

### Symposium Problem

Susan and Carol have lived together as a same-sex couple for five years, and wish to be legally married. They reside in the County of Declaration, in the State of Independence, however, and Independence forbids marriage between homosexual couples. Specifically, the Code of Independence statutorily prohibits marriages or contractual unions between same-sex partners. The relevant Independence statute, Section 411, reads: "No marriage or civil union between persons of the same sex shall be recognized as marriage or be entitled to the benefits thereof."

Susan and Carol attempted to obtain a marriage license from the clerk of court in County of Declaration, but the clerk refused to issue a license to a homosexual couple. Susan and Carol brought suit to challenge the constitutionality of Section 411 on Fourteenth Amendment Equal Protection and Fourteenth Amendment Due Process grounds. They relied chiefly on the United States Supreme Court's decision in Lawrence v. Texas, 123 S.Ct. 2472 (2003), in their argument.

The federal district court for the 13th Circuit dismissed the claim and held that Section 411 is constitutional under the federal Constitution, and that it is the exclusive province of the State to oversee and regulate the marriage relationship.

Susan's and Carol's case is now before the federal Court of Appeals for the 13th Circuit. The Court will be considering the following two questions: (1) whether Section 411 is constitutional under Lawrence, and (2) whether the right to marry is a fundamental right, protected by the Fourteenth Amendment, that must be extended to all persons regardless of sexual orientation. You are an attorney in Declaration, and you have been asked to present your argument before the Court of Appeals. You are a moral free agent, and you may decide this matter however you choose provided your argument relies upon the Lawrence decision.