9 Landmark Supreme Court Cases That Shaped LGBTQ Rights in America

By Tara Law
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The United States has witnessed a remarkable shift in LGBTQ rights and visibility in the 50 years since the Stonewall uprising — and in just the last few years, LGBTQ people have won the right to marry, have hit a record high in representation on television and have seen the first openly gay major presidential candidate begin his campaign.

But the path of LGBTQ rights in America has not been a simple one. And just as advocates fought their battle American culture, they also did so in the courts, including the U.S. Supreme Court. Over the last half a century, the court first denied and then affirmed that LGBTQ people have the right to consensual sex, and then the right to marry whom they choose.

This fall, the Supreme Court will have another opportunity to make another statement about LGBTQ rights. In two cases heard Tuesday, the Court is set to consider whether Title VII of the Civil Rights Act of 1964 — a federal civil rights law that blocks discrimination in the workplace on the basis of sex — covers LGBTQ people.

The first case will consider the dismissals of a county government employee and a skydiving instructor, who were fired for being gay. The second case will consider the case of a funeral home director, who was fired after coming out as transgender. The cases come as the court appears to be moving in a conservative direction, following the appointments in 2017 and 2018 of Justices Neil Gorsuch and Brett Kavanaugh, respectively. The Trump administration has already made clear where it stands in these cases; the Department of Justice argued in a pair of amicus briefs that discrimination based on gender identity or sexual orientation should not be included under Title VII.

As of Oct. 8, the fate of the cases appeared to be uncertain. After hearing arguments for the cases, Gorsuch said that there are strong arguments supporting the position of LGBTQ workers, but said that he was concerned about the “massive social upheaval” that could following ruling in their favor.

Regardless of how the justices rule in the cases, the court’s decisions would not be the first time that the Supreme Court made major decisions impacting LGBTQ people’s civil rights in the United States. Below are nine of the most important cases.

**One, Inc. v. Olesen (1958)**

One of the first Supreme Court cases to consider LGBTQ rights concerned freedom of speech.

In 1953, a publisher associated with the Los Angeles chapter of the Mattachine Society, one of the country’s first “homophile” groups, released something unique for its time: ONE: The Homosexual Magazine. The magazine, which is considered by One Archives Foundation to be America’s first
widely-distributed magazine for gay readers, included articles, editorials, short stories and other content. Not long after publication began, its August and October editions were seized by the Los Angeles postal authorities. Authorities argued that the publication violated obscenity laws.

In its decision, the Supreme Court tossed out a lower court’s ruling, and established that material aimed at a gay audience was not inherently obscene. The decision validated that people had the right to publish LGBTQ media.

**Baker v. Nelson (1972)**

The Supreme Court considered the issue of marriage equality for the first time in 1972. The case was sparked when a young Minneapolis couple, Richard John Baker and James Michael McConnell, wanted to get married. The couple was reportedly so determined that Baker enrolled in law school to figure out a way how the two could legally wed, according to the New York Times. However, the couple’s effort seemed to fail when the Supreme Court decided to dismiss the case “for want of a substantial federal question.” The case did not end up changing much for people in Baker and McConnell’s situation.

Ultimately, the couple got married anyway by obtaining a marriage license in a different Minnesota county in 1971. Baker changed his name to Pat Lyn McConnell to obtain the certificate.

The pastor who married them, Roger Lynn, told the Times in 2015 that he considers them to be “one of my more successful marriages” because they were still happy and love each other. A Minnesota judge ruled that the couple’s marriage is valid in 2018.

**Bowers v. Hardwick (1986)**

The LGBTQ rights movement was dealt a major blow when the court decided to uphold a Georgia sodomy law in 1986.

The subject of the case, Michael Hardwick, had been caught by a Georgia police officer in 1982 having oral sex with another man. The Supreme Court held in a 5–4 ruling, with an opinion by Justice Byron White, that the 14th Amendment’s promise of due process doesn’t prevent states from criminalizing private, consensual sex between people of the same sex. “Against a background in which many states have criminalized sodomy and still do,” White said in the opinion, “to claim that a right to engage in such conduct is ‘deeply rooted in this Nation’s history and tradition’ or ‘implicit in the concept of ordered liberty’ is, at best, facetious.”

Karen Loewy, senior counsel Lambda Legal, which fights for LGBTQ legal rights, tells TIME that Court made a special effort to make clear that the case applied to LGBTQ people, despite the fact that the law didn’t refer to the genders of the people involved.
“The court went out of its way to make clear that gay people could be criminalized under these provisions, and there was nothing wrong with that. The court actually turned it into an inquiry about same-sex intimacy where the statute wasn’t even that specific,” Loewy said.

“It really labeled LGBTQ people as criminals in every sense. Employers would fire people and say, well… it has nothing to do with who you are. It has to do with the fact that you’re a criminal.”

Robin Maril, associate legal director of the Human Rights Campaign, notes that the conversation about LGBTQ people during that period was shaped by the AIDS epidemic. Many people who feared the then-mysterious disease were “hyper-focused” on the idea that gay men were promiscuous and saw HIV-positive people as “sort of getting what they deserved,” says Maril. “I think AIDs brought out the worst in America.”

Hardwick died from complications from AIDS in 1991, and one of his attorneys, Kathleen Wilde said that he had been “very bitter” about the case’s outcome, according to the New York Times.

**Romer v. Evans (1996)**

In this decision, the Supreme Court ruled that laws couldn’t single out LGBTQ people to take away their rights.

The case revolved around an amendment to a Colorado law, which banned cities from passing anti-discrimination laws that would protect gay and bisexual people. In a 6-3 decision, Court ruled that the law didn’t adhere to the 14th Amendment’s equal protection clause, because of how it singled out a certain group. “Even if, as the state contends, homosexuals can find protection in laws and policies of general application,” Justice Anthony Kennedy said in the majority opinion, “[the Colorado law] goes well beyond merely depriving them of special rights. It imposes a broad disability upon those persons alone, forbidding them, but no others, to seek specific legal protection.”

As Loewy explains, “In Romer, the Supreme Court recognized for the first time that carving LGBTQ people out of protections that everybody else could have access to violated equal protection.”

**Boy Scouts of America v. Dale (1996)**

The same year the court found that laws couldn’t single out LGBTQ people, the Supreme Court also considered whether a private organization could single them out with specific rules — and found in favor of that organization.

In 1990, the Boy Scouts of America decided to expel James Dale, an assistant scoutmaster and Eagle Scout, after he was identified in a newspaper as a leader of Rutgers University’s Lesbian/Gay Alliance. The New Jersey Supreme Court initially found for Dale on the grounds that the Scouts had violated the state’s anti-discrimination law, but that decision was overruled in a 5-4 decision by the Supreme Court. The Court found that forcing the Scouts to readmit Dale would violate their First Amendment right to freedom of association.
“The Boy Scouts asserts that homosexual conduct is inconsistent with the values embodied in the Scout Oath and Law, particularly those represented by the terms ‘morally straight’ and ‘clean,’ and that the organization does not want to promote homosexual conduct as a legitimate form of behavior. The Court gives deference to the Boy Scouts’ assertions regarding the nature of its expression,” Justice William Rehnquist said in the Court’s opinion.

“It wasn’t until 2013 that the group decided to end its ban on gay children as members, but still continued its ban on gay adult leaders,” Dale wrote in a 2015 opinion piece in TIME. “This initiative was wrong in many ways: It was great that they weren’t excluding young members, but it was wrong to tell someone that you can be gay when you’re a child, but you’re immoral as an adult. That’s a horrifyingly destructive and damaging thing to say to anyone, especially a young person.”

**Lawrence v. Texas (2003)**

The Court ultimately eliminated sodomy laws in 2003, overruling *Bowers v. Hardwick* with a vote of 6-3.

Justice Kennedy delivered the opinion, saying that the due process clause of the fourteenth amendment gave the petitioners “the full right to engage in private conduct without government intervention… The Texas statute furthers no legitimate state interest which can justify its intrusion into the individual’s personal and private life.”

Loewy notes that her organization fought for this decision, and helped to popularize the idea that “public ideas about morality cannot justify infringing people’s constitutional rights.” Loewy says that this was an essential case because “the court really recognized that LGBTQ people are entitled to constitutional protections for intimate conduct. For private, consensual, intimate conduct.”

**United States v. Windsor (2013)**

This case was one of the major precursors to marriage equality. The Court decided to eliminate the portion of the *Defense of Marriage Act* (DOMA) of 1996 that defined marriage as a “legal union between one man and one woman as husband and wife.”

The case considered the situation of Edith Windsor and Thea Spyer, who were married in Canada before moving to New York, a state that recognized their marriage. After Spyer passed away, Windsor’s attempted to claim a tax exemption for surviving spouses — only to be blocked by DOMA. In a 5-4 vote, Supreme Court ruled that DOMA violates due process and equal protection principles, and ordered the United States to refund Windsor’s taxes.

“DOMA’s principal effect is to identify a subset of state-sanctioned marriages and make them unequal. The principal purpose is to impose inequality, not for other reasons like governmental efficiency,” said Justice Kennedy in the opinion.

**Obergefell v Hodges (2015)**
A group of 14 same-sex couples and two men whose partners were deceased joined together and won one of the LGBTQ rights movement’s biggest victories: marriage.

In a 5-4 vote, the Supreme Court found for the petitioners, who argued that state officials violated the 14th amendment’s equal protection clause by prohibiting them from marrying or not recognizing marriages performed in other states.

“It is demeaning to lock same-sex couples out of a central institution of the Nation’s society, for they too may aspire to the transcendent purposes of marriage,” Justice Kennedy said in the Court’s opinion.

The court also extended them the benefits guaranteed to opposite-sex married couples. Maril argues that while she personally values the emotional aspect of matrimony, getting married in the United States is considered to be a legal status.

“At the end of the day, it’s social security benefits, it’s survivor benefits. It’s healthcare. It’s super unromantic,” Maril says.

Loewy argues that this decision also had a profound cultural impact, because it gave LGBTQ people a “common language” with straight people.

**Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission (2018)**

Although by 2018 LGBTQ people could marry, the Supreme Court found that a baker was not required to make wedding cakes for same-sex marriages.

In a 7-2 decision, the Supreme Court found for Colorado baker Jack Phillips, who had refused to make a gay couple a wedding cake on religious grounds. Phillips argued that baking cakes requires his “artistic skills” and being forced to bake the cake would have infringed upon his freedom of speech and his rights to practice his religion.

However, the Court’s argument in favor of Phillips hinged upon the state’s “impermissible hostility toward his sincere religious beliefs.,” noting that a commissioner compared Phillips’ religious beliefs to defending slavery or the Holocaust.

“The government cannot pass judgment upon or presuppose the illegitimacy of religious beliefs and practices. The state’s interest could have been weighed against Phillips’ sincere religious objections in a way consistent with the requisite religious neutrality,” Justice Kennedy said in the opinion.