

SUPREME COURT OF LOUISIANA

No. 99-KA-0606

STATE OF LOUISIANA

Versus

MITCHELL SMITH, ET AL

C/W

No. 99-KA-2015

STATE OF LOUISIANA

Versus

LISA M. GARRETT

C/W

No. 99-KA-2019

STATE OF LOUISIANA

Versus

MELANIE VARNADO

C/W

No. 99-KA-2094

STATE OF LOUISIANA

Versus

KELLY A. BARON

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS**

JOHNSON, Justice, concurring.

I agree with the result reached by the majority but for different reasons. We granted writ of certiorari to determine whether Article I, Section V of the Louisiana Constitution prohibits *non-commercial* sexual acts performed by *consenting* adults in *private*. In my view, none of the cases presented herein advances a right to privacy challenge to LSA-R.S. 14:89(A)(1) and LSA-R.S. 14:89(A)(2) because none

of the defendants were prosecuted for *private, non-commercial* sexual acts between *consenting* adults.

In my view, defendant, Smith was convicted of committing a nonconsensual act against a female victim. The other defendants were charged with soliciting sex for compensation, a commercial sexual act. I believe that we have yet to be squarely presented with the issue of whether our state constitution protects all private, non-commercial sexual conduct between consenting adults.