Scalia feeds frenzy over Supreme Court 'gay rights' ruling

by Edward Spannaus

The U.S. Supreme Court, in a 6-3 ruling issued May 22, struck down the 1992 Colorado "Amendment 2," which barred local governments from adopting homosexual anti-discrimination laws. The Supreme Court said that Amendment 2, which was a response to the proliferation of local laws prohibiting discrimination against homosexuals in jobs, housing, public accommodations, etc., denies to homosexuals equal protection under the U.S. Constitution.

The ruling is being enthusiastically hailed, and vehemently attacked, as "revolutionary" and as a fundamental turning point for so-called "gay rights" by the news media. However, the hysteria surrounding the ruling, especially from "conservatives," signifies that those screaming the loudest either haven't read the decision, or are willfully misrepresenting what it says.

In fact, of the six justices who signed the majority opinion, four are Republican appointees—which may, incidentally, make it hard for Dole and company to attack the ruling as a product of "liberal Clinton judges." The four Republican appointees who ruled with the majority are David Souter (Bush), Anthony Kennedy (Reagan), Sandra Day O'Connor (Reagan), and John Paul Stevens (Ford).

Ten days after the ruling, a full-page ad ran in the *Washington Times* calling for the impeachment of the six "who voted to legitimize the homosexual lifestyle." The ad was sponsored by the hitherto-unknown "Loyal Opposition," whose president is listed as Operation Rescue's Randall Terry.

A plain reading shows that the ruling is not an endorsement of homosexuality: What it says is that the Colorado measure violates the Equal Protection Clause of the Fourteenth Amendment, by disqualifying a class of persons from the right to obtain legal redress or specific protection of the law. Amendment 2 is so broad and sweeping, said the court, that it bears no rational relationship to any specific objective, such as protecting the rights of association of other citizens, or the liberties of landlords and employers who have personal or religious objections to homosexuality.

The ruling said that Amendment 2 "identifies persons by a single trait and then denies them protection across the board," and said that such a "disqualification of a class of persons from the right to seek specific protection of the law is unprecedented in our jurisprudence." It does not just deny homosexuals special rights—as its proponents contend—but it imposes a special disability: that homosexuals can no longer seek passage of a law or ordinance, but must amend the state's Constitution. This disqualification of a class of persons from the right to seek specific protection of the law "is unprecedented in our jurisprudence."

"It is not within our constitutional tradition to enact laws of this sort," the opinion continues. "Central to both 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."

Scalia's dissent

The hysteria around the ruling is being fed by the dissenting opinion written by Associate Justice Antonin Scalia, which was joined by his clone Clarence Thomas, and Chief Justice William Rehnquist.

Scalia makes much of the factthat the majority ruling never once mentioned the Supreme Court's 1986 decision *Bowers v. Hardwick* which upheld a Georgia anti-sodomy law, and which correctly held that there is no constitutional right to engage in homosexual activity (see *EIR,* July 18, 1986). "If it is constitutionally permissible for a State to make homosexual conduct criminal, surely it is constitutionally permissible for a State to enact other laws merely disfavoring homosexual conduct," Scalia wrote. Which is beside the point, because the majority ruling clearly does not bar such laws.

Scalia went out of his way to make his dissent as strident as possible, so as to feed the frenzy surrounding the issue. He characterized homosexuals as a "politically powerful minority" and as "a group which enjoys enormous influence in American media and politics."

"The Court has mistaken a *Kulturkampf* for a fit of spite," wrote Scalia, saying that the Colorado amendment was only "a modest attempt by seemingly tolerant Coloradans to preserve traditional sexual mores against the efforts of a politically powerful minority to revise those mores through use of the laws." Scalia's dissent also used his typical "democratic" argument, that the court should defer to the opinions of the majority (such as a majority of Colorado voters who adopted Amendment 2), and he repeatedly called the ruling "elitist."

For all of Scalia's appeals to "morality," he told a conference at the Gregorian University in Rome on May 2 that a government cannot determine policies according to moral principles, unless the majority wants it. Even though he opposes abortion, for example, he argued that states can allow it if a majority wants to. "I don't know how you can argue on the basis of democratic theory that the government has a moral obligation to do something which is opposed by the people," Scalia contended.

In 1989, Scalia supported the execution of persons as young as age 16, arguing that there is no "national consensus" that this should be considered cruel and unusual punishment.