

Romer v. Evans, new

Romer v. Evans (1996)

Background: "Amendment 2" was supposed to repeal sexual orientation from anti-discrimination statutes in Aspen, Denver, and Boulder.

Issue: Did the statute do exactly that? (Scalia) Or, did it have a more far reaching effect of disallowing gay people from any protection? (Kennedy)

Argument (Kennedy):

1. Consequential. Any other group of people (ie. Short people) don't have to go to the state legislature for their protection, but gays do. This is called an "undue burden."

2. Rational basis test. The statute lacks relation to a legislative end. There is no possible reason to do this. Instead, what is present is "a bare desire to harm" which can never be a legitimate state action.

Dissent (Scalia): Scalia frames his argument as a legal positivist.

1. The *only* effect of the statute is that there is no special protection for gay people.

2. Going a further step to get your way is not uncommon. Ex: often necessary with contracts if you have connections that may prove to be some type of conflict of interest

3. ***this raises the question: would Scalia have dissented in *Brown*?***

Significance: The moral opinion of the majority, that something is bad, is not a state interest at all.