



## The Equal Protection Clause and *Romer v. Evans*

### Overview

Students will learn about the Equal Protection Clause of the U.S. Constitution through a documentary about *Romer v. Evans*. Students will consider the constitutionality of special legal protections that are afforded members of some minority groups in an effort to achieve equality. They will also learn about the mechanics of state politics, including the interactions between governors, special interest groups, state citizens, and the judiciary.

### Grades

9-12

### Courses

Civics and Economics, US History

### North Carolina Standard Course of Study for Civics & Economics

- Objective 2.01: Identify principles in the United States Constitution.
- Objective 2.06: Analyze court cases that demonstrate how the United States Constitution and Bill of Rights protect the rights of individuals.
- Objective 4.04: Demonstrate active methods of promoting and inhibiting change through political action.
- Objective 4.06: Describe the benefits of civic participation.
- Objective 4.08: Participate in civic life, politics, and/or government.
- Objective 5.01: Evaluate the role of debate, consensus, compromise, and negotiation in resolving conflicts.
- Objective 5.02: Identify the jurisdiction of state and federal courts.
- Objective 5.06: Analyze roles of individual citizens, political parties, the media, and other interest groups in public policy decisions, dispute resolution, and government action.
- Objective 6.06: Analyze the role of lobby groups and special interest groups in the enactment of legislation.
- Objective 10.02: Develop, defend, and evaluate positions on issues regarding diversity in American life.
- Objective 10.06: Discuss the consequences and/or benefits of the freedom of economic, legal, and political choices.

### North Carolina Standard Course of Study for U.S. History

- Objective 12.02: Evaluate the impact of recent constitutional amendments, court rulings, and federal legislation on United States' citizens.
- Objective 12.04: Identify and assess the impact of social, political, and cultural changes in the United States.

### Materials

- LA Times Article - Voters Approve Prop 8, attached
- *Romer v. Evans* Documentary (Distinctive Aspects of American Law DVD, available at [www.distinctiveaspects.org](http://www.distinctiveaspects.org))
- Television and DVD player
- *Romer v. Evans* Viewer's Guide and Answer Key, attached
- *Romer v. Evans* Opinion Excerpts, attached
- Analyzing the Opinion, activity strips attached
- Civic Participation Letter to the Editor (can be assigned as an in-class or homework activity), assignment attached
- Deliberation Exercise (optional), instructions attached

### Essential Questions

- What does equality mean in our society?
- Why might some minority groups need laws granting them special protection?
- How do groups with opposing views resolve conflicts using the political system?
- What is the effect of amending a state's constitution?
- What are some ways that special interest groups can influence the electorate?
- How do state and local governments impact the lives of individual citizens?
- What role might the Supreme Court play in state politics?
- Should the meaning of the Constitution change over time?



## Duration

60+ minutes (time varies depending on which activity options teachers select)

## Student Preparation

- As this lesson addresses potentially sensitive topics, such as discrimination based on sexual orientation, it is important students are prepared to respectfully deal with controversy. Firm expectations of respect, safety, and civil communication must be present in the classroom in order for this lesson to be successful.
- Prior to this lesson, provide students with the attached copy of the *Los Angeles Times* newspaper article "Voters Approve Proposition 8 Banning Same-Sex Marriages." Ask them to read the article and to think about the arguments put forth by each side of the debate. You may wish to ask students to write down a list of the arguments for and against Proposition 8.
- **Optional Writing Assignment:** The text of the Equal Protection Clause is printed at the bottom of the newspaper article handout. Ask students to think about the meaning of the Clause after they have finished reading the article. Tell students to assume the role of a contributor to a political blog covering the Proposition 8 debate. Ask them to write two informal paragraphs for their blog explaining their ideas about how the Equal Protection Clause applies to the situation in California. Encourage students to express their own opinions rather than just summarizing several arguments.

## Procedure

### Warm-Up: Is Profiling Ever OK?

1. Ask students to imagine that they are the owners of a new luxury apartment building. Inform them that, as the landlords, they have the ability to decide who can and cannot rent an apartment in their building. One by one, write the names and descriptions of the following prospective tenants that wish to rent in the students' building. Tell students to silently consider whether there is anyone in this list they would not want to rent to and why. (Tell students that they will not be sharing these answers out loud and should not give any verbal indication as to their opinions.)
  - Maria, an eighteen-year-old college student.
  - Faris, a devout Muslim.
  - Douglas, owner of two golden retrievers.
  - Lisa, whose three cousins, uncle, and grandmother will also be living with her.
  - Demetrius, an African-American middle-aged male.
  - Sandra, a woman recently evicted from another apartment for failure to pay her rent.
  - Janine, an open lesbian.
2. Ask students to raise their hands if there was anyone on the list that they would not rent to. If there are any students who do not raise their hands, signifying that they would rent to anyone on the above list, ask them to explain why. Discuss whether students believe that they should or should not be allowed to take certain characteristics into account when renting out apartments. (Again, remind students not to comment regarding which of the above people they would or would not rent to. Rather, they should discuss the right to do so.) Pose the following discussion topics to the class:
  - In your opinion, what characteristics should a landlord be able to consider when renting out his/her apartments? (Students might mention past rental history, credit scores, current occupation, etc. Not comments on the board.)
  - Are there any of these characteristics that a classmate has mentioned that you disagree with?
  - What problems would arise if it were legally allowed to discriminate against a prospective tenant based on his or her race? Religion?
  - How does this warm-up illustrate the concept of equality?

### The Equal Protection Clause

3. Write the following excerpt from the Equal Protection Clause of the Fourteenth Amendment on the board: "No state shall...deny to any person within its jurisdiction the equal protection of the laws." Ask for volunteers from the class to discuss their ideas about the meaning of the Clause, using the following discussion prompts:
  - What does it mean for a state to equally protect all of its citizens?
  - Can you think of any past examples of states denying certain groups equal protection?
  - Is it possible for every law to treat all people the same way? Explain.
    - What about the law that says that driver's licenses cannot be issued to people under the age of sixteen? Is that acceptable, even though it does not apply to all people equally? Why or why not?



### Documentary: *Romer v. Evans*

4. Explain to students that you will be showing a documentary about an amendment to the Colorado State Constitution that would prohibit the state from passing laws offering special protections to homosexuals. Remind students to treat the controversial issues presented in the film with sensitivity. Depending on your course, it may be helpful to explain or review the process and implications of amending a state's constitution.

- **Teacher's Synopsis of the Case**

By the early 1990s, several cities in Colorado had passed ordinances protecting government employees from discrimination based on their sexual orientation. In 1991, the city of Colorado Springs attempted to enact similar legislation. The proposed law was strongly opposed by conservative and religious groups in the area. These groups, especially one called Colorado for Family Values, were eager to prevent the passage of any laws that would give what they considered to be "special rights" to homosexuals based on their sexual orientation. They decided to campaign in favor of an amendment to the Colorado state constitution that would repeal existing laws protecting homosexuals, as well as prevent new ones from being created. Supporters of the proposed amendment managed to get the required 50,000 signatures to put the proposed amendment, now called Amendment 2, on the November 1992 ballot.

Although the polls predicted that Amendment 2 would fail to garner enough votes, on election night it ended up passing. Pro-gay groups like the Colorado Legal Initiatives Project (CLIP) were prepared for this outcome and promptly filed a lawsuit challenging the constitutionality of Amendment 2. They claimed that Amendment 2 had no purpose other than animosity toward homosexuals, and that hatred was not a legitimate government interest that could justify the fact that the amendment applied only to gays. The trial court and the Colorado Supreme Court, on appeal, agreed with this argument and held that Amendment 2 was unconstitutional. The case was appealed to the Supreme Court, where the lower court rulings were upheld in an important 5-4 decision.

- **Viewing Options**

You may choose to use one or several of the following suggestions while showing the documentary:

- Distribute the Viewer's Guide handout before showing the film and ask students to fill in the blanks with the correct answers as they watch.
- Pause at pre-determined intervals for a brief discussion/explanation session to ensure that students are following the film. The time codes and some suggestions for discussion are listed below:
  - **Discussion Point #1:** (*Pause at 10:03 after Noebel finishes*) Ask students to identify the goal of supporters of Amendment 2. What was this amendment proposed in response to?
  - **Discussion Point #2:** (*Pause at 16:03 after Romer finishes*) Explain or review the term "plaintiff." Ask students why Angela Romero might be a good plaintiff for CLIP to have when challenging Amendment 2. Also, you might ask students how they feel about the governor publicly taking sides in this debate.
  - **Discussion Point #3:** (*At the end of the film*) What was the main argument of Amendment 2 opponents like Dubofsky? How did Solicitor General Tymkovich respond to that argument?

### Analyzing the Decision

5. Students may be surprised to see that the case video ends without revealing the Supreme Court's decision. Depending on your curriculum, before revealing the outcome of the case, you may wish to review important information about the Supreme Court and its functions.
  - Remind students that the Supreme Court is made up of nine justices, nominated by a President of the United States and confirmed by the United States Senate.
  - Explain that while the Court's official decision is contained in a "majority opinion," some of the justices may have a different viewpoint. For example, some might agree with the ultimate decision reached by the majority, but for different reasons. This is called a concurring opinion. Other justices may disagree with both the reasoning and the decision in the majority opinion. These justices express their views in dissenting opinions.
  - You may touch on various parts of the appellate process, including petitions for certiorari, the filing of amicus briefs, and oral arguments.
6. Below are two options for revealing the Court's decision. Choose the one that best fits your goals for the class:
  - **Option #1: Reading the Opinion (Individual Work)**
    - Hand out the Opinion Excerpt (Appendix) to the students and ask them to read Justice Kennedy's majority opinion. Explain that, as the majority opinion, this decision reflects the official holding of the Court.
    - Depending on the grade level of the class, it may be helpful for you to ask for volunteers to read each paragraph aloud. Reading aloud will enable you to explain any words or concepts that the class finds to be difficult to understand.



- Once the students have finished reading Justice Kennedy’s opinion, ask for students to share with the class what they think the decision is. Offer guidance to point students in the proper analytical direction.
  - After the class has finished discussing the majority opinion, ask the students to read the excerpt from Justice Scalia’s dissenting opinion. When they have finished, encourage the class to discuss how the dissent is different from Justice Kennedy’s majority opinion.
- **Option #2: Analyzing the Opinion (Group Work)**
    - This exercise requires the Analyzing the Opinion handout (Appendix). Before class, cut the handout along the lines to create six group prompts, labeled Group 1-6.
    - Divide the class into six groups. Pass one prompt to each group. Explain to students that they will be closely reading a few sentences from the majority opinion in *Romer v. Evans*. Ask each group to discuss amongst themselves what they think the Supreme Court meant by these important sentences. Allow approximately 5-10 minutes for in-group discussion.
    - One by one, prompt the groups to help you reveal the outcome of the case. Go in order from Group 1 to Group 6, asking each group the question assigned to it in the guide below:
      - Group 1: What does the Constitution say about laws that treat different groups of people differently in our country?
        - ✓ *Goal Answer: They aren’t tolerated, they aren’t desirable, et al.*
      - Group 2: What is the State’s argument in favor of Amendment 2?
        - ✓ *Goal Answer: By prohibiting special protections for homosexuals, Amendment 2 puts them in the same position as everyone else.*
      - Group 3: What is the Supreme Court’s argument against Amendment 2?
        - ✓ *Goal Answer: Amendment 2 says that only homosexuals cannot have laws that grant them special protections. The law doesn’t prevent anyone else from having laws that grant them special protections.*
      - Group 4: When will a classification within a law be tolerated by the Constitution?
        - ✓ *Goal Answer: In most cases, when the classification bears a rational relation to a legitimate end.*
      - Group 5: Is there a legitimate government interest promoted by this law?
        - ✓ *Goal Answer: No, because desire to harm a politically unpopular group is not a legitimate interest.*
      - Group 6: Can Amendment 2 remain a part of Colorado’s constitution?
        - ✓ *Goal Answer: No, because it violates the Equal Protection Clause of the U.S. Constitution.*

### **Equal Protection in Context: Letter to the Editor Activity**

7. Ask students to think of the various ways that Colorado citizens were able to be involved in the political process during the debate over Amendment 2. Remind them that civic participation is not reserved just for elected officials and that there are many ways for all citizens to participate in the political process and explain the following instructions:
  - Inform students that many media sources, including newspapers, provide a forum for readers to express their own opinions on topics important to their community and world. Explain that while these forums today may take the form of internet blogs or discussion boards, the assignment today will be to write a letter to the editor of your Local Newspaper about a gay marriage amendment similar to the ones faced by the people of Colorado and California.
  - Hand out the attached “Letter to the Editor” assignment sheet. Ask students to read the scenario described in the assignment about a proposed amendment to the constitution of the fictional state of Cardinal.
  - Remind students to cite examples from the newspaper article they read and/or the *Romer v. Evans* case video to support their arguments.

### **Additional Activities: Deliberation Exercise**

- This activity will require students to have their homework handout on hand from the night before. (You may wish to have extra copies in case some students have lost their article.)
- Divide students into groups of 4 or 6 people (it should be an even number if possible). Pass out the attached Deliberation Exercise handout. Make sure students have their *L.A. Times* article on hand; this will be the document used during the deliberation.
- Explain to students that the in-class activity will be a deliberation exercise and not a debate. This means that there will not be any argument about which side of the deliberation is right or wrong. Rather, this will be an exercise in identifying and understanding competing viewpoints in the *L.A. Times* article. Emphasize that this exercise is not about any individual student’s personal views on gay marriage.



- Once students are in their groups with the handout, each group will divide into two Teams, A and B. This is explained in the handout as well. Allow ten minutes for each Team to find the arguments it will present to the rest of the group.
- After the ten minutes have passed, announce that it is time for the Teams to meet together and share the arguments they found in the L.A. Times article. Allow five minutes.
- Next, ask the Teams to now explain to their group the opposing viewpoints to the arguments they just articulated. Allow five minutes.
- Once the groups have finished sharing arguments, explain that an important part of deliberation is a personal evaluation of the merits of competing arguments. Ask each student to individually reflect on the different viewpoints and write a paragraph explaining which side was ultimately more convincing in their mind.



## **VOTERS APPROVE PROPOSITION 8 BANNING SAME-SEX MARRIAGES**

*From the Los Angeles Times , November 5, 2008*

A measure to once again ban gay marriage in California led Tuesday, throwing into doubt the unions of an estimated 18,000 same-sex couples who wed during the last 4 1/2 months. As the measure, the most divisive and emotionally fraught on the state ballot this year, took a lead in early returns, supporters gathered at a hotel ballroom in Sacramento and cheered.

"We caused Californians to rethink this issue," Proposition 8 strategist Jeff Flint said. Early in the campaign, he noted, polls showed the measure trailing by 17 points. "I think the voters were thinking, well, if it makes them happy, why shouldn't we let gay couples get married. And I think we made them realize that there are broader implications to society and particularly the children when you make that fundamental change that's at the core of how society is organized, which is marriage," he said.

But in San Francisco at the packed headquarters of the No on 8 campaign party in the Westin St. Francis Hotel, supporters of same-sex marriage refused to despair, saying that they were holding out hope for victory. "You decided to live your life out loud. You fell in love and you said 'I do.' Tonight, we await a verdict," San Francisco Mayor Gavin Newsom said, speaking to a roaring crowd. "I'm crossing my fingers."

Elsewhere in the country, two other gay marriage bans, in Florida and Arizona, were well ahead. In both states, laws already defined marriage as a heterosexual institution. But backers pushed to amend the state constitutions, saying that doing so would protect the institution from legal challenges.

Proposition 8 was the most expensive proposition on any ballot in the nation this year, with more than \$74 million spent by both sides.

The measure's most fervent proponents believed that nothing less than the future of traditional families was at stake, while opponents believed that they were fighting for the fundamental right of gay people to be treated equally under the law. "This has been a moral battle," said Ellen Smedley, 34, a member of the Mormon Church and a mother of five who worked on the campaign. "We aren't trying to change anything that homosexual couples believe or want -- it doesn't change anything that they're allowed to do already. It's defining marriage. . . . Marriage is a man and a woman establishing a family unit."

On the other side were people like John Lewis, 50, and Stuart Gaffney, 46, who were married in June. They were at the San Francisco party holding a little sign in the shape of pink heart that said, "John and Stuart 21 years." They spent the day campaigning against Proposition 8 with family members across the Bay Area. "Our relationship, our marriage, after 21 years together has been put up for a popular vote," Lewis said. "We have done what anyone would do in this situation: stand up for our family."

The battle was closely watched across the nation because California is considered a harbinger of cultural change and because this is the first time voters have weighed in on gay marriage in a state where it was legal. Campaign contributions came from every state in the nation in opposition to the measure and every state but Vermont to its supporters. And as far away as Washington, D.C., gay rights organizations hosted gatherings Tuesday night to watch voting results on Proposition 8. "I am nervous," Human Rights Campaign President Joe Solmonese said from a brewery in the nation's capital. "This is the biggest civil rights struggle for our movement in decades. . . . The outcome weighs incredibly heavily on the minds of every single person in the room."

Eight years ago, Californians voted 61% to define marriage as being only between a man and a woman. The California Supreme Court overturned that measure, Proposition 22, in its May 15 decision legalizing same-sex marriage on the grounds that the state Constitution required equal treatment of gay and lesbian couples.

Opponents of Proposition 8 faced a difficult challenge. Bob Stern, president of the Center for Governmental Studies, said California voters "very, very rarely reverse themselves" especially in such a short time. Both sides waged a passionate -- and at times bitter -- fight over whether to allow same-sex marriages to continue. The campaigns spent tens of millions of dollars in dueling television and radio commercials that blanketed the airwaves for weeks.

But supporters and opponents also did battle on street corners and front lawns, from the pulpits of churches and synagogues and -- unusual for a fight over a social issue -- in the boardrooms of many of the state's largest corporations.

Most of the state's highest-profile political leaders -- including both U.S. senators and the mayors of San Francisco, San Diego and Los Angeles -- along with the editorial pages of most major newspapers, opposed the measure. PG&E, Apple and other companies contributed money to fight the proposition, and the heads of Silicon Valley companies including Google and Yahoo took out a newspaper ad opposing it.

On the other side were an array of conservative organizations, including the Knights of Columbus, Focus on the Family and the American Family Assn., along with tens of thousands of small donors, including many who responded to urging from Mormon, Catholic and evangelical clergy.

An early October filing by the "yes" campaign reported so many contributions that the secretary of state's campaign finance website crashed. Proponents also organized a massive grass-roots effort. Campaign officials said they distributed more than 1.1 million lawn signs for Proposition 8 -- although an effort to stage a massive, simultaneous lawn-sign planting in late September failed after a production glitch in China delayed the arrival of hundreds of thousands of signs.

Research and polling showed that many voters were against gay marriage, but afraid that saying so would make them seem "discriminatory" or "not cool," said Flint, so proponents hoped to show them they were not alone. Perhaps more powerfully, the Proposition 8 campaign also seized on the issue of education, arguing in a series of advertisements and mailers that children would be subjected to a pro-gay curriculum if the measure was not approved. "Mom, guess what I learned in school today?" a little girl said in one spot. "I learned how a prince married a prince." As the girl's mother made a horrified face, a voice-over said: "Think it can't happen? It's already happened. . . . Teaching about gay marriage will happen unless we pass Proposition 8."

Many voters said they had been swayed by that message. "We thought it would go this way," Proposition 8 co-chair Frank Schubert said. "We had 100,000 people on the streets today. We had people in every precinct, if not knocking on doors, then phoning voters in every precinct. We canvassed the entire state of California, one on one, asking people face to face how do they feel about this issue. And this is the kind of issue people are very personal and private about, and they don't like talking to pollsters, they don't like talking to the media, but we had a pretty good idea how they felt and that's being reflected in the vote count."

***Fourteenth Amendment:***

***"No state shall ... deny to any person within its jurisdiction the equal protection of the laws."***

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## ***Romer v. Evans* Viewer's Guide**

**Name** \_\_\_\_\_ **Date** \_\_\_\_\_

1. What experience prompted Governor Roy Romer to issue an executive order?
2. Summit Ministries, a large evangelical church, is based where?
3. How many signatures were necessary to get the initiative on the ballot?
4. Name one reason that Colorado for Family Values felt Amendment 2 was necessary.
5. What was the first task of the Colorado Legal Initiatives Project?
6. What was Angela Romero's job?
7. When his commercials were deemed inappropriate for television, what did Tebedo do to communicate his message to voters?
8. Who became the first named defendant in the case against Amendment 2?
9. What did Dubofsky claim was the motivation of supporters of Amendment 2?



### **Romer v. Evans Viewer's Guide (Answer Key)**

1. What experience prompted Governor Roy Romer to issue an executive order?

*Hearing a gay government employee say that he felt uncomfortable revealing his identity while at a meeting in the Governor's Mansion.*

2. Summit Ministries, a large evangelical church, is based where?

*Colorado Springs.*

3. How many signatures were necessary to get the initiative on the ballot?

*50,000.*

4. Name one reason that Colorado for Family Values felt Amendment 2 was necessary.

*To prevent gays from having special rights; to promote morality; etc.*

5. What was the first task of the Colorado Legal Initiatives Project?

*Hiring a lawyer.*

6. What was Angela Romero's job?

*Police officer; youth officer; etc.*

7. When his commercials were deemed inappropriate for television, what did Tebedo do to communicate his message to voters?

*He sent out a pamphlet.*

8. Who became the first named defendant in the case against Amendment 2?

*Governor Romer.*

9. What did Dubofsky claim was the motivation of supporters of Amendment 2?

*Hatred; prejudice; etc.*



## ***Romer v. Evans* Opinion Excerpts**

Excerpt from the Majority Opinion, written by Justice Kennedy:

One century ago, the first Justice Harlan admonished this Court that the Constitution "neither knows nor tolerates classes among citizens." Unheeded then, those words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake. The Equal Protection Clause enforces this principle and today requires us to hold invalid a provision of Colorado's Constitution...

The State's principal argument in defense of Amendment 2 is that it puts gays and lesbians in the same position as all other persons. So, the State says, the measure does no more than deny homosexuals special rights. This reading of the amendment's language is implausible...The amendment withdraws from homosexuals, but no others, specific legal protection from the injuries caused by discrimination.

We cannot accept the view that Amendment 2's prohibition on specific legal protections does no more than deprive homosexuals of special rights. 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...[T]he protections Amendment 2 withholds...are protections taken for granted by most people either because they already have them or do not need them...

The Fourteenth Amendment's promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons...If a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.

Amendment 2 confounds this normal process of judicial review. It is at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board. 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.

A second and related point is that laws of the kind now before us raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected. "If the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest."...Even laws enacted for broad and ambitious purposes often can be explained by reference to legitimate public policies which justify the incidental disadvantages they impose on certain persons. Amendment 2, however, in making a general announcement that gays and lesbians shall not have any particular protections from the law, inflicts on them immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it.

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.

Excerpt from Justice Scalia's Dissenting Opinion:

The Court has mistaken a Kulturkampf for a fit of spite. The constitutional amendment before us here is not the manifestation of a "bare . . . desire to harm" homosexuals, but is rather 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. That objective, and the means chosen to achieve it, are not only unimpeachable under any constitutional doctrine hitherto pronounced (hence the opinion's heavy reliance upon principles of righteousness rather than judicial holdings); they have been specifically approved by the Congress of the United States and by this Court.

In holding that homosexuality cannot be singled out for disfavorable treatment, the Court places the prestige of this institution behind the proposition that opposition to homosexuality is as reprehensible as racial or religious bias. Whether it is or not is precisely the cultural debate that gave rise to the Colorado constitutional amendment (and to the preferential laws against which the amendment was directed). Since the Constitution of the United States says nothing about this subject, it is left to be resolved by normal democratic means, including the democratic adoption of provisions in state constitutions. 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. I vigorously dissent.

Today's opinion has no foundation in American constitutional law, and barely pretends to. The people of Colorado have adopted an entirely reasonable provision which does not even disfavor homosexuals in any substantive sense, but merely denies them preferential treatment. Amendment 2 is designed to prevent piecemeal deterioration of the sexual morality favored by a majority of Coloradans, and is not only an appropriate means to that legitimate end, but a means that Americans have employed before. Striking it down is an act, not of judicial judgment, but of political will. I dissent.

## Analyzing the Opinion

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### GROUP 1:

“[T]he Constitution ‘neither knows nor tolerates classes among citizens...’ The Equal Protection Clause enforces this principle...”

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### GROUP 2:

“The State’s principal argument in defense of Amendment 2 is that it puts gays and lesbians in the same position as all other persons. So, the State says, the measure does no more than deny homosexuals special rights.”

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### GROUP 3:

“The amendment imposes a special disability upon [homosexual] persons alone. Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint...[T]he protections Amendment 2 withholds...are protections taken for granted by most people either because they already have them or do not need them...”

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### GROUP 4:

“The Fourteenth Amendment’s promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons... We will uphold the legislative classification so long as it bears a rational relation to some legitimate end.”

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### GROUP 5:

“[L]aws of the kind now before us raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected. ‘If the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.’”

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### GROUP 6:

“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.”



Name \_\_\_\_\_ Date \_\_\_\_\_

**Civic Participation: Letter to the Editor**

You are a citizen of the state of Cardinal. In two months, the citizens of Cardinal will be voting on whether or not to amend the state constitution. The proposed amendment, called Proposition 1, is similar to California's Proposition 8. Proposition 1 reads:

*“Marriage in the state of Cardinal is only valid if it is between one man and one woman.”*

You have decided to voice your opinion on this important issue by writing a letter to the state’s most popular newspaper, the *Cardinal State Gazette*. Using the sources that were presented in class, including the Proposition 8 newspaper article, the case of *Romer v. Evans*, and the Equal Protection Clause of the U.S. Constitution, write a well-constructed letter to the editor in support of or against the passage of Proposition 1. You may use the space provided below, or a separate sheet of paper if you need more room.

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## Deliberation Exercise

Name \_\_\_\_\_ Date \_\_\_\_\_

**STEP ONE:**

Once you have been assigned to a small group, divide into two Teams, A and B. Within your Team, look over the *L.A. Times* article you read for homework. Identify the competing arguments in the article for and against Proposition 8. If you are in Team A, focus on the arguments made by supporters of Proposition 8. If you are in Team B, focus on the arguments made by opponents of Proposition 8.

**STEP TWO:**

Each Team should write down the most compelling arguments for its side, as articulated by the *L.A. Times* article:

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**STEP THREE:**

Each Team should choose a Representative to share what it has written with the entire group. Team A will present its arguments first. Team B will then follow. Each Team should listen carefully to the opposing arguments.

**STEP FOUR:**

Each Team should now choose a new Representative. This person will be responsible for repeating the opposing Team's arguments. Team B will begin, and Team A should correct Team B's Representative if he or she articulates an argument incorrectly. The Teams will then switch roles and repeat.

**STEP FIVE:**

The deliberation has ended. On your own, describe/summarize which arguments you found most compelling and why.

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