Governor Jane Hull, who wrote, "Keeping archaic laws on the books does not promote high moral standards; instead, it teaches the lesson that laws are made to be broken."<sup>57</sup>

Legislators in Arizona appear to prefer this proactive approach. In 2011, a proposed amendment to the AIDS education statute, entitled "Instruction on sexually transmitted infections; department assistance; definition," was introduced in the Arizona senate.<sup>58</sup> The bill, which did not get past its introduction, was sponsored by six senators.<sup>59</sup> The text began by changing the course of instruction from permissive to compulsory: "Each common, high and unified school district may shall provide instruction. . . ." <sup>60</sup> It proposed to expand the emphasis of instruction to all sexually transmitted infections, not only HIV/AIDS.<sup>61</sup> It defined standards for "medically accurate" information, requiring compliance with industry methods, peer-review, and acceptance by relevant experts.<sup>62</sup> The proposed amendment also deleted the entire no promo homo portion of § 15-716. The six Arizona senators who introduced the bill appeared to suggest that health education can and must be provided to all students without bias, judgment, or categorization.<sup>63</sup>

C. Mississippi

In 1998, the Mississippi legislature enacted a law entitled "Abstinence-only or abstinence-plus education."<sup>64</sup> The law explains that abstinence-only curricula are the state standard.<sup>65</sup> Allowance is made for schools to offer "abstinence-plus" education, but the only apparent difference is that abstinence-plus may include discussion of "the nature, causes and effects of sexually transmitted diseases, or the prevention of sexually transmitted diseases."<sup>66</sup> For both types of education, the statute requires emphasis on abstinence and the "likely negative" consequences of "not abstaining."<sup>67</sup> It calls for discussion of "unwanted sexual advances" and of how drug and alcohol use might increase a person's vulnerability.<sup>68</sup> It allows for "a factual presentation of the risks and failure rates of condoms and contraceptives, provided there are no demonstrations of how such items are used."<sup>69</sup> The statute also requires teachers to present "the current state law related to sexual conduct, including forcible rape, statutory rape, paternity establishment, child support and

homosexual activity."<sup>70</sup>

This is an interesting grouping of topics. One might not intuitively think of child support provisions as "law related to sexual conduct."<sup>71</sup> But the connection is, of course, graspable, particularly within the framework of abstinence-only education. From a no promo homo perspective, there is no question that this statute attaches a stigma to "homosexual activity" when it is the final item in a list that begins with "forcible rape."<sup>72</sup> Apart from that underlying judgment, the Mississippi law differs from the Alabama and Arizona statutes by avoiding societal views and focusing solely on the criminal status of "homosexual activity."<sup>73</sup>

Mississippi's sodomy law is called, simply, "Sodomy."<sup>74</sup> It employs classic sodomy language, conflating homosexuality and bestiality: "Every person who shall be convicted of the detestable and abominable crime against nature committed with mankind or with a beast, shall be punished by imprisonment in the penitentiary for a term of not more than ten years."<sup>75</sup> This law remains on the books, despite Lawrence, without attempted repeal.<sup>76</sup> Interestingly, while this sodomy law prescribes the punishment for each person who has been convicted of "the detestable and abominable crime against nature," it does not expound upon the circumstances under which a person may be charged with the crime.<sup>77</sup> This lack of specificity may mean that Mississippi's law technically remains valid despite Lawrence. It is arguable that this law was never intended to be enforced against consenting adults who privately engage in "the detestable and abominable crime against nature."<sup>78</sup>

Regardless of whether this sodomy law is enforced or even enforceable, it remains a required element of Mississippi's public school sex education curriculum.<sup>79</sup> In 2011 and 2012, five bills were introduced in the Mississippi legislature proposing amendments to the "Abstinence-only or abstinence-plus education" statute.<sup>80</sup> Not one of these bills got past its introduction.<sup>81</sup>

The amendments proposed by these five bills suggest that there are two competing philosophies in the Mississippi legislature. On one hand, there was House Bill 1091, introduced in January of 2011.<sup>82</sup> This bill represented what might be termed "the Victorian perspective." The text of this proposed amendment went to great lengths to avoid the word "sex."<sup>83</sup> "Sexual intercourse" became "reproductive activity."<sup>84</sup> "Unwanted sexual advances" became "unwanted advances."<sup>85</sup> "Sex-related education" became "reproductive education."<sup>86</sup> And, proving that everything old is new again, "sexually transmitted diseases" became "venereal diseases."<sup>87</sup> Also, the option to discuss condoms and contraceptives, factually and without demonstration, was deleted.<sup>88</sup>

The only place in the entire proposed amendment of § 37-13-171 that any form of the word "sex" remained was in subsection (2)(e), which required educators to teach "the current state law related to ... homosexual activity."<sup>89</sup> The other topics in the list—which included forcible rape, statutory rape, paternity establishment, and child support—remained, as well.<sup>90</sup> One might even argue that, thematically, the provision made more sense as amended because it no longer stated that these topics were all "related to sexual conduct."<sup>91</sup> Nevertheless, the no promo homo paradigm remained, and teachers would still have been required to instruct students on the reigning criminality of homosexual activity.<sup>92</sup>

The other philosophy at play in the Mississippi legislature might be termed "the baby-steps perspective." To call it progressive would be an overstatement; but this approach, evident in both of the bills introduced in 2012,<sup>93</sup> seems intent on moving the Mississippi sex education curricula in the direction of modernization. The Senate bill focused on changing the default "state standard" curriculum from abstinence-only to abstinence-plus.<sup>94</sup> The primary result of this change, as it was presented in the bill, was that educating students about "the nature, causes and effects of sexually transmitted diseases, or the prevention of sexually transmitted diseases"<sup>95</sup> would become mandatory, and the instruction would include "access to school nurses and youth-friendly preventive health services."<sup>96</sup> Despite its more open approach, the Senate bill made no attempt to alter the no promo homo element of the original statute.<sup>97</sup>

The 2012 House bill brought the current "Abstinence-only or abstinence-plus education" statute forward for possible amendment without specifically addressing any of its provisions.<sup>98</sup> However, this bill did propose new, detailed guidelines for establishing the sex education curricula.<sup>99</sup> These guidelines included definitions of the terms "factual information" and "medically accurate."<sup>100</sup> There was a distinctly new tone—less ominous and more thorough—in the mandated discussions of sexually transmitted infections. For example, "Course material and instruction shall present the latest medically factual information regarding both the possible side effects and [the] health benefits of all forms of contraception...."<sup>101</sup>

These proposed guidelines also included the following provision: "Course material and instruction shall be free of racial, ethnic, gender, religious or sexual orientation biases."<sup>102</sup> If this bill had been enacted, with no changes made to the original no promo homo requirement in § 37-13171,<sup>103</sup> teachers would have undoubtedly faced a conundrum. It would be difficult to instruct students that "homosexual activity" is criminal as a "detestable and abominable crime against nature"<sup>104</sup> without suggesting some bias regarding sexual orientation.<sup>105</sup> However, in keeping with the baby-steps theory, one could reasonably conclude that Mississippi's proposed House Bill 203 was a small step in the right direction.

#### D. Oklahoma

In 1987, the Oklahoma legislature enacted a law entitled "AIDS prevention education."<sup>106</sup> The law requires public schools to provide AIDS prevention instruction a minimum of three times, beginning with students in fifth or sixth grade.<sup>107</sup> It mandates teaching the role of abstinence in preventing the spread of AIDS.<sup>108</sup> The law also contains a subtle no promo homo element.

Subsection (D)(1) reads, "engaging in homosexual activity, promiscuous sexual activity, intravenous drug use or contact with contaminated blood products is now known to be primarily responsible for contact with the AIDS virus."<sup>109</sup> One might take issue with the wording- what qualifies as "promiscuous"? What does "primarily responsible" mean? Regardless, the general message-that certain types of activities have a notable correlation to AIDS exposure-is arguably factual.<sup>110</sup> This list becomes troubling, however, when followed by the next subsection, which states, "avoiding the activities specified in paragraph 1 of this subsection is the only method of preventing the spread of the virus."<sup>111</sup> Similar to use of the phrase "homosexual lifestyle,"<sup>112</sup> this provision both presumes and suggests that homosexuality is a choice, and that one must choose to refrain from "homosexual activity" just as one would surely choose to refrain from "contact with contaminated blood products."<sup>113</sup> Another extreme flaw in this provision is its disregard of the possibility of monogamous homosexual activity among partners who are HIV-negative. Homosexual activity of this type need not be avoided in order to "prevent[] the spread of the virus."<sup>114</sup> This statute is a clear example of how the no promo homo message can be quite broad, even if the statutory language seems narrowly focused.

It is interesting to note that a different Oklahoma law, enacted in 1993, attempts to alleviate the harshness of the message.<sup>115</sup> The "State Plan for the Prevention and Treatment of AIDS" lays out guidelines for informational programs that "are intended for the general public, health care professionals and other professionals, and specialized education and information efforts, as appropriate."<sup>116</sup> The text very closely tracks the language of the "AIDS prevention education" statute.<sup>117</sup> However, the newer law refers to "the primary method of transmission" of HIV/AIDS as "engaging in any promiscuous homosexual, bisexual or heterosexual activity or intravenous chemical substance use, or contact with contaminated blood products."<sup>118</sup> This is a change in perspective that would benefit Oklahoma's public school children. Unfortunately, there have been no proposals to amend the no promo homo element of the "AIDS prevention education" statute."<sup>9</sup>

The picture being painted for students in Oklahoma is not as dire as it could be. Oklahoma has retained its sodomy law, entitled "Crime against nature."<sup>120</sup> As Mississippi's does,<sup>121</sup> the Oklahoma statute relies on the classic sodomy construction: "Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the custody of the Department of Corrections not exceeding ten (10) years."<sup>122</sup> The statute then goes on to elucidate conditions under which such persons would be subject to post-imprisonment supervision.<sup>123</sup> Interestingly, Oklahoma's sodomy law refers to a person's guilt,<sup>124</sup> rather than his conviction, as it is stated in Mississippi's law.<sup>125</sup> The practical effect of this wording on the enforceability of the statute is beyond the scope of this Article. Nevertheless, the absence of homosexuality's criminal stigma in Oklahoma's sex education curriculum is laudable.

#### E. South Carolina

In 1988, the South Carolina legislature enacted a law entitled "Local school boards to implement comprehensive health education program; guidelines and restrictions."<sup>126</sup> The law calls for "comprehensive health education" for students in kindergarten through fifth grade.<sup>127</sup> This grade school curriculum may include "age-appropriate instruction in reproductive health" but must exclude discussion of "[s]exually transmitted diseases as defined in the annual Department of Health and Environmental Control List of Reportable Diseases."<sup>128</sup> For older students, coverage of sexually transmitted infections and pregnancy prevention is required.<sup>129</sup> The statute states that, for all age levels, "[t]he program of instruction provided for in this section may not include a discussion of

alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases."<sup>130</sup>

This no promo homo element is complex. It opens with the demeaning "alternate sexual lifestyles" phrase, but it does appear to acknowledge the existence of "homosexual relationships."<sup>131</sup> It contemplates other "alternate sexual lifestyles," but chooses to make a particular example of homosexuality.<sup>132</sup> Perhaps most telling, there is subtle but unmistakable damnation in the pairing of homosexuality and sexually transmitted infections.<sup>133</sup> This provision does not use the overt language of the Arizona statute, which prohibits promotion of homosexuality and discussion of safer homosexual sex,<sup>134</sup> but it does convey the same message: positive connotations of homosexuality are forbidden and neutral connotations are to be avoided.<sup>135</sup> It does not seem that anyone in the South Carolina legislature is seeking to change this message; there have been no attempted amendments to the statute.

However, South Carolina, like Oklahoma, does not go as far as it could in propounding the anti-homosexual agenda in public schools. South Carolina's "Buggery" statute,<sup>136</sup> perhaps not surprisingly, applies the same antiquated diction and concepts as the Mississippi<sup>137</sup> and Oklahoma<sup>138</sup> laws do: "Whoever shall commit the abominable crime of buggery, whether with mankind or with beast, shall, on conviction, be guilty of felony and shall be imprisoned in the Penitentiary for five years or shall pay a fine of not less than five hundred dollars, or both, at the discretion of the court."<sup>139</sup> Though South Carolina persists in the harmful fiction of keeping this statute on its law books, it at least does not require this criminal status to be included in sex education textbooks.

#### F. Utah

In 1988, the Utah legislature enacted a law now entitled "Instruction in health-Parental consent requirements-Conduct and speech of school employees and volunteers-Political and religious doctrine prohibited."<sup>140</sup> The law calls for instruction in "(i) community and personal health; (ii) physiology; (iii) personal hygiene; and (iv) prevention of communicable disease."<sup>141</sup> It requires an emphasis on abstinence before marriage and fidelity within marriage.<sup>142</sup> The statute "prohibit[s] instruction in . . . the advocacy of homosexuality."<sup>143</sup>

This is an overt no promo homo provision. It states its topic clearly.<sup>144</sup> There might be some room for confusion in what "instruction in the advocacy" means.<sup>145</sup> Utah legislators appear to be concerned about this (and other elements of the statute that lack clarity). A House bill, which was enrolled the day before the closing of the 2012 legislative session, made little substantive change but did simplify the wording of the current law. The proposed text read, in relevant part:

(c) Human sexuality instruction or instructional programs may not include instruction in, or the advocacy of..

(ii) homosexuality.<sup>146</sup>

The progress of this bill reaffirms the Utah legislature's commitment to the no promo homo philosophy.

An interesting, and more subtle, element of the Utah "Instruction in health" statute currently precedes the prohibition on discussing homosexuality;<sup>147</sup> in the 2012 bill, it immediately followed the provision.<sup>148</sup> This subsection reads: "At no time may instruction be provided, including responses to spontaneous questions raised by students, regarding any means or methods that facilitate or encourage the violation of any state or federal criminal law by a minor or an adult."<sup>149</sup> This reference to criminal law,<sup>150</sup> which may eventually be brought within close proximity of the prohibition on homosexuality discourse, serves as a covert extension of the no promo homo approach.

Utah's sodomy law carries the somewhat confusing, and perhaps telling, title "Sodomy-Forcible sodomy."<sup>151</sup> The bulk of the statute is devoted to forcible sodomy, certain sexual acts characterized by lack of consent.<sup>152</sup> Subsections (1) and (3) of the statute refer to the crime of sodomy.<sup>153</sup> "A person commits sodomy when the actor engages in any sexual act with a person who is 14 years of age or older involving the genitals of one person and mouth or anus of another person, regardless of the sex of either participant."<sup>154</sup> Certainly, this is a sodomy law that goes out of its way to include heterosexual acts. It is also a sodomy law that, by virtue of its juxtaposition with acts lacking consent,<sup>155</sup> is clearly invalidated by Lawrence.<sup>156</sup> Nevertheless, it remains on the books and unchallenged in Utah.

It also remains as a looming limitation on the education of Utah's public school students. It is significant, in contrast to the mandated

discussions of criminality in Alabama<sup>157</sup> and Mississippi,<sup>158</sup> that Utah teachers are not required to highlight the criminal status of homosexuality.<sup>159</sup> However, going so far as to forbid instructors to respond to issues that are raised by students ensures that the education being provided will be insufficient. Any student who has the courage to ask a question about a subject that is purposefully omitted will be ignored or rebuffed. But that disregard is, of course, exactly the kind of treatment that the no promo homo philosophy seeks to engender.

## II. Texas: The Crucible?

It is tempting to view Texas as "where it all began." As has been demonstrated in this Article, however, very little has happened in response to the United States Supreme Court's decision in *Lawrence*.<sup>160</sup> In Texas, §21.06, the "Homosexual Conduct" statute under which *Lawrence* and *Garner* were charged and convicted, remains on the books.<sup>161</sup> It is, however, utterly unenforceable and unquestionably invalidated.

There are two Texas public school education statutes that reference § 21.06. One is located in a chapter about sexual education.<sup>162</sup> The other is within a chapter that addresses AIDS and HIV.<sup>163</sup> Their no promo homo elements are similar, but not identical.<sup>164</sup> The sex education statute states that the curriculum must include "emphasis, provided in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under Section 21.06, Penal Code."<sup>165</sup> The AIDS education statute indicates that the curriculum must "state that homosexual conduct is not an acceptable lifestyle and is a criminal offense under Section 21.06, Penal Code."<sup>166</sup> The AIDS education statute is bolder in its conviction. It calls for statement rather than emphasis, does not qualify in what way the information should be presented, and does not hide behind "the general public" in asserting its view.<sup>167</sup> But neither statute is subtle in its opposition to the homosexual "lifestyle."<sup>168</sup> Both require proactive instruction on the criminal status of "homosexual conduct."<sup>169</sup> It is apparently irrelevant that homosexual conduct is not, in fact, criminal.

Several Texas legislators, led by Representative Garnet Coleman, do not believe it is irrelevant. Between 1983 and 2000, there were fourteen attempts to repeal § 21.06.<sup>170</sup> The fourteenth attempt<sup>171</sup> was filed December 19, 2000, while *Lawrence v. State* made its way through the system of appeals and rehearings.<sup>172</sup> That bill was referred to the House Committee on Criminal Jurisprudence on January 30, 2001.<sup>173</sup> And that was the end of the story.

On June 26, 2003, the United States Supreme Court handed down its decision in *Lawrence v. Texas*.<sup>174</sup> In the next regular session of the Texas Legislature, and in each regular session thereafter, Representative Coleman has introduced a bill "relating to the repeal of the offense of homosexual conduct."<sup>175</sup> These attempted repeals are unique. They should, after all, be mere formalities. Section 21.06 has been invalidated as facially unconstitutional by the highest court in the land.<sup>176</sup> It is unenforceable and beyond redemption, yet Coleman's repeal bills have never made it out of committee.

Representative Coleman's four bills have gone beyond simply repealing the defunct "Homosexual Conduct" statute. Each bill also includes proposed amendments to Texas's sex education and AIDS education laws.<sup>178</sup> These proposed amendments do not call for sweeping changes or major overhauls. They call only for the removal of the no promo homo provision in each of the two education statutes.<sup>179</sup>

Is this proposal-to remove the mandated anti-homosexual commentary from public school health and sex education-the immovable object that prevents repeal of § 21.06 from going forward? On April 5, 2011, Representative Coleman's most recent bill, House Bill 2156, was considered in a public hearing before the Texas House Committee on Criminal Jurisprudence.<sup>180</sup> The consideration, which came in the fifth hour of the public hearing, lasted twenty-six minutes.<sup>181</sup> Representative Coleman opened and closed the discussion.<sup>182</sup> Five witnesses spoke in favor of the bill; no one spoke in opposition to it.<sup>183</sup> Coleman and all five witnesses-including a representative of the State Bar of Texas, which officially endorsed the bill-all focused on the repeal of § 21.06 as a response to *Lawrence*.<sup>184</sup> The committee, however, was more interested in discussing the proposed changes to the sex education and AIDS education statutes.<sup>185</sup>

When Representative Coleman took the podium to close discussion of the bill, one member of the committee<sup>186</sup> initiated a conversation about the effects of the proposals.<sup>187</sup> He indicated that he understood the proposal to repeal § 21.06, and,



consequently, to remove the reference to criminality from the education statutes.<sup>188</sup> However, he failed to find any justification for deleting the portion of the provision that terms homosexuality "unacceptable."<sup>189</sup> The committee member stated: "Now I can understand the Supreme Court opinion, which says that it's not constitutional to criminally prosecute, but what I'm trying to understand is how we go a step further to say that the state can't have a policy statement if it so chooses."<sup>190</sup> The conversation continued on this theme for several minutes, with another committee member seconding his colleague's reluctance to alter the legislature's "policy statement" regarding homosexuality.<sup>191</sup>

Representative Coleman did not abandon the cause. He argued that it is demeaning to LGBT individuals to tell them "that who and what they are is not acceptable."<sup>192</sup> He drew analogies to other antiquated laws, such as residential red-lining and prohibitions on interracial marriage.<sup>193</sup> He observed that times have changed, and that the youth of today and tomorrow will not allow policies that are hurtful and discriminatory to stand.<sup>194</sup> Through it all, Representative Coleman stated, no fewer than five times, that if backing off on the amendments to the education statutes would get the repeal of § 21.06 to go through, then "[o]f course, of course we could do that."<sup>195</sup>

The questioning committee member refused to discuss a compromise, insisting, "Well, I don't speak for the committee."<sup>196</sup> After a few more minutes in this vein, consideration of House Bill 2156 ended.<sup>197</sup> The matter was left pending and was never revisited.

The activities in the Texas legislature raise more questions than they answer. Are the legislators resistant to repealing § 21.06? It seems that they are. Nearly a decade has passed since the law was invalidated, but its repeal has not even come to a vote. Is it the policy of the education statutes that the legislators are hesitant to alter? The members of the Committee on Criminal Jurisprudence seemed focused on the issue, yet no one chose to entertain Representative Coleman's offers to retain the policy.

Is a change in that policy worth fighting for or is Representative Coleman's willingness to compromise a wise approach? Coleman's perspective—that the no promo homo paradigm is doomed and that repeal of § 21.06 is, in itself, a good first step—is appealing. However, the arguments in favor of avoiding half measures are also strong. Recognizing all the reasons that no promo homo education laws are harmful, but becoming complicit in their retention, may exacerbate the problem. The real question is: what message is being given to the youth? For adolescents who are already grappling with more than the standard teenage share of insecurity, intimidation, and isolation, the message that "even those who are on your side are willing to barter away your dignity" may be simply unacceptable.

## Conclusion

The no promo homo education laws in Alabama, Arizona, Mississippi, Oklahoma, South Carolina, Utah, and Texas take various forms. They rely to varying degrees on sodomy laws that are nearly, if not entirely, <sup>192</sup> M at 5:30:43.

<sup>193</sup> Id., beginning at 5:26:00.

<sup>194</sup> Id.

<sup>195</sup> Id. at 5:28:49.

<sup>196</sup> Id. at 5:28:53.

<sup>197</sup> Id. at 5:26:00-5:36:00.

unenforceable. But they all aim to instill in each generation the belief that individuals who identify as lesbian, gay, bisexual, or transgender are inferior. The message can be couched in terms that are "medically accurate;"<sup>198</sup> it can be presented "from a public health perspective;"<sup>199</sup> it can be justified as "the current state law."<sup>200</sup> But at its heart, it is a message of hatred and fear.

Lobbyists, lawyers, and legislators across the country have found tidy ways to word their message and enact it in the law. But the man who knew the right message was a man of limited education, a man who was unemployed on the night he became a quiet folk-hero and allowed his privacy to be martyred to the greater good.<sup>201</sup> Tyron Garner's message was pure; it was a lesson for everyone. "Be who you are, and don't be afraid."<sup>202</sup>

1. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938).
2. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
3. *Brown v. Bd. of Educ. of Topeka, Kan.*, 347 U.S. 483 (1954).
4. *Roe v. Wade*, 410 U.S. 113 (1973).
5. *Lawrence v. Texas*, 539 U.S. 558 (2003).
6. Terri Langford, "No Contest Plea in Texas Sodomy Case," Associated Press, Nov. 20, 1998, available at <http://www.glapn.org/sodomylaws/usa/texas/txnews13.htm>.
7. *Lawrence*, 539 U.S. at 563.
8. *Id.*
9. *Id.*; Tex. Penal Code Ann. § 21.06 (West 2012).
10. Tex. Penal Code Ann. § 21.06.
11. *Id.* §21.01(1)(A).
12. See History of Sodomy Laws, <http://www.glapn.org/sodomylaws/history/history.htm> (last visited Dec. 28, 2012) (presenting an overview of proscriptions against non-procreative sexual acts).
13. See, e.g., Ala. Code § 13A-6-65 (West 2012) (referring to "deviate sexual intercourse with another person" without limitation to homosexual conduct).
14. Christopher R. Leslie, *Lawrence v. Texas as the Perfect Storm*, 38 U.C. Davis L. Rev. 509, 511 (2005).
15. *Id.* at 511-17.
16. *Id.*
17. *Id.* at 514.
18. William N. Eskridge, Jr., *No Promo Homo: The Sedimentation of Antigay Discourse and the Channeling Effect of Judicial Review*, 75 N.Y.U. L. Rev. 1327, 1359 (2000).
19. Okla. Stat. tit. 70, § 6-103.15 (repealed 1989); *Nat'l Gay Task Force v. Bd. of Educ. of the City of Okla. City*, 729 F.2d 1270, 1272 (10th Cir. 1984), *affd.*, 470 U.S. 903 (1985).
20. *Nat'l Gay Task Force*, 729 F.2d at 1272.
21. Eskridge, *supra* note 18 (discussing examples of no promo homo laws that have been challenged on First Amendment principles).
22. See, e.g., Ala. Code § 16-40A-2(c)(8) (West 2012); Ariz. Rev. Stat. Ann. § 15716 (West 2012); Okla. Stat. tit. 70, § 11-103.3 (West 2012).
23. Ala. Code § 16-40A-2 (West 2012).
24. *Id.* § 16-40A-2(A)(1H2).
25. *Id.* § 16-40A-2(C)(3).
26. *Id.* § 16-40A-2(C)(6)-(7).

27. Id. § 16-40A-2(C)(8).

28. See Gay & Lesbian Alliance Against Defamation, Media Reference Guide 6 (8th ed. 2010), <http://www.glaad.org/files/MediaReferenceGuide2010.pdf> ("There is no single lesbian, gay or bisexual lifestyle. Lesbians, gay men and bisexuals are diverse in the ways they lead their lives. The phrase 'gay lifestyle' is used to denigrate lesbians and gay men, suggesting that their orientation is a choice and therefore can and should be 'cured.'").

29. Ala. Code § 16-40A-2(C)(8) (West 2012).

30. See id.

31. See id.

32. Id.

33. Ala. Code § 13A-6-65 (West 2012).

34. Id.

35. Id. § 13A-6-60(2).

36. Id. § 13A-6-65 cmt. (emphasis added).

37. See id. § 13A-6-65.

38. Id. § 13A-6-65 cmt.

39. *Lawrence v. Texas*, 539 U.S. 558, 567 (2003) ("The statutes do 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.").

40. Ala. Code § 16-40A-2(c)(8) (West 2012).

41. See id.

42. Ariz. Rev. Stat. Ann. § 15-716 (West 2012).

43. Id. § 15-716(B)(2)-(3).

44. M § 15-716(B)(5).

45. Id. § 15-716(C).

46. Id.; see also Ala. Code § 16-40A-2(c)(8) (West 2012).

47. Ariz. Rev. Stat. Ann. § 15-716(C) (West 2012).

48. Ala. Code § 16-40A-2(C)(8) (West 2012).

49. Ariz. Rev. Stat. Ann. § 15-716(C) (West 2012).

50. Id.

51. See id.

52. Ala. Code § 16-40A-2 (West 2012). See *supra* notes 23-27 and accompanying text.

53. Ariz. Rev. Stat. Ann. § 15-716(B)(2), (5) (West 2012).

54. Id. § 15-716(C)(3). Although it is important to avoid suggesting that HIV/AIDS is "a gay man's disease," it is likewise folly to

ignore the importance of condom education for sexual minority youth. See Condoms and HIV Prevention: Position Statement by UNAIDS, UNFPA, and WHO, UNAIDS (March 19, 2009), <http://www.unaids.org/en/Resources/PressCentre/Featurestories/2009/March/20090319preventionposition/> ("Effective condom promotion targets not only the general population, but also people at higher risk of HIV exposure, especially [several other high-risk groups] and men who have sex with men.").

55. The Equity Act of 2001, ch. 382, 2001 Ariz. Legis. Serv. (West).

56. Ariz. Rev. Stat. Ann. § 13-1411 (repealed 2001).

57. Barbara Dozeots, Arizona Repeals Sodomy Laws, Sodomy laws (May 9, 2011), <http://www.glapn.org/sodomylaws/usa/arizona/aznews24.htm>.

58. S.B. 1457, 50th Leg., 1st Reg. Sess. (Ariz. 2011).

59. Id.

60. Compare id., with Ariz. Rev. Stat. Ann. § 15-716(A) (West 2012).

61. Compare Ariz. S.B. 1457, with Ariz. Rev. Stat. Ann. § 15-716(A), (B)(5) (West 2012).

62. Ariz. S.B. 1457, revised § F.

63. See id. (requiring all school districts to provide "sex education that is medically accurate and comprehensive").

64. Miss. Code Ann. § 37-13-171 (West 2012).

65. Id. §37-13-171(2).

66. Id. § 37-13-171(3).

67. Id. § 37-13-171(2)(a).

68. Id. § 37-13-171 (2)(c).

69. Id. §37-13-171(2)(d).

70. Id. § 37-13-171(2)(e).

71. Id.

72. Id.

73. Compare Miss. Code Ann. § 37-13-171 (West 2012) (focusing ostensibly on criminal status), with Ala. Code § 16-40A-2(c)(8) (West 2012) (focusing on public opprobrium as well as criminal status), and Ariz. Rev. Stat. Ann. § 15-716(C) (West 2012) (prohibiting positive representation of homosexuality).

74. Miss. Code Ann. § 97-29-59 (West 2012).

75. Id.

76. See generally *Lawrence v. Texas*, 539 U.S. 558 (2003) (holding that the Texas sodomy law was unconstitutional under the Fourteenth Amendment).

77. Miss. Code Ann. § 97-29-59.

78. See id.

79. Id. § 37-13-171(2)(e) (failing to specify which statutes must be discussed in conveying "the current state law"; there is no question the Sodomy statute is "related to sexual conduct... and homosexual activity" (quoting Miss. Code Ann. § 97-29-59)).

80. Id. § 37-13-171.

81. H.B. 507, 2011 Leg., 126th Sess. (Miss. 2011); H.B. 1091, 2011 Leg., 126th Sess. (Miss. 2011); H.B. 965, 2011 Leg., 126th Sess. (Miss. 2011); H.B. 203, 2012 Leg., 127th Sess. (Miss. 2012); S.B. 2599, 2012 Leg., 127th Sess. (Miss. 2012).

82. Miss. H.B. 1091.

83. See generally id.

84. Compare Miss. H.B. 1091 (2)(f) (using "reproductive activity"), with Miss. Code Ann. § 37-13-171 (2)(f) (West 2012) (using "sexual intercourse").

85. Compare Miss. H.B. 1091 (2)(c) (using "unwanted advances"), with Miss. Code Ann. § 37-13-171(2)(c) (using "unwanted sexual advances").

86. Compare Miss. H.B. 1091(2) (using "reproductive education"), with Miss. Code Ann. § 37-13-171(2) (using "sex-related education").

87. Compare Miss. H.B. 1091 (2)(d) (using "venereal diseases), with Miss. Code Ann. § 37-13-171 (2)(d) (using "sexually transmitted diseases").

88. Compare Miss. H.B. 1091 (2)(d) (deleting optional inclusion of "discussion on condoms or contraceptives"), with Miss. Code Ann. § 37-13-171(2)(d) (noting that instruction "may include a discussion on condoms or contraceptives").

89. Compare Miss. H.B. 1091 (2)(e) ("Teaches the current state law related to . . . forcible rape, statutory rape, paternity establishment, child support and homosexual activity"), with Miss. Code Ann. § 37-13-171(2)(e) ("Teaches the current state law related to sexual conduct, which includes forcible rape, statutory rape, paternity establishment, child support and homosexual activity").

90. Id.

91. Id. (emphasis added).

92. See Miss. Code Ann. § 97-29-59 (West 2012).

93. H.B. 203, 2012 Leg., 127th Sess. (Miss. 2012); S.B. 2599, 2012 Leg., 127th Sess. (Miss. 2012).

94. Miss. S.B. 2599(3).

95. Compare Miss. S.B. 2599(3)(g) (mandating education about sexually transmitted diseases and providing access to preventive health services), with Miss. Code Ann. § 37-13-171(2)(d) (West 2012) (describing the abstinence-only approach).

96. Miss. S.B. 2599(3)(h).

97. Miss. S.B. 2599.

98. Miss. H.B. 203.

99. See generally id.

100. Miss. H.B. 203(2)(a)(i), (ii).

101. Miss. H.B. 203(2)(b)(iv).

102. Miss. H.B. 203(2)(b)(xv).
103. Miss. Code Ann. § 37-13-171 (2)(e) (West 2012).
104. U§ 97-29-59.
105. Miss. H.B. 203(2)(b)(xv).
106. Okla. Stat. Ann. tit. 70, § 11-103.3 (West 2012).
107. Id. § 11-103.3(A)(1H3).
108. Id. § 11-103.3(E).
109. Id. § 11-103.3(D)(1).
110. See, e.g., Avert, United States of America HIV & AIDS Statistics, <http://www.avert.org/usa-transmission-gender.htm> (last visited Feb. 4, 2013) (citing 2010 Center for Disease Control statistics for HIV/AIDS transmission by route and gender).
111. Okla. Stat. Ann. tit. 70, § 11-103.3(D)(2).
112. See supra notes 45-47 and accompanying text.
113. Okla. Stat. Ann. tit. 70, § 11-103.3(D)(1).
114. Id. § 11-103.3(D)(2).
115. Okla. Stat. Ann. tit. 63, § 1-534.2 (West 2012). This statute, addressing the presentation of information to audiences outside of public schools, is separate from the "AIDS prevention education" statute, and neither references the other. See Okla. Stat. Ann. tit. 70, § 11-103.3.
116. Okla. Stat. Ann. tit. 63, § 1-534.2(2).
117. Compare id., with Okla. Stat. tit. 70, § 11-103.3(D).
118. Okla. Stat. Ann. tit. 63, § 1-534.2(2)(a) (emphasis added).
119. Okla. Stat. Ann. tit. 70, § 11-103.3.
120. Okla. Stat. Ann. tit. 21, § 886 (West 2012).
121. Miss. Code Ann. § 97-29-59 (West 2012).
122. Okla. Stat. Ann. tit. 21, § 886.
123. Id.
124. Id.
125. Miss. Code Ann. § 97-29-59.
126. S.C.Code Ann. § 59-32-30 (West 2012).
127. Id. § 59-32-30(A)(1).
128. Id.
129. Id. § 59-32-30(A)(2H3).

130. Id. § 59-32-30(A)(5).

131. Id. (emphasis added).

132. Id.

133. Id. (prohibiting discussion of homosexuality "except in the context of instruction concerning sexually transmitted diseases"). This exception suggests that, although homosexuality is not worthy of comprehensive discussion, correlations between homosexual activity and sexually transmitted infections may be highlighted.

134. Ariz. Rev. Stat. Ann. § 15-716(C) (West 2012) ("No district shall include in its course of study instruction which: 1. Promotes a homosexual life-style. 2. Portrays homosexuality as a positive alternative life-style. 3. Suggests that some methods of sex are safe methods of homosexual sex.").

135. See S.C. Code Ann. § 59-32-30(A)(5) (West 2012).

136. S.C. Code Ann. § 16-15-120 (West 2012).

137. Miss. Code Ann. § 97-29-59 (West 2012).

138. Okla. Stat. Ann. tit. 21, § 886 (West 2012).

139. S.C. Code Ann. § 16-15-120.

140. Utah Code Ann. § 53A-13-101 (West 2012).

141. Id. § 53A-13-101(l)(a)(iHiv).

142. Id. § 53A-13-101 ( 1 )(b)(i)(A), (B).

143. Id. § 53A-13-101 ( 1 )(c)(iii)(A)(II).

144. See id. (referring specifically to "homosexuality").

145. Id.

146. H.B. 363(3)(c)(ii), 60th Leg., 2012 Sess. (Utah 2012).

147. Utah Code Ann. § 53A-13-101 ( I )(b)(ii)(A).

148. Utah H.B. 363(3)(d)(i).

149. Id.

150. Id.

151. Utah Code Ann. § 76-5-403 (West 2012).

152. Id.

153. Id. § 76-5-403(1), (3).

154. Id. § 76-5-403(1).

155. Id. § 76-5-403(2), (4) (referring to forcible sodomy).

156. See generally *Lawrence v. Texas*, 539 U.S. 558, 578 (2003). Utah's statute, § 76-5403, contains provisions pertaining to non-consensual acts. The remaining provisions, which purport to prohibit consensual acts, are invalid under *Lawrence*. See id.

157. Ala. Code § 16-40A-2(c)(8) (West 2012).
158. Miss. Code Ann. § 37-13-171(2)(e) (West 2012).
159. Utah Code Ann. § 76-5-403.
160. See generally *Lawrence*, 539 U.S. 558.
161. Tex. Penal Code Ann. § 21.06 (West 2012).
162. Tex. Health & Safety Code Ann. § 163.002 (West 2012).
163. Id. § 85.007(b)(2).
164. See id. §§ 163.002(8), 85.007(b)(2).
165. Id. § 163.002(8).
166. Id. § 85.007(b)(2).
167. Id. §§ 85.007(a)(2), 163.002(8).
168. Tex. Health & Safety Code Ann. §§ 85.007(a)(2), 163.002(8).
169. Id.
170. Legislative Reference Library of Texas, [http://www.lrl.state.tx.us/legis/bill\\_search/advancedsearch.cfm](http://www.lrl.state.tx.us/legis/bill_search/advancedsearch.cfm) (search "Caption Keyword" for "homosexual conduct") (last visited Mar. 16, 2012).
171. Id. (search "Caption Keyword" for "homosexual conduct"; then follow "HB 389" hyperlink; then follow "Actions" hyperlink).
172. *Lawrence v. State*, 41 S.W.3d 349 (2001).
173. History, Texas Legislature Online, <http://www.capitol.state.tx.us/BillLookup/history.aspx?LegSess=77R&Bill=HB389> (last visited Mar. 16, 2012).
174. *Lawrence v. Texas*, 539 U.S. 558 (2003).
175. Legislative Reference Library of Texas, supra note 170 (search "Caption Keyword" for "homosexual conduct"; then follow "HB 3215," hyperlink; then follow "Actions" hyperlink) (last visited Mar. 16, 2012); id. (search "Caption Keyword" for "homosexual conduct"; then follow "HB 1326" hyperlink; then follow "Actions" hyperlink); id. (search "Caption Keyword" for "homosexual conduct"; then follow "HB 3026" hyperlink; then follow "Actions" hyperlink); id. (search "Caption Keyword" for "homosexual conduct"; then follow "HB 2156" hyperlink; then follow "Actions" hyperlink).
176. *Lawrence*, 539 U.S. at 578.
177. Bill Stages, Texas Legislature Online, <http://www.capitol.state.tx.us> (last visited Mar. 16, 2012) (search "Bill Lookup" for Bill Number "HB3215" in Legislature "79(R)2005"); id. (search "Bill Lookup" for Bill Number "HB 1326" in Legislature "80(R)-2007"); id. (search "Bill Lookup" for Bill Number "HB3026" in Legislature "81 (R)-2009"); id. (search "Bill Lookup" for Bill Number "HB2156" in Legislature "82(R)-2011").
178. Rep. Coleman's attempts in 2005, 2007, and 2009 are identical to those in 2011. See, e.g., Tex. H.B. 2156, 2011 Leg. 82d Sess. (Tex. 2011) (including amendments to Tex. Health & Safety Code Ann. §§ 85.007(b), 163.002(8)).
179. E.g., id.
180. See 82(R) History for HB 2156, Texas Legislature Online, <http://www.legis.state.tx.us/biffllookup/History.aspx?>



LegSess=82R&Bill=HB2156 (last visited Mar. 16,2012).

181. Committee on Criminal Jurisprudence Meeting, Texas House of Representatives (Apr. 5, 2011), <http://www.house.state.tx.us/video-audio/committee-broadcasts/committeearchives/player/?session=82&committee=220&ram=11040510220> [hereinafter Public Hearing] (begins at 5:25:00).

182. Id.

183. Id.

184. Id.

185. See id.

186. The quality of the video makes it difficult to distinguish which committee members are speaking. It seems that the bulk of the questioning was carried on by Rep. Burkett, with some input from Chairman Gallego.

187. Public Hearing, *supra* note 181, beginning at 5:26:20.

188. Id.

189. Id.

190. Id. at 5:27:02.

191. Id.

198. Ariz. Rev. Stat. Ann. § 15-716(B)(2) (West 2012).

199. Tex. Health & Safety Code Ann. § 163.002(8) (West 2012).

200. Miss. Code Ann. § 37-13-171 (2)(e) (West 2012).

201. Douglas Martin, Tyron Garner, 39, Plaintiff in Pivotal Sodomy Case, Dies, N.Y. Times (Sept. 14, 2006), <http://www.nytimes.com/2006/09/14/obituaries/14gamer.html>.

202. Id.

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\*J.D. expected May 2013, University of Wyoming College of Law. The author wishes to thank the following: The editorial staff of TJWL. The exceptional faculty at the UW College of Law, especially Professors Jerry Parkinson, Michael C. Duff, and Jacquelyn L. Bridgeman and Librarians Tawnya K. Plumb and Deb Person. Her inspirational colleagues and friends, especially Sabrina Sameshima, Grant Gerrard, Kendall Laws, Joshua C. Eames, Christopher Sherwood, Jessica Kern, and Christina Spindler Berta. And, as always, her siblings and mother, her sons, and her dad.



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