

Clause includes the right of two adults, “with full and mutual consent from each other, [to] engag[e] in sexual practices common to a homosexual lifestyle.”

Justices concurring: Kennedy, Stevens, Souter, Ginsburg, Breyer  
Justice concurring specially: O'Connor  
Justices dissenting: Scalia, Thomas, Rehnquist, C.J.

939. *Blakely v. Washington*, 542 U.S. 296 (2004).

Washington State’s sentencing law, which allows a judge to impose a sentence above the standard range if he finds “substantial and compelling reasons justifying an exceptional sentence,” is inconsistent with the Sixth Amendment right to trial by jury.

Justices concurring: Scalia, Stevens, Souter, Thomas, Ginsburg  
Justices dissenting: O'Connor, Breyer, Kennedy, Rehnquist, C.J.

940. *Granholm v. Heald*, 544 U.S. 460 (2005).

Michigan and New York laws that allow in-state wineries to sell wine directly to consumers but prohibit or discourage out-of-state wineries from doing so discriminate against interstate commerce in violation of the Commerce Clause, and are not authorized by the Twenty-first Amendment.

Justices concurring: Kennedy, Scalia, Souter, Ginsburg, Breyer  
Justices dissenting: Stevens, O'Connor, Thomas, Rehnquist, C.J.

941. *Halbert v. Michigan*, 545 U.S. 605 (2005).

A Michigan statute making appointment of appellate counsel discretionary with the court for indigent criminal defendants who plead *nolo contendere* or guilty is unconstitutional to the extent that it deprives indigents of the right to the appointment of counsel to seek “first-tier review” in the Michigan Court of Appeals.

Justices concurring: Ginsburg, Stevens, O'Connor, Kennedy, Souter, Breyer  
Justices dissenting: Thomas, Scalia, Rehnquist, C.J.

942. *Roper v. Simmons*, 543 U.S. 551 (2005).

Missouri’s law setting the minimum age at 16 for persons eligible for the death penalty violates the Eighth Amendment’s ban on cruel and unusual punishment as applied to persons who were under 18 at the time they committed their offense.

Justices concurring: Kennedy, Stevens, Souter, Ginsburg, Breyer  
Justices dissenting: O'Connor, Scalia, Thomas, Rehnquist, C.J.

943. *Jones v. Flowers*, 547 U.S. 220 (2006).

Arkansas statute violated due process when interpreted not to require the Arkansas Commissioner of State Lands to take additional