

# Victory

The Supreme Court declares Amendment 2 unconstitutional—queers rejoice nationwide

by Bob Roehr



**E**quality Under Law” is the phrase etched into the white marble atop the U.S. Supreme Court building. For too long it seemed those words did not apply to gay men and lesbians. That changed dramatically on May 20, when the court affirmed 6-to-3 the state supreme court decision that Colorado’s anti-gay Amendment 2 is unconstitutional.

“We must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do. A state cannot so deem a class of persons a stranger to its laws. Amendment 2 violates the Equal Protection Clause.”

So wrote Justice Anthony Kennedy in concluding the opinion for the majority in the case formally known as *Romer vs. Evans*.

In its appeal to the court, the State of Colorado had argued that “the measure does no more than deny homosexuals special rights.”

“This reading of the amendment’s language is implausible,” Kennedy wrote. “To the contrary,

the amendment imposes a special disability upon those persons alone. Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint. They can obtain specific protection against discrimination only by enlisting the citizenry of Colorado to amend the state constitution....

“We find nothing special in the protections Amendment 2 withholds. These protections are taken for granted by most people either because they already have them or do not need them; these are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society....

“Its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus towards the class that it affects; it lacks a rational relationship to legitimate state interests.... The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence....

“It is not within our constitutional tradition to

enact laws of this sort. Central both to the idea of the rule of law and to our own Constitution’s guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance....

“We cannot say that Amendment 2 is directed to any identifiable legitimate purpose or discrete objective. It is a status-based enactment divorced from any factual context from which we could discern a relationship to legitimate state interests; it is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit.”

The dissenting opinion was written by Justice Antonin Scalia and joined by Chief Justice William Rehnquist and Justice Clarence Thomas. It dripped with venom toward both gay men and lesbians and the majority opinion. Scalia appropriated the language Nazi Germany used against the Jews when he wrote as his opening line: “The Court has mistaken a Kulturkampf [cultural war] for a fit of spite.”

To Scalia, Amendment 2 “is rather a modest attempt by seemingly tolerant Coloradans to pre-

serve traditional sexual mores against the efforts of a politically powerful minority to revise those mores through use of the laws.”

He castigated his colleagues for “the opinion’s heavy reliance upon principles of righteousness rather than judicial holdings.” He wrote that the ruling “contradicts” the 1986 sodomy decision *Bowers vs. Hardwick*, “and places the prestige of this institution behind the proposition that opposition to homosexuality is as reprehensible as racial or religious bias....

“This court has no business imposing upon all Americans the resolution favored by the elite class from which the members of this institution are selected, pronouncing that ‘animosity’ toward homosexuality is evil.

“The problem,” wrote Scalia, “is that because those who engage in homosexual conduct tend to reside in disproportionate number in certain communities, have high disposable income, and of course care about homosexual-rights issues much more ardently than the public at large, they possess political power much greater than their number, both locally and statewide....

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