

Chronology of Laws and Legal Cases Affecting LGBTQ Rights

This chronology is a part of DHR's Virginia LGBTQ Heritage project, which is a companion to our New Dominion Virginia Initiative (<http://www.dhr.virginia.gov/NewDominion/index.htm>). The chronology provides highlights of laws that affected LGBTQ rights under English law and during Virginia's colonial era, but focuses on the 20th and 21st century laws and legal decisions that have shaped LGBTQ rights up to 2015, including changing concepts of permissible marital relationships. Laws and legal decisions that affected LGBTQ rights nationally are included, as well as those specific to Virginia. This document is a work in progress and will be periodically updated as additional information becomes available. Please report broken links to lena.mcdonald@dhr.virginia.gov.

1290: First mention in English common law of a punishment for homosexuality

1300: Treatise in England prescribed that sodomites should be burned alive

1533: Buggery Act introduced by Henry VIII brought sodomy within the scope of statute law for the first time and made it punishable by hanging.

1691: *Virginia* enacts a law stating that if a white person (bond or free) marries a person of color (Negro, mulatto, or Indian), the couple will be banished from the colony. Banishment means almost certain death in the woods.

1924: Racial Integrity Act outlawed interracial marriage in *Virginia*. Ruled unconstitutional in 1967 by the U.S. Supreme Court (*Loving v. Virginia*).

1948: In *Perez v. Sharp*, the California Supreme Court becomes the first state high court to declare a ban on interracial marriage to be unconstitutional. In 1967, the U.S. Supreme Court, in *Loving v. Virginia*, overturns all state bans on interracial marriage, declaring that the "freedom to marry" belongs to all Americans.

1952: Immigration and Nationality Act of 1952 identifies homosexuality as reflective of a "psychopathic personality" and grounds for deportation. In 1967, the U.S. Supreme Court ruling *Boutellier v. Immigration and Naturalization Service* upholds this policy.

1957: The U.S. Supreme Court ruling, *Roth v. United States*, finds that the First Amendment protects literature, but not obscenity. It is soon followed by *People v. Ferlinghetti*, in which San Francisco Municipal Court Judge Clayton W. Horn finds that, rather than being obscene, Allen Ginsberg's work has "redeeming social importance," and therefore is protected by the First Amendment.

1958: In the landmark case *One, Inc. v. Olesen*, the U.S. Supreme Court rules in favor of the First Amendment rights of the magazine *One: The Homosexual Magazine*, which is affiliated with the Mattachine Society. The U.S. Postal Service had banned distribution of publications on homosexuality through the mail as "obscenity," and both it and the FBI declared *One* to be obscene material. This decision marks the first time the U.S. Supreme Court rules in favor of homosexuals.

1961: Illinois completes a comprehensive criminal code revision that makes it the first state in the U.S. to repeal its law against sodomy. Homosexual acts between two consenting adults in private are no longer illegal. However the revised code made it a crime to commit a “lewd fondling or caress of the body of another person of the same sex” in a public place.

1967: The U.S. Supreme Court decision in *Loving v. Virginia* strikes down Virginia’s law against interracial marriage and puts an end to anti-miscegenation laws in the U.S.

1974: The Gay Alliance of Students group forms at **Virginia** Commonwealth University (VCU) in Richmond. It asks for space and support from the school and is denied, then files suit against the school in *Gay Alliance of Students v. Matthews, et al* (the board of directors of VCU). The initial ruling favors the school and the decision is appealed.

1975: In **Richmond, Virginia**, a lawsuit, *Doe v. Commonwealth’s Attorney of the City of Richmond*, unsuccessfully challenges sodomy laws in the state of **Virginia**. These laws are still on the books, although have not been enforced since 1993 when the US Supreme Court deemed such laws unconstitutional.

1976: In **Richmond, Virginia**, on appeal, in the case of *Gay Alliance of Students v. Matthews, et al.*, the Sixth Federal Circuit Court rules that gay student groups must be allowed the same access to space and funding as other campus groups.

1986: In a 5-4 vote, the U.S. Supreme Court ruling in *Bowers v. Hardwick* upholds the sodomy laws of the state of Georgia and thus, the right of each state to criminalize private same-sex acts, which means that government continues to have the right to arrest consenting adults having sex in the privacy of their own homes in the 24 states with sodomy laws still on the books. Anti-gay groups cheer the decision. Four years later, Justice Lewis Powell, the swing vote, tells New York University law students, “I probably made a mistake in that one.”

1993-1995: In *Bottoms v. Bottoms*, the landmark 1993 ruling by a **Virginia** judge that denied a lesbian custody of her biological son because her sexual orientation made her “unfit” as a parent, focused national media attention on same-sex-headed families. Kay Bottoms, mother of Sharon Bottoms, sought custody of Sharon Bottoms’s son because she thought her daughter was an unfit mother due to her sexual orientation. Ultimately the Virginia Supreme Court ruled in favor of Kay Bottoms. The court battle was a crucial early test of legal equality and gay parents’ rights. Media attention around the case, though, helped move courts and advocates on lesbian custody issues.

1996: In May, the U. S. Supreme Court rules 6-3 in the case of *Romer v. Evans* that Colorado’s 2nd amendment, which denies gays and lesbians protections against discrimination, is unconstitutional. The ruling puts an end to 20 years of state and local ballot initiatives aimed at stripping gays of anti-discrimination protections, leaving same-sex marriage as the main issue for anti-gay organizers.

2003: In June, striking down a Texas law banning private, consensual sex between same-sex adults, the U. S. Supreme Court rules in *Lawrence et al. v. Texas* that sodomy laws in the U.S. are unconstitutional based on infringement of citizens' right to privacy in their home. Sodomy laws historically have been one of the many laws that criminalize non-reproductive, non-commercial, consensual sex between adults in private. The ruling overturns the 1986 case *Bowers v. Hardwick*, in which the Court upheld a similar law. The Court states that gay people are entitled to "an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct." Dissenting Justice Antonin Scalia complains that "the court has largely signed onto the so-called homosexual agenda." Senator Rick Santorum (R-Penn) compares same-sex marriage to polygamy, incest, and adultery when commenting on the sodomy case being heard by the U.S. Supreme Court.

2003: In November, the Massachusetts Supreme Judicial Court rules 4-3 in *Goodridge v. Massachusetts Department of Public Health* that there is no rational basis under the law to deny a marriage license to same-sex couples and that it denies dignity and equality of all individuals.

2004: On May 17, Massachusetts marriage licenses begin to be issued to same-sex couples, making Massachusetts the first state to legalize gay marriage. Unitarian Universalist Association President the Reverend William G. Sinkford legally marries Hillary and Julie Goodridge, lead plaintiffs in *Goodridge v. Massachusetts Department of Public Health* in Eliot Hall at the Unitarian Universalist Association.

2005: The *Virginia State Supreme Court* decision *Martin v. Zihler* strikes down Virginia's anti-fornication statute.

2010: The U. S. Supreme Court rules in *Christian Legal Society v. Martinez* that public universities may refuse to recognize student organizations with discriminatory membership policies.

2010: District Court Chief Judge Vaughn R. Walker rules in *Perry v. Schwarzenegger* that California's Proposition 8, which outlaws same-gender marriage, violates the U.S. Constitution's guarantees of equal protection and due process.

2010: The U. S. Supreme Court agrees to hear *Windsor v. United States*, a lawsuit filed by Edith Windsor that challenges the constitutionality of the federal Defense of Marriage Act (DOMA).

2012: The U.S. Ninth Circuit Court of Appeals upholds Judge Vaughn Walker's previous ruling regarding *Perry v. Brown* (formerly *Perry v. Schwarzenegger*), which found that California's Proposition 8 was unconstitutional. Proponents of Proposition 8 appeal the case to the U.S. Supreme Court.

2013: In June, the U.S. Supreme Court rules in *Windsor v. United States* strikes down the section of the Defense of Marriage Act that denies federal benefits to legally married same-gender couples, and rules that gay couples are entitled to federal benefits such as Social Security survivor benefits and family leave. Also in June, the Court dismisses *Hollingsworth v. Perry* (previously *Perry v. Brown*) declaring that the proponents of Proposition 8 lack legal standing to

appeal the U.S. Ninth Circuit Court of Appeals 2012 ruling that California's Proposition 8 (a voter-approved referendum that outlawed same-sex marriage) is unconstitutional. Subsequently, between mid-2013 and early 2015, 65 state and federal court rulings uphold the right of same-gender couples to marry.

2013: In *Virginia*, Timothy Bostic and Tony London, and Carol Schall and Mary Townley, with the American Foundation for Equal Rights, file a lawsuit against Virginia for violating the Fourteenth amendment by not permitting same-gender marriage; this case becomes known as *Bostic v. Schaefer*. A class-action suit follows in August, representing 14,000 same-gender couples in the Commonwealth, but the case is stayed pending the ruling in the *Bostic* case.

2014: In January, *Virginia* Attorney General Mark Herring announces that he will not defend the Commonwealth's marriage laws that prohibit same-gender marriage, and that he believes the laws to be unconstitutional. In February, in the case *Bostic v. Schaefer*, U.S. District Court Judge Arenda L. Wright Allen rules that Virginia's ban on same-gender marriage is unconstitutional. In July, on appeal, the 4th Circuit Court of Appeals upholds Allen's decision. In August, Attorney General Mark Herring requests that the U.S. Supreme Court review the ruling, while the Prince William County Clerk files a motion seeking to stay the Court of Appeals ruling. On October 6, the U.S. Supreme Court denies review of *Bostic v. Schaefer*. The decision to deny review means that same-gender couples in Virginia can get married effective immediately, and Virginia begins issuing marriage licenses that day.

2014: After the US 4th Circuit Court of Appeals decision *MacDonald v. Moose* strikes down *Virginia's* "Crimes against Nature" statute, the law is repealed on March 7.

2015: In June with the *Obergefell v. Hodges* decision, the U. S. Supreme Court recognizes a Constitutional right to same sex marriage, making such unions legal nationwide.

State Laws Still "On the Books" that Have Affected LGBTQ Rights in Virginia

(also see The Equality Advocate, "Virginia LGBT Laws," William & Mary Law School's LGBT Equality Alliance, at <http://equalityadvocate.blogs.wm.edu/virginia-laws/> and "Virginia Laws," William & Mary Law School of Law, <http://wmpeople.wm.edu/index.php/site/page/lglawm/virginialaws>)

Virginia's anti-adultery statute, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-365>. Still on the books.

Virginia law prohibiting cohabitation is repealed, <http://lis.virginia.gov/cgi-bin/legp604.exe?131+sum+SB969>

Virginia's prohibition on "obscene items," <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-374>. Still on the books.

Virginia law prohibiting "profane" and "indecent" language over public airwaves, <http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+18.2-427> . Still on the books.

Virginia law prohibiting sex among minors, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-371>. Still on the books.

Virginia law regarding adoption by LGBT individuals, <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0715>. Enacted 2012. Still on the books.

Virginia's anti-fornication statute. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-344> Struck down by State Supreme Court in 2005 (*Martin v. Zihlerl*) but never repealed. Still on the books.

Virginia's law defining marriage, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+20-45.2>. 2006 – Virginia's constitution amended to prohibit same-sex marriage. Virginia's prohibition on gay marriage was ruled unconstitutional on 7/28/2014 by the US 4th Circuit Court of Appeals (*Bostic v. Schaefer*). Still on the books.

Virginia's "Crimes against Nature" statute, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-361>. Repealed 3/7/2014 after US 4th Circuit Court of Appeals decision *MacDonald v. Moose* and after U.S. Supreme Court declined to take up the case.

SOURCES

Anderson-Minshall, Diane. "The Court Cases that Changed Our World." *The Advocate*. August 22, 2012. <http://www.advocate.com/arts-entertainment/advocate-45/2012/08/22/court-cases-changed-our-world>

Bostic v. Schaefer – lawsuit that led to overturning Virginia's law against same-sex marriage, <http://www.freedomtomarry.org/states/entry/c/virginia>

Landmark cases identified by Lambda Legal, <http://www.lambdalegal.org/in-court/cases/landmark>

Lawrence v. Texas - <http://www.lambdalegal.org/in-court/cases/lawrence-v-texas> Struck down Texas's anti-sodomy law; used to strike down similar laws in other states.

Painter, George. "Virginia." Chapter in *The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States*. Published online at <http://www.glapn.org/sodomylaws/sensibilities/virginia.htm>