SIGNIFICANT GLBT CASES

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Amendment XIV. (1868)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

1. *Loving v. Virginia*, 87 S.Ct. 1817 (1967). United States Supreme Court unanimously held Virginia law banning interracial marriage unconstitutional because racial classifications violate the central meaning of he Equal Protection Clause and because it violated the Due Process Clause (i.e., privacy and liberty) of the Fourteenth Amendment. Marriage was declared by the Court to be one of the "basic civil rights of man."

2. *Roe v. Wade*, 410 U.S. 113 (1973). United States Supreme Court held a Texas criminal abortion statute unconstitutional under the Due Process Clause (i.e., privacy and liberty) of the Fourteenth Amendment. Supreme Court recognized a right of personal privacy and a zone of privacy.

3. *Bowers v. Hardwick*, 478 U.S. 186 (1986). United States Supreme Court held a Georgia criminal sodomy statute (applicable to sodomy acts of all people) constitutional. The Supreme Court expressly held that there is no due process (i.e., privacy or liberty) constitutional right for homosexuals to engage in sodomy under the United States Constitution.

4. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). United States Supreme Court held that "sexual stereotyping" may constitute unlawful sex discrimination in employment setting covered by Title VII. When a plaintiff in a Title VII case proves that her gender played a motivating part in an employment decision, the defendant may avoid a finding of liability only by providing by a preponderance of the evidence that it would have made the same decision even if it had not taken the plaintiff's gender into account."

5. *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995). United States Supreme Court unanimously held that a Massachusetts law that requires private citizens who organize a parade to include among the marchers a [GLBT] group imparting a message the organizers do not wish to convey is unconstitutional under the First Amendment to the Constitution.

6. *Romer v. Evans*, 517 U.S. 620 (1996). United States Supreme Court held a Colorado constitutional amendment prohibiting all legislative, executive, and judicial action at any level of state or local government designed to protect homosexual persons from discrimination as unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment. "The desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." A state cannot so deem a class of persons a stranger to its laws."

7. *Littleton v. Prange*, 9 S.W.2d 223 (Tex. App. – San Antonio 1999). Texas appellate court held that no matter how a transsexual may change his or her body (either through hormonal treatment or surgery) the sex of a person at birth based on chromosomes is the legal sex of the person forever. As a male, her marriage to another male is void. There being no legal marriage, Ms. Littleton cannot maintain a medical malpractice suit as a "spouse." Case dismissed.

8. *Boy Scouts of America v. James Dale*, 530 U.S. 640 (2000). United States Supreme Court held a New Jersey law unconstitutional which required the inclusion of unwanted (GLBT) persons in a group (the Boy Scouts) to infringe on the groups freedom of *expressive association* under the First Amendment of the Constitution. The First Amendment right of freedom of association includes a freedom not to associate with persons whom you do not wish to be included if that person's presence affects in a significant way the group's ability to advocate public or private viewpoints.

9. *Lawrence v. Texas*, 123 S.Ct. 2472 (2003). United States Supreme Court held Texas law banning homosexual conduct unconstitutional and prior Supreme Court decision of *Bowers v. Hardwick* reversed. The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government. "It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter." *Casey, supra*, at 847. United States Supreme Court (in a separate case) also reversed the conviction of Matthew Limon in a Kansas case for underage sexual conduct.

10. *Goodridge v. Department of Public Health and Commissioner of Public Health*, 798 N.E2d 941 (2003). Supreme Court of Massachusetts held that refusal to issue same-sex couples marriage licenses declared unconstitutional under Massachusetts constitution. Recognizing the right of an individual to marry a person of the same sex will not diminish the validity or

dignity of oppose-sex marriage, any more than recognizing the right of an individual to marry a person of a different race devalues the marriage of a person who marries someone of her own race. If anything, extending civil marriage to same-sex couples reinforces the importance of marriage to individuals and communities. That same-sex couples are willing to embrace marriage's solemn obligations of exclusivity, mutual support, and commitment to one another is a testament to the enduring place of marriage in our laws and in the human spirit.

11. *Goodridge* case follow-up, 802 N.E.2d 565 (2004). Supreme Court of Massachusetts held civil union bill with same benefits, protections, rights, and responsibilities of marriage unconstitutional as not equal to "marriage". Same-sex marriage licenses began to be issued on May 17, 2004. The bill's absolute prohibition of the use of the word "marriage" by "spouses" who are the same sex is more than semantic. The dissimilitude between the terms "civil marriage" and "civil union" is not innocuous; it is a considered choice of language that reflects a demonstrable assigning of same-sex, largely homosexual couples, to second-class status.

12. *Lofton v. Secretary of the Department of Children and Family Services*, 2004 WL 161275 (11th Cir. Fla. 2004). Eleventh Circuit Court of Appeals upholds as constitutional a Florida statute which prevents adoption by "practicing homosexuals" over an equal protection and due process challenge in light of the *Lawrence v. Texas* decision. There is no "fundamental right" to be adopted, or to adopt children. Court held that *Lawrence v. Texas* did not identify a new fundamental right to private sexual intimacy. Florida's rational basis argument: disallowing adoption into homosexual households, which are necessarily motherless or fatherless and lack the stability that comes with marriage, is a rational means of furthering Florida's interest in promoting adoption by marital families.

13. *State of Kansas v. Matthew R. Limon*, 122 P.3d 22 (2005). Kansas Supreme Court held a Kansas statute which punished sodomy between adults and children of the opposite sex less severely than sodomy between adults and children of the same sex unconstitutional as a violation of the Equal Protection provisions of the federal and state constitutions (based on *Lawrence v. Texas* decision). "Moral disapproval of a group cannot be a legitimate governmental interest."

14. *Donald Rumsfeld, et al. v. Forum for Academic and Institutional Rights, Inc.*, 2006 WL 521237 (2006). United States Supreme Court held (by unanimous decision) that the Solomon amendment (which requires campus access for military recruiters) is constitutional under the Constitution's grant to Congress of the power to provide for the common defense and to raise, support, provide, and maintain an army and navy. The Supreme Court also found that the Solomon amendment does not violate the First Amendment because the Solomon amendment regulates conduct, not speech:

> The Solomon Amendment neither limits what law schools may say nor requires them to say anything. Law schools remain free under the statute to express whatever views they may have on the military's congressionally mandated employment policy, all the while retaining eligibility for federal funds. See Tr. Of Oral Arg. 25 (Solicitor-General acknowledging that law schools "could put signs on the bulletin board next to the door, they could engage in speech, they could help organize student protests"). As a general matter, the Solomon Amendment regulates conduct, not speech. It affects what law schools must do – afford equal access to military recruiters – not what they may or may not say.

The Court also held that the Solomon Amendment does not violate the law school's associational expressive rights (like the Boy Scout case) because the recruiters are not part of the law schools. (The three law schools currently barring military recruiters are New York Law School, William Mitchell College of Law in St. Paul, and Vermont Law School).