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Not necessarily a defeat

*The Boston St. Patrick's Day Parade case may prove
to be a significant help in our fight for equality*

by Matt Coles



The U.S. Supreme Court recently decided that Irish veterans in Boston may keep a lesbian, gay and bisexual Irish group out of the veteran's annual St. Patrick's Day Parade. Understandably, many lesbian and gay men assumed the decision was a defeat. However, a close look shows that far from being a defeat, the case may prove to be a significant help in our fight for equality.

There are four positive things in the decision. First, the Court said that, generally speaking, laws prohibiting discrimination on the basis of sexual orientation are constitutional. Since this really was not an issue in the case, the court had to go well out of its way to say that. This part of the decision will greatly assist us in defending discrimination laws that protect us against attacks from the radical right.

Much more subtle, but also helpful, is the respectful treatment that the court gave the lesbian, gay and bisexual Irish group, typically referring to its members as "lesbian, gay and bisexual individuals." The demeaning language of previous decisions involving lesbians and gay men, which helped set a tone of hostility toward us in federal courts generally, is completely absent. This may help us to begin setting a new tone.

Third, the court said that by marching behind a banner identifying themselves a lesbian or gay, members of the Irish group were making a statement that there are lesbians, gay men and bisexuals among the Irish and that they "have as much claim to unqualified social acceptance as heterosexuals...." That is quite close to what the sexual-minority-rights movement itself has been saying for years. Coming out of the closet is a political act, which makes the statement that we are everywhere and that we are entitled to equal treatment.

This decision lays the foundation for a freedom of speech defense for anyone who suffers at the hands of government for coming out or for being openly gay. The statement that it is important for every lesbian or gay man to come out is our movement's first great truism. We keep hearing it because, relatively speaking, so few of us have been able to come out. The parade decision may make it easier, by giving some legal protection to those who do.

Finally, the basic principle of the decision will help lesbians and gay men. By the time the Boston parade case got to the Supreme Court, both the veterans and the Irish lesbian, gay and bisexual group agreed that the parade was not sponsored by the city. That was critically important. As the ACLU told the court in a "friend of the court" brief, if the parade were sponsored by the city, the first amendment would require that it accept all messages and allow the gay group to march.

But a private parade stands (or strides) on a different footing. Here, the question was whether the government could close the streets to a parade unless its sponsors agreed to accept a message they did not agree with. If the Supreme Court had decided that government could, this new power would have been used against us far more quickly and forcefully than it would have been used against our opponents. Indeed, in San Diego, a group identifying itself as "Normal People" has already sued for a place in that city's pride parade, claiming it is being excluded because of its members' sexual orientation.

Some say that the San Diego pride parade is different because there the two messages are inconsistent and in Boston they were not. But the real issue is who decides when a message is inconsistent with the theme of a parade or demonstration. According to the court, the First Amendment says that decision belongs to the speaker, not to the government. Our own history with government power and its abuse should lead us to cheer that conclusion.

The decision of the Boston veterans was stupid and cruel—stupid because it defies reality to pretend that there aren't Irish lesbians, gay men and bisexuals, and cruel to maintain the pretense in the face of real humans who want to join the celebration. We should try to convince them to change that decision.

But if anyone should understand that it is a bad idea to use the coercive power of government to shape what a person wants to say, it is our community. The success of our movement depends on persuasion. We need the unfettered right to speak and to shape our messages.

Matt Coles is the national director of the American Civil Liberties Union's Lesbian and Gay Rights Project.