

**MORE BANG FOR THE BUCK:
AND THE INTIMATE-SEX-FOR-MONEY
LICENSE**

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eyeballs pushed out of their sockets,¹¹ conjoined twins, the shockingly crippled, and horrifically facially disfigured are but a sample of those with egregiously unsettling, immutable characteristics that conceivably militate against achieving intimate sex, particularly in light of current state criminal schemes. They should consider petitioning the court for declaratory judgment and injunctive relief in order to ply and tender funds to open-minded, willing intimate sex partners.

This Note proposes to distill the essence of *Lawrence v. Texas* down to (and thus provide a remedy for) one extraordinary subset of people those

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in several counties in Nevada.⁵³

⁵⁴ thereby prohibiting in one fell swoop an immense range of commercial, sex activities. Prostitution laws, in addition to being a relatively modern invention,⁵⁵ have also been accused of being liberty limiting, paternalistic, illogical, and morally based.⁵⁶

Inexorably, these laws and the conceivably innumerable dating hardships encountered by many of the radically deformed, disfigured, or disabled conspire to create a Maslowian wasteland a palpably, sexually deprived reality. In the end, masturbation cannot fulfill the need for love counties in Nevada.

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⁷⁵ (an issue we shall, indeed, return to). But, what does emerge, conceptually (and valuably for purposes of our discussion), is that the Constitution, under certain conditions,⁷⁶ . . . intimate

Whereas, unquestionably, much turns on whether the scope of the sex right is broad or narrow, no matter what, progeny challenges face a gauntlet of unpredictable hurdles due to aforementioned level of judicial review opacity,⁸⁵ slippery

would-be challenged *right* (yet another scope issue).⁸⁷ The touchstone in unpacking *Lawrence*, however, in all likelihood is rooted in a *Lawrence* redux identifying a plaintiff (or class) à la John Lawrence who is compelled to be intimately celibate due to an interposing state measure.⁸⁸ In other words, *Lawrence* becomes far less mysterious (and thus a would-be challenger finding refuge in its holding stands on much firmer ground) when viewed through the lens of *what it must minimally stand for rather than what it might maximally embrace*.

Lawrence

engage in incest, polygamy, consensual sadomasochism, etc.). But its floor the right not to be intimately celibate is, arguably, clear and comprehensible. Applying such a naked truth methodology to the plight of the shockingly disabled, deformed, and disfigured, brings us one step closer to assuaging their conceivable condition of intimate sex deprivation, via the court sanctioned intimate-sex-for-money license.

III. THE INTIMATE-SEX-FOR-MONEY LICENSE

A. *Fundamental Right*

are protected as part of a right to privacy under the Due Process Clause . . . the government may constitutionally restrict these decisions only if it has *more* than an ordinary run-of-the-⁸⁹ liberty right to engage in private and intimate, sexual conduct is arguably

85. See Lund & McGinnis, *supra* note 62. Compare Muth v. Frank, 412 F.3d 808, 817-18 . . . did not apply strict scrutiny in reviewing the sodomy statute at with -54 (11th Cir. 2004) (Barkett, J., dissenting) (holding that *Lawrence* recognized a fundamental, substantive due process right to sexual liberty), and *Lawrence* utilized an intermediate scrutiny balancing analysis).

86. Brett H. McDonnell, *Is Incest Next?*, 10 CARDOZO WOMEN S L.J. 337, 337 (2004).

87. See *Lawrence*, 539 U.S. at 572.

88. See *infra* Part III.

89. Cir. 2004) (Barkett, J., dissenting).

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or her limited, perceived social capital. administrator-vetted list of on-the-dating-market payees forms the basis for a licensing scheme featuring constitutional coitus for funds on a per visitation basis. Simply put, Plaintiff avails himself or herself of a remarkable truth; sexual activity between

Normative daters can and do release a largesse of social facets incrementally and still *stay in the game*; the intimate sex seeker, however, must front load his or her highly potent, but limited social capital in order to avoid *game over*. This prudent utilization of circumscribed,

Plaintiff thus seeks declaratory judgment and injunctive relief against the relevant state prostitution scheme as applied to his or her intimate-sex-for-money arrangement. Plaintiff does not seek to abolish prostitution laws, but desires requisite fundamental-right breathing room,¹²⁹ because he or she must date in reverse. Whereas daters at large can afford to save the best for last, the intimate sex seller stands and falls by first impressions. To make a long story short, *but for the tendering of funds for intimate sex in accord with a licensing rubric, plaintiff will be precluded from experiencing intimate sex.*

1. Love for Sale

But does not the notion of commercial sex militate against the idea of intimate sex, destroying the very right striven for?¹³⁰ Fundamentally,

source of freedom and equality for

ii. In Search of Two-Way Streets

Does *Lawrence* bilateralism? What if payees, in the manner of typical prostitutes, foresee never developing any romantic feelings for the cash- and sex-providing payor? Can unilateral sexual intimacy really exist? The intimate sex seeker stands on much firmer ground when his or her choice is rooted in payees who capacity for foreseeably tugging at the heartstrings.¹⁴² Sexual intimacy likely requires a plausible mutuality,¹⁴³ consistent with, as one expert put it,

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choice he or she now faces.¹⁵⁸ Furthermore, the intimate sex licensing scheme fosters a sense of community because blessing, engages in foreseeably far-reaching and fulfilling, funded reciprocal fornication rather than remain a social pariah and shattered victim of an often brutal, mating system.

b. Is the Right Substantially Infringed?

If the nature and scope of the right is fundamental, the state measure must substantially burden the aforementioned right to intimate sex before the state need justify its actions.¹⁵⁹ A logical corollary of this is that plaintiff may never accuse the state of causing a substantial burden if any quantum of this
¹⁶⁰ Plaintiff carries the burden on this issue too.¹⁶¹

means.¹⁶² The perturbingly, disabled, deformed, and disfigured plaintiffs considered in this Note differ radically from daters at large.¹⁶³ The general population can reasonably modify their preemptive dating criteria¹⁶⁴ their lifestyles, habits, or levels of dating-pickiness in the hope of better results,¹⁶⁵ and upon doing so, more often than not succeed. They, thus, have a hand in choosing to be intimately celibate or not due to a proverbial laundry list of must-haves, deal-breakers, and no-nos.¹⁶⁶ a right to intimate sex with a right to matches-everything-on-my-checklist (holding-out-for-butterflies) sex. Choices concerning how busy to be, or who to befriend,¹⁶⁷ or which dating coach or technique to use, shut or open the door on intimate lovemaking opportunities, and, thus, determine the presence

158. As discussed above, casual sex is arguably devoid of any possibility of longstanding intimacy, and, thus, remains generally illegal when purchased.

159. *See*

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or absence of conditions of intimacy celibacy (there is no point in blaming the state for what really amounts to acts of self-sabotage).

i. Sugar Dating

avail himself or herself of the already-legal and ubiquitous, sugar daddy (or mommy) dating model? In the Sugar

¹⁷²

of . . . (1) a sugar daddy, (2) a sugar baby, and (3) an allowance. A sugar daddy is . . . [a] . . . wealthy individual who is willing to pay . . . in exchange for the company of a younger . . . cohort . . . a sugar baby is . . . seeking . . .

¹⁷³

¹⁷⁴ In such arrangements, an

making the exchange of money more temporally proximate to the sexual

¹⁷⁵

¹⁷⁶

because the sugar baby has likely engaged in sexual activity as a business (and the sugar daddy has engaged in solicitation of the same prohibition).¹⁷⁷ Even if the money is exchanged on a monthly basis, the transaction typically

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additional investment in time, funds, or in going the distance, all in the name of *maybe* becomes onerous, futile, and unreasonable.

In contrast, the intimate-sex-for

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Under strict scrutiny, the state carries the burden on whether the means they employ are

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review, the tier of scrutiny that the Court decides to apply does not predetermine the outcome of the case; with intermediate scrutiny, sometimes the state wins, a²¹⁴

Preliminarily and undeniably, if prostitution laws serve compelling state interests,²¹⁵ they certainly serve important government interests too. Furthermore, under the more forgiving tailoring of intermediate scrutiny, the state
-
establishing laws.²¹⁶

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the abstract will not cut it.²²⁵ Payor and payees, as described, do not cause, nor are they the target of, any palpable or detectable harm.

IV. CONCLUSION

In conclusion, *Lawrence* right to sexual autonomy is relatively feckless and denuded of remedial substance if its scope fails to mitigate the plight of individuals who due to interposing state measures face à la *Lawrence* and *Garner* a state of penetrative, compelled intimacy celibacy because of²²⁶ A drastically disfigured, deformed, or disabled person who is authentically, biologically attracted to another, and in possession of no reasonable, alternative dating pathway, should petition the court as an intimate sex seeker. A carefully crafted court-