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national news

Supreme Court says no to Boston Irish queers

*Mixed reactions greet the verdict that takes a unanimous
 stand on the First Amendment*

by Bob Roehr



When first banned from the city's parade, GLIB held its own St. Patrick's Day Parade in 1993

Lesbian and gay Irish paraders in Boston lost and First Amendment protection of free speech won in a rare unanimous decision by the U.S. Supreme Court. Organizers of a private parade have the right to decide who to include and what messages to allow within that event, said Justice David Souter in the opinion released June 19.

The Irish American Gay, Lesbian and Bisexual Group of Boston (GLIB) had organized to celebrate its members' heritage and participate in the city's annual St. Patrick's Day parade. The South Boston Allied War Veterans Council, the private group organizing the activity, denied the group's application.

GLIB members maintained that the parade was a "public accommodation" and that the Veterans Council discriminated against them simply because they are gay. That is illegal under Massachusetts law. GLIB sued and won at every level of the state court system.

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 Chester Darling.**

Council attorney Chester Darling at oral arguments before the Supreme Court. The court agreed.

Souter's carefully worded opinion drew on a long tradition of protection of free speech in deciding in the council's favor. He called the parade "a public drama...making some sort of collective point, not just to each other but to bystanders along the way." It is clearly protected speech, the court concluded.

The opinion upheld the constitutionality of the Massachusetts law banning discrimination, saying it simply didn't apply in this situation. Some lesbian and gay legal observers had been fearful that the court might somehow undercut that law.

The Veterans Council reacted with jubilation; GLIB, with disappointment. GLIB spokeswoman Cathleen Finn was "shocked" by the unanimous vote. No further legal recourse is possible.

Support for GLIB's position within the gay and lesbian community had been mixed from the start.

Tom Stoddard, former executive director of the Lambda Legal Defense and Education Fund, expressed the views of many when he said, "You lose your association rights when you operate in public...they [the council] do have a right to exclude." He made the comments several months ago on the PBS program *Freedom Speaks*.

The American Civil Liberties Union had filed an amicus brief in support of neither party. It released a statement calling the decision "a sound one that reflects well-established First Amendment principles and reaffirms that every speaker has the right to craft his or her message without government interference."

"What would happen if a homophobic 'ex-gay ministry' wanted to march in our pride parades chanting 'Hey, hey, ho, ho, Barney Fag has got to go?' Would we let the government force us to

include that hateful message in our celebration? I don't think so," said David Morris, president of the libertarian group Gays and Lesbians for Individual Rights. "True freedom means we respect the rights of others as much as our own rights."

Perhaps the most tantalizing part of the decision is where it might lead the court in future deliberations on the question of lesbians and gay men in the military. A central tenet of those legal challenges is the issue of free speech—the right to say one is lesbian or gay and still remain a member of the armed forces.

"A narrow, succinctly articulable message is not a condition of constitutional protection," Souter wrote.

His defense of free speech and the state nondiscrimination law, his differentiation between private and government activities and their corresponding different levels of scrutiny, and his leaving open the possibility of future First Amendment claims by GLIB could all be interpreted positively by attorneys leading the challenge to the military ban.