

# The Legal Fight for Gay Marriage

## *Goodridge v. Department of Public Health, Obergefell v. Hodges*

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In June 2003, the Supreme Court in *Lawrence v. Texas* struck down Texas's sodomy law, thereby decriminalizing consensual sexual activity between gay male adults nationwide. Five months later, the Massachusetts Supreme Judicial Court became the first state high court to declare denying gay couples the right to marry unlawful under its state constitution. For the gay community, the Massachusetts decision in *Goodridge v. Department of Public Health* came after more than three decades of fighting for legal recognition of what they considered a fundamental civil right.

The Court construed civil marriage as “the voluntary union of two persons as spouses, to the exclusion of all others,” which it called a “reformulation” that “furthers the aim of marriage to promote stable, exclusive relationships,” thereby advancing legitimate state interests. The Massachusetts court found support in *Lawrence*'s references to the Fourteenth Amendment, which precluded “government intrusion into the deeply personal realms of consensual adult expressions of intimacy.”

The Massachusetts court stayed its decision to give the legislature time to achieve a resolution. It also issued an advisory opinion rejecting a proposed compromise making gay civil unions lawful. Despite vigorous efforts, the legislature didn't put forward a legislative solution. At 12:01 A.M. on May 17, 2004, Cambridge City Hall opened to applicants for marriage licenses and issued them that morning to more than 260 couples, making Massachusetts the first state to legally solemnize gay marriage.

Critics lambasted the decision for containing “virtually no legal analysis” and for reflecting “judges' personal policy preferences.” Nevertheless, the ruling dramatically impacted the gay marriage debate, inspiring thousands of gay couples to apply for marriage licenses. But it also galvanized opponents to seek political relief through state constitutional amendments that limited marriage to the union of a man and a woman.

On the anniversaries of *Lawrence v. Texas* and *United States v. Windsor*, the latter of which required federal recognition of state-licensed same-sex marriages, the Supreme Court ruled in *Obergefell v. Hodges* that the right to marry is a “fundamental right inherent in the liberty of the person” and that the due process clause of the Fourteenth Amendment guarantees gay couples the right to marry.

**SEE ALSO** The First Ban on Gay Marriage (1973); The First Gay Marriage Laws (1989).

*In 2008, protesters in Sacramento voiced their objections to the passage of Proposition 8, which banned gay marriage in California with a referendum-based state constitutional amendment. A federal court later overturned the legislation.*





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