

# What Colorado Can Teach Us About A CIVIL RIGHTS MOVEMENT

LAMBDA LEGAL ROMER **V.** EVANS RETROSPECTIVE



BY HECTOR VARGAS, DEPUTY DIRECTOR  
OF EDUCATION & PUBLIC AFFAIRS  
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Imagine a United States where entire groups of people are shut out of the democratic process by power-wielding special interest groups. Right-wing political extremists imagined such a country, and in 1992 they thought they'd achieved part of that vision in Colorado.

Just 15 years ago, our opponents embarked on a strategy to shut lesbians, gay men and bisexuals out of the political process and forever close the doors of state legislatures and other legislative bodies to antidiscrimination proposals. The furor then was over Colorado's Amendment 2, a sweeping constitutional amendment that sought to prohibit "all legislative, executive or judicial action at any level of state or local government designed to protect... gays and lesbians." In plain English, the amendment to the state constitution would deny lesbian and gay residents of Colorado the ability to advocate for even the most basic protections against discrimination.

Working together, Lambda Legal, the ACLU Lesbian and Gay Rights Project and the Colorado Legal Initiatives Project derailed these efforts. We took our challenge to Amendment 2 all the way up to the U.S. Supreme Court, and in 1996,

secured a landmark victory overturning the amendment. In his opinion for the majority, Justice Anthony M. Kennedy wrote:

*"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."*

At the time, *Romer* was the most favorable decision for gays and lesbians in the history of the U.S. Supreme Court. The Court made clear that a constitution may not be amended solely to exclude one group of people from the democratic process. The decision put our communities on equal footing with others to be able to ask the government for protection against discrimination.

The work for lesbian, gay, bisexual and transgender people in Colorado didn't end with that decision; advocates and allies

continued to press for fairness. And everyone's work has paid off. In May, Colorado joined the ranks of those states that prohibit employment discrimination on the basis of sexual orientation and gender identity and expression. Now 20 states and the District of Columbia have laws that expressly protect against sexual orientation discrimination and 12 of those protect against discrimination based on gender identity and expression — and in April, a federal Employment Non-Discrimination Act was introduced in Congress.

Had it not been for *Romer*, the Colorado Employment Non-Discrimination Act and similar laws in other states would not have been possible. That one Supreme Court decision illustrates a core principle of Lambda Legal's impact litigation strategy: What happens in the courts, over time, influences the court of public opinion and can lead to legislative action. Our experience in Colorado highlights just how critical America's democratic institutions are for the health and well being of our nation. These institutions help ensure that everyone has a fair shake — in court, at work and in the ongoing movement toward equal rights for all. **L**