

Table 14-2 The Court and Constitutional Gay Rights Cases

Case	Outcome
<i>Bowers v. Hardwick</i> (1986). Georgia law that prohibited oral or anal sex, challenged on the grounds that it violated the fundamental right to privacy embraced by the Fourteenth Amendment's due process clause.	5 (Burger, O'Connor, Powell, Rehnquist, White) to 4 (Blackmun, Brennan, Marshall, Stevens) to uphold the law. The majority held that consensual homosexual sodomy is not a fundamental right under the Fourteenth Amendment due process clause. Applying rational basis, the majority found that the state has a legitimate interest in morality.
<i>Romer v. Evans</i> (1996). Amendment to the Colorado state constitution that limited cities from enacting antidiscrimination ordinances based on sexual orientation, challenged as violating the Fourteenth Amendment's equal protection clause.	6 (Breyer, Ginsburg, Kennedy , O'Connor, Souter, Stevens) to 3 (Rehnquist, Scalia, Thomas) to invalidate the amendment. The majority, applying rational basis scrutiny, found no legitimate justification for singling out sexual orientation for political disability and so inferred animus as a motivating factor.
<i>Lawrence v. Texas</i> (2003). Texas law that made it a crime for two persons of the same sex to engage in sodomy, challenged as a violation of the due process and equal protection clauses.	6 (Breyer, Ginsburg, Kennedy , O'Connor, Souter, Stevens) to 3 (Rehnquist, Scalia, Thomas) to invalidate the law. In overruling <i>Bowers</i> , the majority found that the state's moral justification for the law was insufficient to overcome the individual's protected liberty interest in privacy and dignity.
<i>Hollingsworth v. Perry</i> (2013). Amendment to the California constitution banning same-sex marriages, challenged as a violation of due process and equal protection clauses.	5 (Breyer, Ginsburg, Kagan, Roberts , Scalia) to 4 (Alito, Kennedy, Sotomayor, Thomas) to vacate and remand. The Court dismissed the case on standing to sue grounds. Because the lower court had invalidated the amendment, the impact of the decision was to allow same-sex marriages to continue in California.
<i>United States v. Windsor</i> (2013). Federal Defense of Marriage Act (DOMA), which defined marriage as a legally recognized relationship between one man and one woman for purposes of the more than one thousand federal laws that address marital or spousal status, challenged as a violation of the Fifth Amendment due process clause.	5 (Breyer, Ginsburg, Kagan, Kennedy , Sotomayor) to 4 (Alito, Roberts, Scalia, Thomas) to strike the law because the government had not supported it with any legitimate reason.
<i>Obergefell v. Hodges</i> (2015). Ohio's ban on same-sex marriage, challenged as violating the equal protection and due process clauses of the Fourteenth Amendment.	5 (Breyer, Ginsburg, Kagan, Kennedy , Sotomayor) to 4 (Alito, Roberts, Scalia, Thomas) to invalidate the law, primarily as a denial of the dignity, personal choice, and autonomy interests protected by the due process clause.
<i>Pavan v. Smith</i> (2017). Arkansas law mandating that when a married woman gives birth, her husband must be listed as the second parent on the child's birth certificate (even if he's not the child's genetic parent because the child was conceived by artificial insemination), interpreted by the state supreme court not to apply to married same-sex couples and challenged as a violation of the Fourteenth Amendment.	Per curiam. 6 (Breyer, Ginsburg, Kagan, Kennedy, Sotomayor, Roberts) to 3 (Alito, Gorsuch, Thomas) to reverse the state supreme court "because [the] differential treatment infringes <i>Obergefell</i> 's commitment to provide same-sex couples 'the constellation of benefits that the States have linked to marriage.'"

Note: The majority opinion writer is in boldface. See also Chapter 6 for free expression cases related to gay rights: *Boy Scouts of America v. Dale* and *303 Creative LLC v. Elenis* (2023).