

Special Pride Issue

O U T

June 1993

Ryan Idol

The rise and fall of a porn star

Where it's at...
Our top 10 cities

PLUS: On the road with gay truckers

She's one ballsy babe

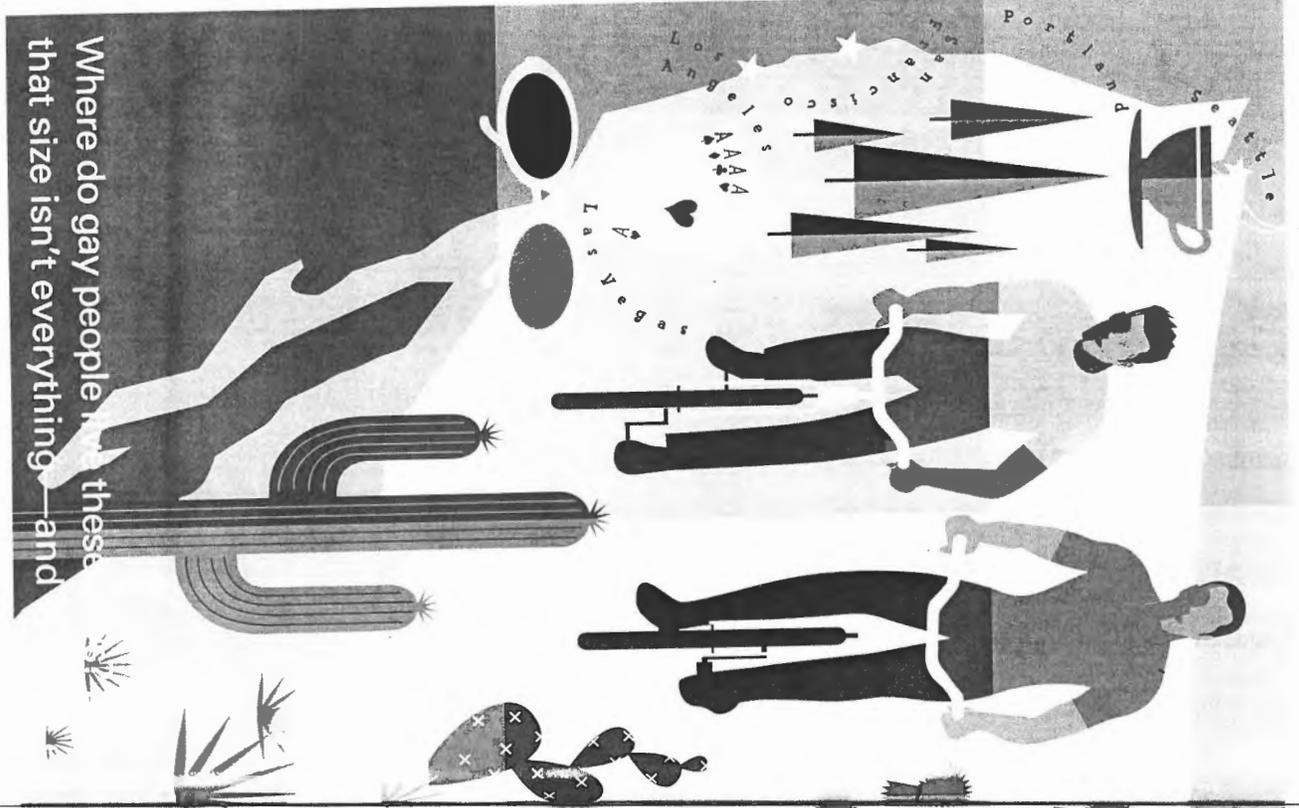
anne heche

Talks about her life, her work, and her relationship with Harrison, and more

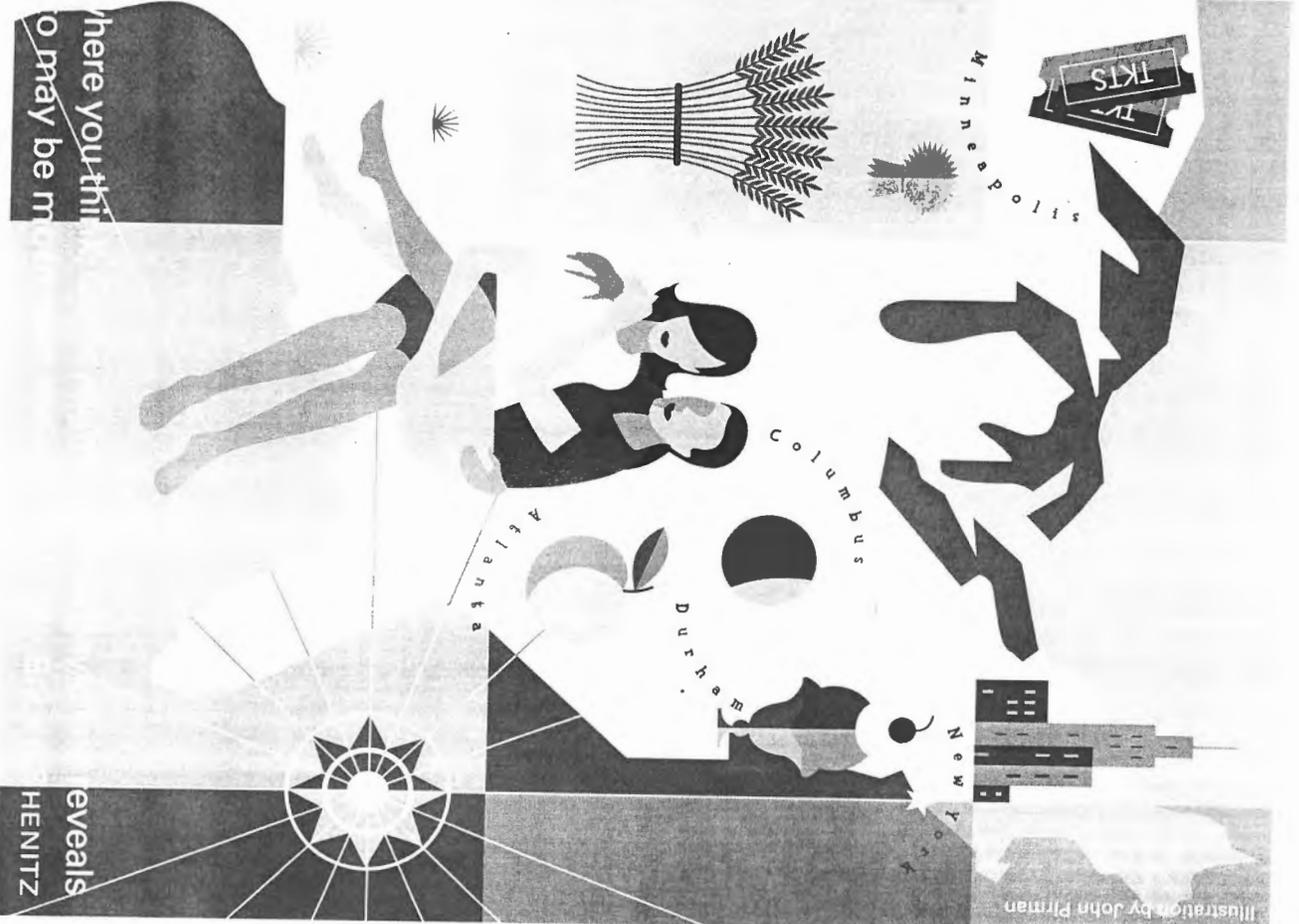


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Our Towns



Where do gay people live these days? The answer is everywhere—and that size isn't everything.



Where you think you'll find them may be wrong.

Henitz reveals

Illustration by John Pirman

THE PHRASE “gay ghetto” conjures up unmistakable clone capitals like New York’s Chelsea, the Castro in San Francisco, or WeHo in Los Angeles—centers for High Church gay culture, ghettos organized more by affinity and fashion than by economic oppression or language barriers. But increasingly, these focal points of gay orthodoxy are giving way to newer, more precisely tailored environments for our subcultures—or mixed neighborhoods where gay people are just another part of the local fauna. In the New York area, for example, lesbians with kids can hole up in Brooklyn’s Park Slope or in suburban New Jersey, while gay Spanish-speaking immigrants gather in Jackson Heights, Queens. As gay people move on to new frontiers in living fuller lives, the very idea of “good gay cities” begins to lose all meaning.

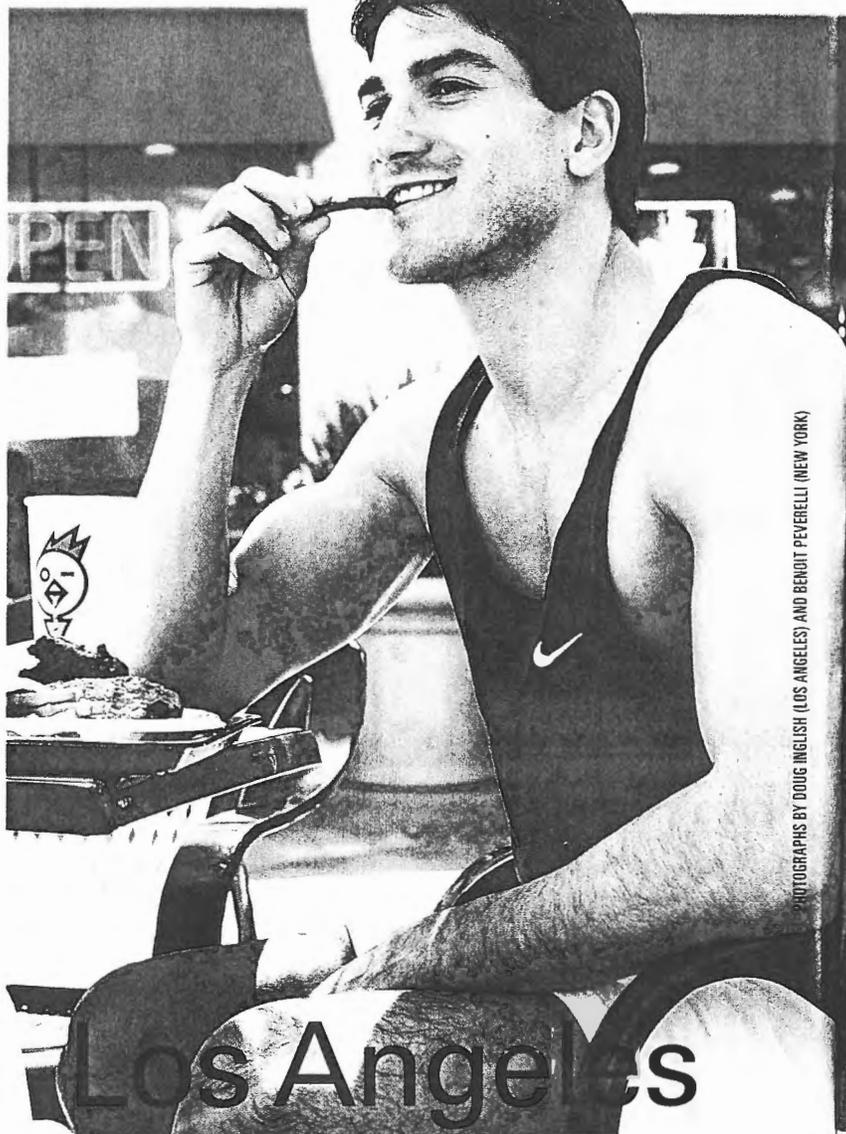
The trend to eschew the gay ghetto began in the '80s. Between 1979, when Edmund White wrote his snapshot of gay male life, *States of Desire*, and 1983, when he wrote an updated introduction to the book, he found that a new generation was already comfortable enough with a gay identity to scorn the exclusiveness he had described. What’s more, gay orthodoxy has never welcomed everyone: Highly visible gay neighborhoods have usually been created by middle-class, white, gay men. “There is a sense of isolation I feel when I visit San Francisco,” says Craig Washington, the coordinator of an African-American outreach program for an Atlanta AIDS service organization. “People say San Francisco is a gay mecca, but for whom?”

Indeed, not everyone hears the siren song of gay urban life. Surprisingly, the percentage of people who self-identify as gay or lesbian is higher in smaller cities, like Minneapolis and Seattle, than in the larger metropolises. “The medium-sized city is the interesting one,” says Robert Bailey, associate professor of public policy and administration at Rutgers University. “It pays to be hospitable to gay people, who are one of the few groups of people moving into downtowns.” Smaller cities are often breeding grounds for openly gay elected officials and civic leaders who can develop closer relationships with decision makers; that’s why they can often succeed even better than large cities in providing the services gay communities need.

Portland, Oregon, has four volunteer “crisis response teams” that work with the police to provide help for black, Hispanic, Asian, and gay/transgender crime victims. Roni Lang, a civilian member of the Sexual Minorities Roundtable and crisis-response-

CAFE KOO-KOO-ROO EPITOMIZES LA-LA LAND

KOO-KOO-ROO
California



PHOTOGRAPHS BY DOUG INGLISH (LOS ANGELES) AND BENOIT PEVERELLI (NEW YORK)

LESBIAN BREEDERS IN PARK SLOPE, BROOKLYN

New York

PHOTOGRAPHS BY DOUG INGLISH (LOS ANGELES) AND BENOIT PEVEBELLI (NEW YORK)

team volunteer, is a 66-year-old transgender person who lives as a woman about 90 percent of the time. At a meeting at police headquarters, he wears a tasteful black-and-white checked suit and heels; several staffers greet him by name, and few give him a second look. (He keeps a second police department ID in case he wants to come to a meeting in men's clothes.) Chief of police Charles A. Moose sticks his head in to say a quick hello to everyone. It's a scene impossible to imagine in New York.

But while there is more acceptance and participation in civic life in cities of all sizes, we still lack most basic rights everywhere. And even the brightest achievements carry the seeds of potential problems: When gay people gain hard-won acceptance in the broader community and begin to assimilate, is there a danger of what writer Daniel Harris calls "the fall of gay culture"? Tina Podlodowski, the Microsoft millionaire who "retired" to become a member of the Seattle city council, lives the contradiction. On the one hand, she will tell you, "I am a councilperson who's lesbian, not the lesbian councilperson." On the other hand, she says, "I don't want to be so assimilated that people forget I'm lesbian and very proud of that. I want to see lesbian culture, I want to see queer culture. I don't want to lose that."

If the operative metaphor for gay political and social life was once the experiences of people of color, our current position is perhaps more accurately compared to American Jews. With a lessening of some of the most overt forms of anti-gay oppression, the gradual loss of much unique gay sexual behavior, and the ability—and desire—of many to "pass," will assimilation become the next big gay lifestyle choice?

Of course, while it's unclear if total assimilation is even desirable, it's hardly possible in 1998. For now, most of us will give at least some thought to gay-friendliness when choosing a place to live.

How did *OUT* go about selecting our 10 good cities for lesbians and gay men? We wanted to present a mix of the obvious—New York, L.A., and San Francisco—and the surprising—Columbus, Ohio, and Durham, North Carolina. We don't claim to present a "10 Best" list, but simply a cross section of where we live now. ■

Signs of the Times



Civil rights law on the books



Gay-friendly employers in city or nearby



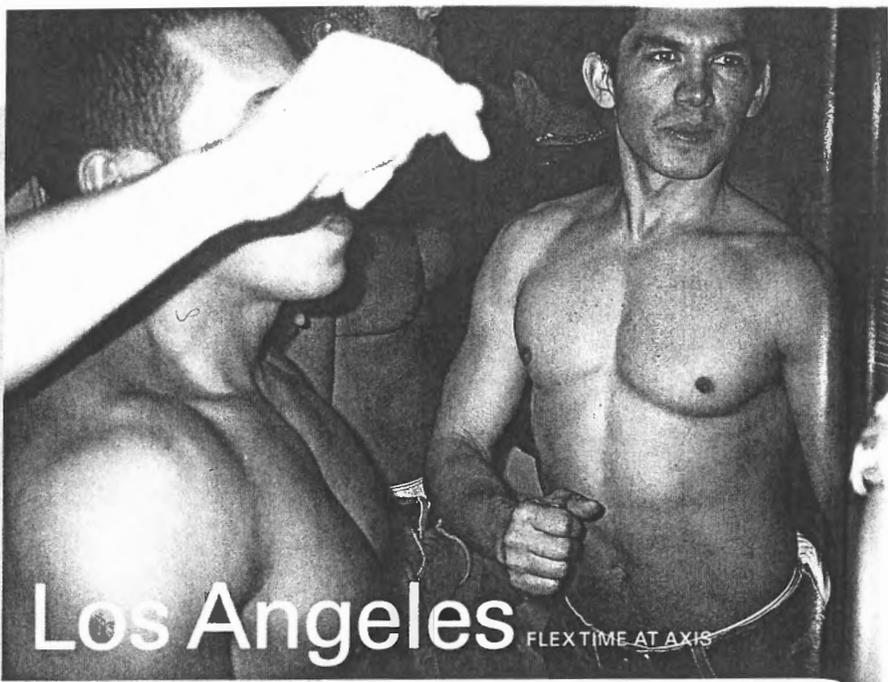
Gay social services and professionals



Activism and civic culture



Nightlife



The Big 3

One goes to New York to work, to L.A. to work and to be seen, and to San Francisco to just be. All three cities are large enough to support more than one highly visible gay or lesbian neighborhood. What's different in the '90s is that all three cities have matured to the point where gay people can choose to live in exclusively gay neighborhoods or very mixed gay-friendly ones, taking occasional visits back to the mothership of West Hollywood or the Castro for an infusion of *echt* gay air. "The wonderful thing about Los Angeles over the last 30 years has been the variety of places that have been created, appropriated, and constructed by gays for their own use," says Moira Kenney, an urban planner who is working on a book on the geography and politics of gay and lesbian L.A.

PHOTOGRAPHS BY DOUG INGLISH (LOS ANGELES), BENJAMIN PEYERELLI (NEW YORK), AND KEN PROBST (SAN FRANCISCO); ICONS BY JOHN PIRMAN

New York

BUSTIN' OUT AT KRASH IN QUEENS

New York

NOT THE CENTER OF THE UNIVERSE



- ▶ Manhattan is still the apex, from Chelsea's A Different Light, g, and Big Cup to the East Village's Boiler Room and Foxy.
- ▶ In Park Slope, Brooklyn, women-owned businesses along Fifth and Seventh Avenues, lots of dykes with tykes, and mixed race couples (straight and gay) make this a progressive outpost.
- ▶ New Jersey has become a destination for commuters, especially those with kids. Joan M. Garry, executive director of the Gay & Lesbian Alliance Against Defamation, moved to Montclair, an upscale, artsy suburb, in part for its good public education system. Her daughter's elementary school has three gay families.
- ▶ Jackson Heights is in the midst of the city's most ethnically diverse borough, Queens. Since a highly publicized gay-bashing murder in 1990, gay people have a more visible presence.
- ▶ New York has become a social-service innovator: The Michael Callen-Audre Lorde Community Health Center, which started out of offices in the gay community center, recently moved into its own loft building in Chelsea. Brooklyn boasts the Audre Lorde Project, a center for lesbian, gay, bisexual, two-spirit, and transgender people of color. The New York City Comptroller's office lists more than 500 gay services and groups.

San Francisco

THE PROMISED LAND



- ▶ Lesbians are everywhere from Noe Valley to Bernal Heights to the Mission.
- ▶ The development of Multimedia Gulch around South Park (in SoMa) has provided a freewheeling, gay-friendly environment—and many new jobs.
- ▶ Twenty years after the assassination of Harvey Milk, gay people serve on the Board of Supervisors and in a raft of other city-government positions.
- ▶ Catch a film at the baroque Castro Theatre. Evening shows start with a mighty Wurlitzer organ rising out of the pit. A nerdy guy in a suit serenades the audience with a medley.
- ▶ Trannyshack is the not-to-be-missed weekly gender-bending extravaganza at the Stud Bar. And check out the annual real girl drag-queen pageant.
- ▶ A new gay and lesbian synagogue for Congregation Sh'ar Zahav, has recently opened opposite the Mission Dolores.

- ▶ The Lexington Club redefines lesbian chic: low lights, red booths, beautiful girls sipping cocktails.

Los Angeles

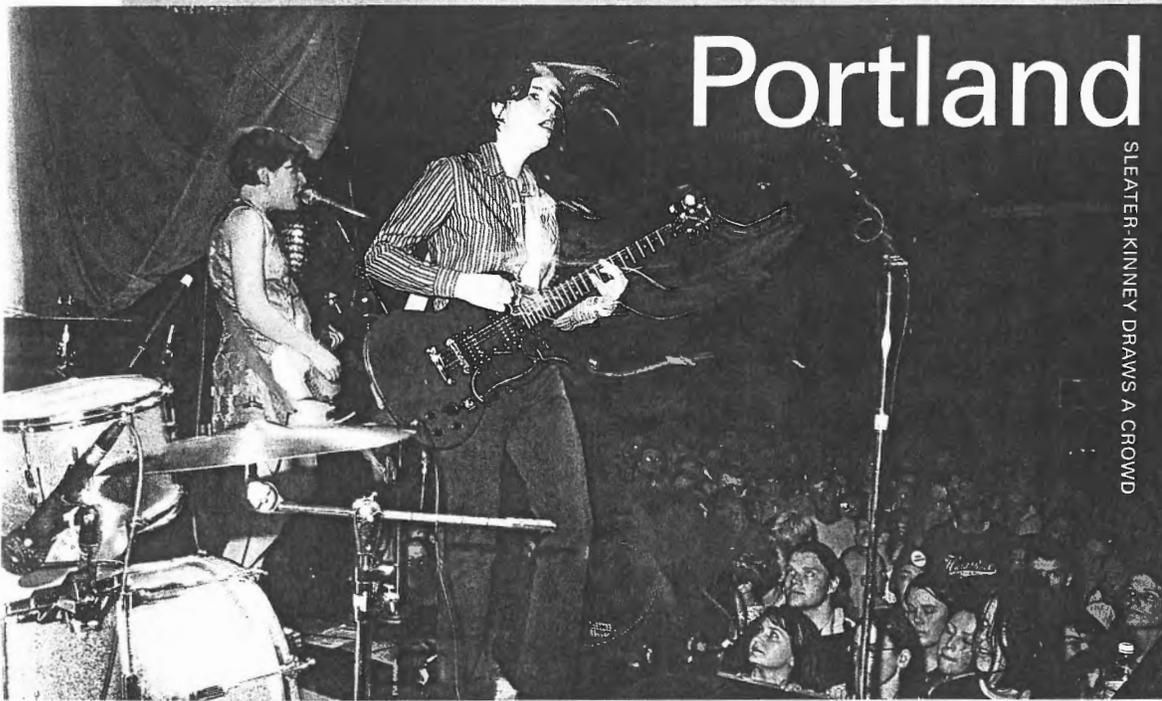
MORE THAN JUST PRETTY BOYS



- ▶ "If you had to say where gay entered the mainstream of America, wasn't it the movies?" asks Robert Dawidoff, a professor of history at Claremont Graduate University. And of course, the city is also home to the industry that gave us *Ellen*.
- ▶ As L.A. becomes more ethnically and culturally diverse, the arts flourish. The Getty Center and Santa Monica's Bergamot Station are the new high-culture meccas.
- ▶ Probably the best gay and lesbian community center in the nation, providing health-care and counseling services. Its new building opens in June.
- ▶ The city boasts a new rock 'n' roll fag scene: Mondays at Rage, Sucker at the Garage, and the monthly Dragstrip 66.

NATURE CALLS IN BERNAL HEIGHTS





Portland

SLEATER-KINNEY DRAWS A CROWD



PHOTOGRAPHS BY ALICE WHEELER (PORTLAND, SEATTLE).
MUSIC: SLEATER-KINNEY PRODUCTIONS (U.S. VEGETARIAN)

The Post-Gay Cities

Tucked up in the Northwest, Seattleites and Portlanders used to cherish the notion that their part of the world was a well-kept secret. If the 1962 World's Fair and the Space Needle put Seattle on the map, then Starbucks, Microsoft, and *Frasier* have helped to establish it as a premier destination. But now that housing prices are rising (median new home cost: \$200,000), some Seattle residents look to their neighbor to the south and envy its efforts to control growth. Both cities have strong gay communities and boast some of the most beautiful urban parks in the country. More prosaically, both have a city-wide-elected council, which forces each member to develop a broad constituency. As lesbian Seattle councilwoman Tina Podlodowski puts it, "even if the entire gay and lesbian community voted for me in the city of Seattle, I would not win. There are many

more bridges that need to get built to win an election here." If Seattle is the big city writ small, Portland feels like the little city that could. It too is experiencing rapid growth, though many—both gay and straight—find that the city's smaller scale just makes it easier to start an enterprise or a project of any kind. Lisa DeGrace, for example, left the lesbian utopia of Northampton, Massachusetts, to help establish a theater company. When she's not volunteering at In Other Words, a non-profit women's bookstore, she's the managing director of the Profile Theatre Project, which presents the work of one playwright each season.

Seattle



DANCIN' FOOLS AT THE TIMBERLINE TAVERN

PHOTOGRAPHS BY ALICE WHEELER (PORTLAND, SEATTLE),
AND ANDREW PRODUCTIONS (LAS VEGAS)

Seattle

MEN, MUSIC, AND MICROSOFT



► The Capitol Hill neighborhood boasts many gay-owned and gay-friendly businesses. Bailey/Coy Books, owned by Seattle native and gay community activist Barbara Bailey, is a good all-around book-

store with a large selection of gay and lesbian titles.

► Seattle Fringe Theatre Festival: In March you could have caught Donna Rae Davidson and her ukulele singing a salute to Margarethe Cammermeyer and others in "Women With Balls."

► Toys in Babeland is a lesbian-owned, everybody-welcome sex-toy store. Co-owner Rachel Venning conceived the business while earning an M.B.A. and deciding that corporate life was not for her. The store is light and airy, and the staff casual and friendly. Watch out New York: Co-owner Claire Cavanah will be opening a Big Apple branch later this year.

► Clothing is casual. Leave the suit at home, break out the flannel and denim.

► Espresso on every street corner.

► The new Art and Revolution Organization Cafeteria showcases cutting-edge DJs from abroad.

Portland

THE LESBIAN PROMISED LAND



► Portland lesbians say the city is to girls what San Francisco is to boys.

► The beautiful Mount Tabor Park contains the only extinct volcano within the limits of a U.S. city.

► No community center, but an extremely active Metropolitan Community Church that hosts gay groups of all kinds.

► Portland remains gay-friendly, despite—or perhaps because of—several anti-gay referenda over the last 10 years. Locals consider mayor Vera Katz a staunch defender of gay rights.

► Powell's City of Books. Over a half-million titles in stock, and the gay and lesbian section is the first thing you hit when entering.

► You can get married at the coin-operated Church of Elvis.

► You can use your Seattle wardrobe.

► The Portland music scene has blossomed in recent years, and bands like Sleater-Kinney, the Vegas Beat, and Team Dresch play at clubs such as Zoot Suite and La Luna.

NEON STRIP SEARCHING



Las Vegas



HEDONISM CENTRAL

We haven't seen the future, but it might look something like Las Vegas. The fastest growing metropolitan area in the country, the gambling capital has always had a freewheeling, libertarian streak—prostitution is legal in some Nevada counties—but it's largely been conservative on gay issues. Local activists, however, point to the 1993 repeal of the state sodomy statute—the only such repeal accomplished through a state legislature rather than the courts since 1983—as a turning point in local gay life. A supportive mayor, Jan Laverty Jones, has also made a difference. Even before her election in 1991, she became well known for a series of TV ads for her car dealership in which she appeared with local drag performer Kenny Kerr, who dressed up as Jones' evil twin. "Since we're a young city, we haven't been able to develop generations of decades-old hatreds that can build up with segregated neighborhoods," says Lee Plotkin, a Las Vegas real estate broker active in gay community affairs.

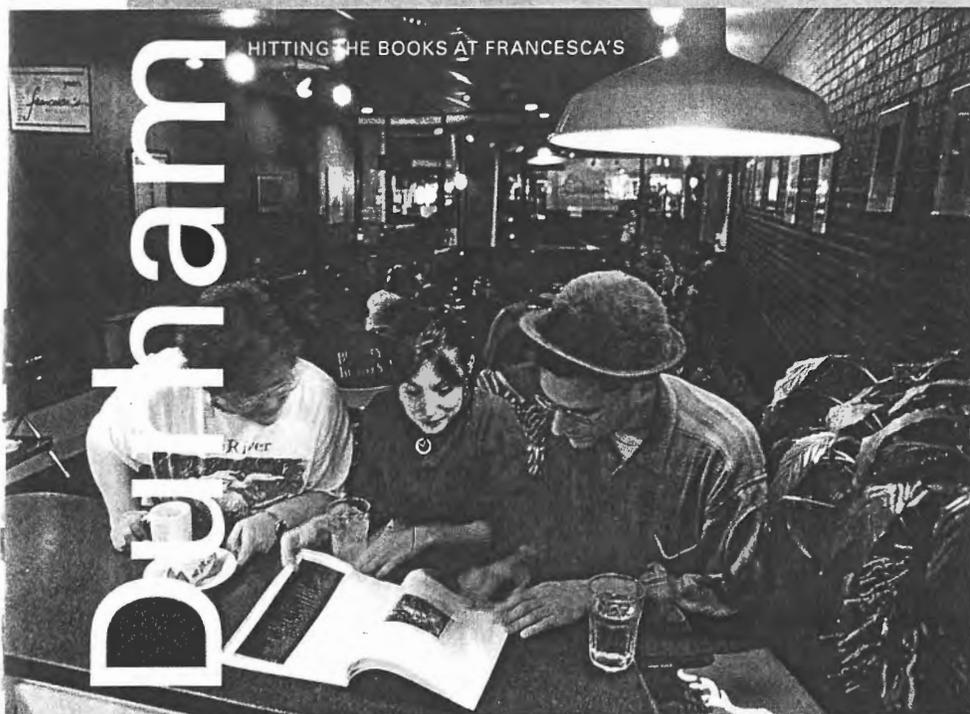
Las Vegas offers:

► Showgirls.

► A low cost of living.

► The biggest Gay Pride parade in the region. Last year several thousand people attended, up from less than a hundred a decade ago.

► The area around Paradise Road and Naples Drive has several bars and a gay bookstore, Get Booked.



HITTING THE BOOKS AT FRANCESCA'S

Durham

THE COLLEGE TOWN



When you come to Durham, North Carolina, dispense with images of country music, pork barbecue, and tobacco allotments. Instead, head for Ninth Street, a bustling strip of bookstores and ethnic restaurants, and go directly to the lesbian-owned Francesca's Dessert Caffe. Buy two scoops of chocolate-raspberry ice cream, grab a table under a ceiling fan, and sit a spell. Look around: Near the watercooler, two women are celebrating their sixth anniversary together; three gay men, in high spirits after a movie, dive into homemade pastries; a radical historian, straight and married, talks about his upcoming book on a local civil-rights uprising.

It's no coincidence that the queer heart of Durham is an ice cream shop. This is not a city filled with discos, sex clubs, and gay community centers. There's no gay ghetto. It's hard to find a good meal after 10 p.m. Still, it's the very lack of an urban feel that has attracted lesbians and gay men to this oasis of tolerance in the midst of Jesse Helms' home state.

"There's enough to be interesting—

professional theater, movies, concerts—but it doesn't have the intimidating feel big cities have to me," says Brandon Bowman, a North Carolina native who sings with the Triangle Gay Men's Chorus. "You can walk down the street, talk to people, and make eye contact without worrying if they're going to rob you."

And yet Durham, with its population of 167,000, has an atmosphere of tolerance usually associated with big cities. Both Duke University and the high-tech Research Triangle Park have drawn people from around the country. What's more, the city is 40 percent African-American, with a strong black middle class, which means it has had to deal with differences for its entire history. "The D in Durham is for diversity," says lesbian attorney Sharon Thompson, a former state legislator. "Anyone here can feel comfortable and find kindred spirits."—BARRY YEOMAN

Durham boasts:

- ▶ Manbites Dog Theater, with its annual "Don't Ask, Don't Tell" festival.
- ▶ The Durham County Library, which publishes lesbian and gay bibliographies.
- ▶ The Durham Dragons, a women's fast-pitch softball team.
- ▶ Still possible to find an old Southern house for under \$100,000.

Minneapolis/ St. Paul

A HOMEGROWN REGIONAL HUB



Minneapolis is a regional hub, gathering the gay diaspora from the Five States area (the Dakotas, Iowa, Wisconsin, and Minnesota) in search of urban living on a smaller scale than Chicago offers. The city has some of the coldest and snowiest winters of any large city, but there is at least one compensation: Minnesota has a long progressive tradition in politics and is one of only 10 states with a gay rights law.

Minneapolis features:

- ▶ District 202, a pioneering community center for gay youth.
- ▶ The country's largest gay Oscar party, held at the Orpheum Theater and Bravo Event Center, which attracted 3,500 attendees this year.
- ▶ Local folklore says it has the second-largest number of theater seats and the second-largest gay population per capita. Undoubtedly, they try harder.
- ▶ Local gay celeb Mark Addicks, the man behind Frosted Cheerios, the most successful new product launch in the history of cereal.
- ▶ Yes, you can see Mary Richards' house. No, you can't go in: It's privately owned.
- ▶ The only complaint aside from the weather: The city's Scandinavian heritage may make it harder to break into long-established social circles, "but once accepted, you're kind of in for life," says engineer Rick Allen, a transplant from Baton Rouge, Louisiana.

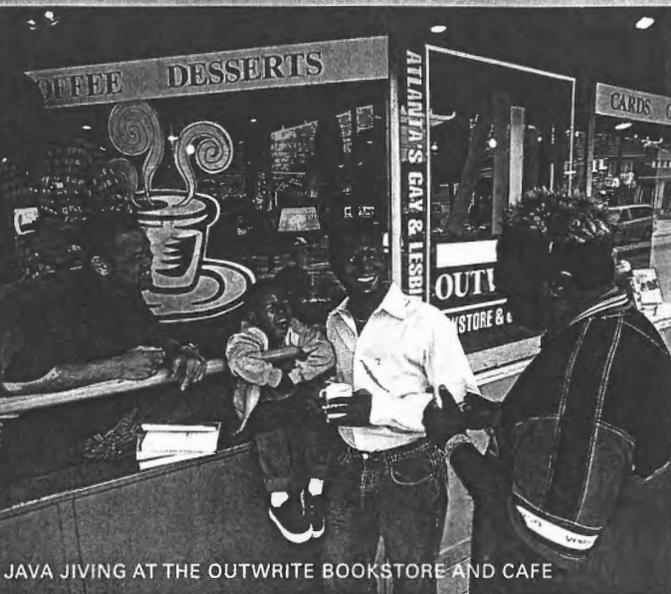
LOGGING ON AT CAMP SNOOP



PHOTOGRAPH BY BENNOT PEVERELLI (DURHAM), SIM & ASSOCIATES (MINNEAPOLIS)

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Atlanta



JAVA JIVING AT THE OUTWRITE BOOKSTORE AND CAFE

THE GAY MECCA OF THE SOUTH



Yankees still find in Atlanta some of the graciousness and slower pace of the South, but Southerners barely consider it Southern: It has too many carpetbag-

gers, which may help account for its reputation as the most gay-friendly Southeast city outside of Florida. As an oasis for gay Southerners, it combines the mellowness of San Francisco with the region's traditional hospitality and lack of attitude.

► The "city that's too busy to hate" was also the site of some of the worst anti-

gay violence in 1997, the bombing of the Otherside, a gay nightclub. The bombing, while sobering, seemed to galvanize gay Atlantans. "People retain an awareness that they're vulnerable, yet there's been no rushing back to the closet," says Lawrie Demorest, a lawyer and activist.

► "One of the worst things about the South is the overt racism, sexism, and homophobia," says regional black lesbian activist Pat Hussain. "One of the best things about the South is the overt racism, sexism, and homophobia. We're the only region of the country that's not in denial." The birthplace of Dr. Martin Luther King Jr., home to a long-established middle-class African-American community, has the nation's premier civil rights museum.

► City council member Cathy Woolard became Georgia's first openly gay elected official last year.

► Atlanta was the only major city without a gay bookstore when Philip Rafshoon opened Outwrite nearly five years ago. Since then, its café has become a meeting spot for a number of political and social groups and a major attraction of Midtown, the heavily gay neighborhood centered around Piedmont Park.

Columbus

IT'S NOT JUST WHITE BREAD ANYMORE



Sherwood Anderson's collection of stories, *Winesburg, Ohio*, depicts a bastion of Middle American narrowness; the story "Hands," in fact, concerns a reclusive man who had been hounded from his job as a teacher because of a false accusation of pedophilia. All the more surprising, perhaps, to find a thriving gay life in Columbus—Ohio's capital—a city of 700,000. A major focal point of the community is a one-and-a-half-year-old restaurant, Out on Main, a gay Planet Hollywood. It features memorabilia and artifacts like Greg Louganis' Speedo and Martina Navratilova's tennis racket, as well as vintage photos of same-sex cou-

ples holding hands and a mural depicting events from the last 50 years of gay rights activities. But, says co-owner Michael Caven, "This isn't Disneyland for gay and lesbian history and culture. We definitely want our visitors to see that we are a people who've suffered greatly, overcome many obstacles, and have great hope for the future." Caven estimates that 40 percent of his customers are nongay, and the Sunday gospel brunch appeals to families of all kinds.

► Columbus boasts the largest number of gay bowling teams in the country. (Even the city's boosters aren't sure whether this is a plus or a minus.)

► The Reality Theater, the oldest alternative theater in the Midwest, features many gay-themed productions.

AN OUT ON MAIN FOOD GROUP



► BRAVO (Buckeye Region Anti-Violence Organization) tracks hate crimes. Kim Dill of the Stonewall Columbus community center says that the area ranks fifth in the country in reported hate crimes, which may reflect a high degree of activism.

PHOTOGRAPH BY ROBIN NELSON/BLACK STAR (ATLANTA); RAFFENBERGER PHOTOGRAPHY (COLUMBUS)

Portland Gay/Lesbian Community's past year

- Yes, it has been a watershed year for gays & lesbians, but I don't think it's just in Portland and I don't think you could say this one has been a more notable year than years past. Gays and lesbians are fighting for their rights and have continued making significant strides forward every year.
- I also think that it's part of a larger, national societal phenomenon. Look at the issue of gays & lesbians around the country -- Ellen DeGeneres' character coming out, the actress herself going very public about her relationship with Anne Heche, this week's controversy over Hormel's ambassadorship to Luxembourg. Gays & lesbians have been pushed to the forefront of our discussion of what defines American culture and society.
- That said, Portland's elected leadership has always taken an active role in advancing the cause of gay and lesbian equality issues. This year we both lost and gained ground, in part stemming from the Besaws case.
- This Council decided to appeal the Besaws case because it was an affront to us that someone would argue the city had no right to attempt to give recourse for discrimination, which is against the laws we've set for this city. Why should you or I have any more right to sue than someone who's gay or lesbian? Someone said during the discussions at that time, if you substituted the words African American, people would feel very differently.
- Government has a responsibility to all its citizens, and therefore needs to aggressively work to protect the rights of all minorities prone to discrimination -- whether it's related to ethnicity, gender, or sexual orientation. It's really no different than the government's interest in protecting the rights of minorities. I believe sexual minorities have a right to be free from discrimination and need extra help achieving parity, and that the city government has a duty to help them get there.
- My bureaus have worked for a long time on helping ensure parity for ethnic minorities through the Fair Contracting and Employment Initiative. So, the clause requiring our contractors to have non-discrimination policies was a natural outgrowth of that.
- In a way, I'm happy that the Besaws case happened, because it's encouraged us to be creative as we talked more about what government can do -- and one of the things we came up with is that we can get people to talk to each other through mediation. It's expedient, economical, and people just need to learn to talk to each other.
- If we can get people to come to the table at a time when people are turning against affirmative action and "special rights" for minorities, we're going a great thing. I think it's impressive that city government is taking the initiative to enter a new area of law, implementing this pilot mediation program and helping set the tone for how we deal with issues of discrimination and varying perceptions that lead to conflict.



City of Portland
Vera Katz
Mayor

June 12, 1995

INTEROFFICE MEMORANDUM

TO: Commissioner Blumenauer
Commissioner Hales
Commissioner Kafoury
Commissioner Lindberg

FROM: Mayor Katz

SUBJECT: Resolution to Authorize Joining Opposition to
Colorado's Anti-Gay Rights Measure in the U.S. Supreme
Court.

I have just learned that the briefs in Romer v. Evans are due to be filed next week in the United States Supreme Court. That case challenges the constitutionality of the Colorado measure that disables the state and local governments from prohibiting any form of discrimination against a person because of his or her sexual orientation.

The State of Oregon is filing an amicus brief opposing the measure, along with the states of Maryland, Massachusetts, Minnesota, Nevada, Washington and the District of Columbia.

In addition, a number of cities around the country are filing an amicus brief in opposition to the measure. We have the opportunity to join in that brief to lend our support in opposition to the measure.

Because the brief must go to the printers very soon, I will present a resolution to Council on Wednesday, June 13, 1995, along with a request to waive the rules to allow consideration of the resolution. The resolution will authorize the City to join in the amicus brief prepared by the City of Boulder, Colorado, and other cities in opposition to the Colorado measure. That brief will argue that the wholesale authorization of discrimination against any group of citizens is not a legitimate state goal and that the measure violates the Equal Protection Clause of the United States Constitution.

Please join me in making this statement in opposition to such discrimination on behalf of the City of Portland.

Enclosure



CITY OF

PORTLAND, OREGON

OFFICE OF CITY ATTORNEY

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1220 S.W. 5th Avenue
Portland, Oregon 97204
(503) 823-4047

TO: *Alyssa*

DATE *6/15/95*

FROM: *Linda Meng*

RE: *Romer v. Evans*

This draft is not for public release yet. The list of participating cities is tentative at this point.

filed May 20

City and County of San Francisco:

Office of City Attorney



Louise H. Renne,
City Attorney

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Louise H. Renne,
City Attorney

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0552s.

City and County of San Francisco:

Office of City Attorney



Louise H. Renne,
City Attorney

FAX TRANSMITTAL

FROM: JULIA M. C. FRIEDLANDER TEL NO: (415) 554-4255
Deputy City Attorney

FAX NO: (415) 554-4248

DATE: 6/14/95

TIME: _____

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TO: Joseph de Raismes, III
City Attorney

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TEL NO: (303) 441-3020

TO: Bruce Blaisdell
Boston City Attorney

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TO: Linda Ming
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05525

City and County of San Francisco:

Office of City Attorney



Louise H. Renne,
City Attorney

FAX TRANSMITTAL

FROM: JULIA M. C. FRIEDLANDER
Deputy City Attorney

TEL NO: (415) 554-4255

FAX NO: (415) 554-4248

DATE: 6/14/95

TIME: _____

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TO: _____

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City and County of San Francisco:

Office of City Attorney



Louise H. Renne,
City Attorney

MEMORANDUM

DATE: June 14, 1995
TO: Municipal Attorney Contacts
FROM: Julia M. C. Friedlander
Deputy City Attorney
RE: Draft Amicus Brief
Romer v. Evans

Attached please find a draft of the amicus brief our office has prepared in support of respondents in the case challenging Colorado's anti-gay initiative, "Amentment 2." Rather than addressing all the arguments that have been well developed in other briefs, this draft focuses on the effects of Amendment 2 on cities' ability to combat acts of public discrimination.

We are eager to to see other cities join with us on this brief. Unfortunately, our time is extremely short. We need to receive your comments by noon on Thursday, June 15. We need to receive a memo confirming participation by the close of business Thursday.

Please call me if you have any questions or comments on the draft. I can be reached at (415) 554-4255. My fax number is (415) 554-4255. Thanks.

J. M. F.

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No. 94-1039

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

Roy Romer, as Governor of the State of Colorado,
and the State of Colorado,

Petitioners,

v.

Richard G. Evans, Angela Romero, Linda
Fowler, Paul Brown, Priscilla Inkpen,
John Miller, The Boulder Valley School
District RE-2, The City and County of
Denver, The City of Boulder, The City of
Aspen, and the City Council of Aspen,

Respondents,

On Writ of Certiorari to
the Supreme Court of the State of Colorado

BRIEF OF THE CITIES OF BALTIMORE, CHICAGO, LOS ANGELES,
SAN FRANCISCO . . . AND THE NATIONAL INSTITUTE OF
MUNICIPAL LAW OFFICERS, AS AMICUS CURIAE
IN SUPPORT OF RESPONDENTS

LOUISE H. RENNE
City Attorney
Counsel of Record

DENNIS AFTERGUT
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June 19, 1995

DRAFT

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DRAFT**STATEMENT OF INTEREST**

Amici curiae -- the cities of Baltimore, Chicago, Los Angeles, San Francisco, and . . . the National Institute of Municipal Law Officers (NIMLO), submit this brief in support of respondents Richard Evans, et. al. Municipal Amici ("the cities") submit this brief pursuant to Supreme Court Rule 37.5. NIMLO's participation is authorized by the consent of the parties pursuant to Supreme Court Rule 37.3. Written consent for NIMLO's participation, from the counsel of record for each party, is on file with the Clerk of the Supreme Court.

This case concerns whether Amendment 2 to the Colorado Constitution violates the Equal Protection Clause of the Fourteenth Amendment. Amendment 2 forbids all state and local governments from adopting or enforcing any law or policy that allows any person to seek redress for discrimination on the basis of gay, lesbian, or bisexual orientation.

Amici have a direct interest in the resolution of this question. All of the municipal amici have adopted anti-discrimination ordinances or policies that seek to protect individuals from invidious discrimination and mistreatment and to promote respect and equal rights for all members of society. In each city, these protections include some form of prohibition against discrimination based on sexual orientation. Several of the amici cities are located in states where measures similar to Amendment 2 are being considered. Pet. Cert., 20.

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Petitioners Roy Romer as Governor and the State of Colorado have argued that a state may amend its constitution to forbid state and local governments from adopting or enforcing any policy that prohibits discrimination against any disfavored group, so long as the group has not been deemed a suspect class under equal protection analysis. None of the amici cities have limited the protection of their local anti-discrimination ordinances and policies to suspect classifications. The cities have adopted ordinances and policies that prohibit discrimination based upon, for example, age, physical and mental disability, veterans' status or marital status. If petitioners' view prevails, the cities' efforts to combat discrimination based on all arbitrary, status-based characteristics of concern to local citizens would be in jeopardy.

The National Institute of Municipal Law Officers (NIMLO) is a non-profit, non-partisan organization, consisting of over 1400 local governments and their attorneys. Member governments operate NIMLO through their chief legal officers, variously called city or county attorneys, corporation counsel, city solicitors, law directors, and other titles.

NIMLO is dedicated to gathering and disseminating information on recent legal developments that affect municipalities. NIMLO participates in a case in an amicus capacity when a majority of the Board of Directors determines that the case has nationwide impact and amicus support is warranted. In this case, NIMLO is interested in the effect of state initiatives on local authority to protect human rights, as local governments choose to define those rights.

DRAFT**SUMMARY OF ARGUMENT**

Amendment 2 adopts as state policy an impermissible governmental objective under the Equal Protection Clause. The provision creates a state constitutional privilege to discriminate against gay, lesbian, and bisexual persons in every conceivable area of public, as well as private, life. Such a policy is directly contrary to the basic purpose of the Equal Protection Clause -- to ensure that similarly situated persons shall be similarly treated.

DRAFTARGUMENTAMENDMENT 2 FACIALLY VIOLATES
THE EQUAL PROTECTION CLAUSE.

The Colorado Supreme Court strictly scrutinized Amendment 2. Evans v. Romer, 882 P.2d 1335, 1341 (Colo. 1994) ("Evans II"); see also Evans v. Romer, 854 P. 2d 1270, 1286 (Colo. 1993) ("Evans I"). The court reasoned that Amendment 2 burdens the fundamental right to political participation. Amici agree. In addition, Amici believe that the decision of the Colorado Supreme Court is correct for another reason. Even under a rational basis test, Amendment 2 is invalid because it sweeps so broadly that it bears no rational relationship to any conceivable objective that government may legitimately pursue. Thus, the Court need not consider whether Amendment 2 involves a suspect classification or burdens a fundamental right.

The Equal Protection Clause protects all persons from arbitrary discrimination -- not just members of racial and ethnic minorities. See, Yick Wo v. Hopkins, 118 U.S. 225, 226 (1886). The Equal Protection Clause is "essentially a direction that all persons similarly situated should be treated alike." Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985) quoting Plyler v. Doe, 457 U.S. 202, 216 (1982).

Amendment 2 is unconstitutional on its face because it adopts a substantive state policy that contradicts this fundamental direction. Amendment 2 creates a positive power and

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privilege to discriminate against gay, lesbian and bisexual individuals solely on the basis of prejudice. Amendment 2 declares Colorado policy that no gay, lesbian, or bisexual person shall ever be considered to be similarly situated to any heterosexual person with respect to any power, right or privilege -- whether public or private. This policy cannot coexist with the equal protection mandate that governmental classifications be rationally related to a permissible governmental objective.

**A. AMENDMENT 2 CREATES A STATE
CONSTITUTIONAL PRIVILEGE TO DISCRIMINATE
THAT STATE AND LOCAL OFFICIALS ARE
POWERLESS TO CONTROL.**

Petitioners profoundly mischaracterize the scope and effect of Amendment 2 in at least two respects. First, petitioners argue that Amendment 2 merely repeals previously adopted statutes, ordinances and policies that prohibited discrimination based on sexual orientation. Pet. Brf. 11. Petitioners assert that gay, lesbian and bisexual individuals "would retain precisely the same rights under state and federal law that they had prior to the enactment of the special protections repealed by Amendment 2." Id. According to the petitioners, gay, lesbian and bisexual individuals in Colorado stand in the same shoes today as they did before the adoption of anti-discrimination laws that specifically mention sexual orientation.

Second, petitioners argue that Amendment 2 merely preempts local anti-discrimination measures. Pet Brf. 12. Petitioners argue that respondents are seeking "to immunize from preemption

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special protections that have been conferred upon homosexuals and bisexuals." Ibid. Thus, petitioners defend Amendment 2 as involving only a state allocation of authority among political subdivisions. Id. at 14; see also Brief of Amici Curiae States of Alabama, California, et al., p.8 (states can grant and withdraw powers to local governments at their pleasure).

Petitioners' arguments disregard the plain text -- and the extraordinarily broad reach -- of Amendment 2:

Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of, or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be self-executing.

Colo. Const. art. II, §30 (1992) ("Amendment 2") (emphasis added).

Amendment 2 goes far beyond repeal and preemption of anti-discrimination policies. Amendment 2 installs the privilege to discriminate against gay, lesbian and bisexual individuals as a substantive policy in the State of Colorado's basic charter. If Amendment 2 is upheld, individuals choosing to discriminate based on sexual orientation will be able to rely on express constitutional authority, free from any censure or penalty by official sources. See, Reitman v. Mulkey, 387 U.S. 369, 377 (1967) (holding the creation of such authority unconstitutional, even where it authorizes only private acts of discrimination in housing).

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Amendment 2's effect of endorsing and immunizing public discrimination, no matter how invidious or arbitrary, is particularly egregious. Even in the absence of specific legislative authorization, state and local officials normally have the power and the duty to prevent subordinate public employees from acting arbitrarily. For example, a local director of public health would need no legislative guidance to discipline an employee who refuses to inoculate left-handed children.

Administrative decisions based solely on prejudice against gay, lesbian or bisexual individuals are equally arbitrary. Amendment 2 prevents administrators from proscribing this form -- and only this form -- of arbitrary action. The effects of this policy would be felt across a virtually limitless range of local government responsibilities. A single example easily illustrates the hopeless bind in which Amendment 2 would place local governments.

Suppose that an employee of the local library who processes applications for library cards refuses to provide library cards to gay, lesbian or bisexual patrons because the employee does not want to encounter these persons in the public library. An applicant complains to the city that the city has discriminated against her because she was told she could not have a library card because she is a lesbian. City policy establishes that the mission of the public library is to make information widely available to members of the public. Nevertheless, Amendment 2 would prevent the city from disciplining the library employee.

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Such discipline would "enforce [a] policy whereby . . . lesbian . . . orientation [would] be the basis of . . . any . . . claim of discrimination." Worse, the city librarian could not issue a directive that staff may not take sexual orientation into account when issuing library cards. Such a directive would violate the state constitution by creating a policy protecting against discrimination based on sexual orientation.

Under well-settled equal protection precedents, the library patron's right to equal application of the laws has been violated. If any public function "is administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances" the government has denied equal protection of the laws. Yick Wo v. Hopkins, 118 U.S. 220, 227. There is no conceivable basis for arguing that lesbian and heterosexual citizens are not similarly situated with respect to access to institutions such as the public library. Under Yick Wo, even isolated instances of arbitrary treatment are unconstitutional. It necessarily follows that a state may not enshrine in its constitution a positive privilege for its employees to discriminate with impunity in the performance of their duties. Our institutions of government "do not mean to leave room for the play and action of purely personal and arbitrary power." Yick Wo, Id. at 226.

Thus, contrary to petitioners' assertions, Amendment 2 dramatically changes the status quo prior to the adoption of

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positive prohibitions on discrimination based on sexual orientation. Amendment 2 affirmatively disables any instrumentality of a state or local government from prohibiting or penalizing arbitrary action or invidious discrimination, even where it is concededly based solely on prejudice, so long as the facts surrounding the act of discrimination involve the complainant's sexual orientation.

The result is to place government agencies in an impossible bind. By complying with Amendment 2, a state or local government entity would, in many instances, expose itself to liability under the Equal Protection Clause for arbitrary and invidious discrimination. By complying with the mandates of the Equal Protection Clause, a state or local government entity would expose itself to liability under Amendment 2 from public employees or others seeking to defend their right^S to discriminate. The Supremacy Clause resolves this conflict. Amendment 2 violates the United States Constitution.

B. AMENDMENT 2 WAS MOTIVATED BY AN IMPERMISSIBLE GOVERNMENTAL OBJECTIVE.

Under the rational basis test, a legislative classification is generally sustained if it is rationally related to a legitimate governmental interest. Cleburne, 473 U.S. at 440. A classification is invalid, however, where it seeks to further an impermissible purpose. "[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate

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governmental interest. "U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 534 (1973) (requirement that all household members be related creates irrational classification where motivated by illegitimate purpose of preventing "hippies" from participating in food stamp program).^{1/}

Amendment 2 is invalid because it seeks to further impermissible government purposes. "If the adverse impact on the disfavored class is an apparent aim of the legislature, its impartiality [is] suspect." Cleburne, 473 U.S. at 452 (Stevens, Burger concurring). Amendment 2 classifies all individuals according to a highly personal characteristic -- their sexual orientation. Here, the text of Amendment 2 itself makes clear that its core purpose is to deny protection against discrimination to the disfavored class of gay, lesbian and bisexual individuals.^{2/}

Consistent with Amendment 2's text, the Colorado Supreme Court concluded, and petitioners have not contested, that imposing an adverse impact on gay, lesbian, and bisexual people was the declared purpose of Amendment 2:

. . . Amendment 2 sought to deny an independently identifiable group's right to participate equally in the political process. . . . [¶] . . . Amendment 2 also is intended to deny the same right to persons based on homosexual, lesbian, or bisexual. . . conduct, practices, or relationships. . . .

Evans II, 882 P.2d at 1349 (emphasis added).

The legislative history confirms that Amendment 2 was intended to adversely impact gay, lesbian and bisexual individuals. The Colorado legislative counsel's analysis of

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Amendment 2 informed voters that several agencies of state and local government had recognized a need to protect gay, lesbian and bisexual individuals from discrimination based on their sexual orientation. See, Pet. Cert. App. F-3 through F-6. Voters were informed that if Amendment 2 passed, it would nullify these protective policies and state and local governmental officials would have no power to adopt or enforce similar policies.^{3/}

There can be no dispute that Amendment 2 was intended to have an adverse impact on gay, lesbian and bisexual people. Because Amendment 2 was motivated by purposes embodying prejudice against gay, lesbian and bisexual people, it is not entitled to deference by the Court. While the Court generally presumes that even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted, this presumption only applies "absent some reason to infer antipathy." Vance v. Bradley, 440 U.S. 93, 97 (1979), quoted in F.C.C. v. Beach Communications, 508 U.S. ___, 113 S. Ct. 2096, 2101 (1993) (emphasis added). Amendment 2 displays antipathy toward gay, lesbian or bisexual people on its face. Because of this antipathy, and because Amendment 2 creates a positive right to discriminate arbitrarily and invidiously, no legitimate purpose can be advanced to justify its effects under the Equal Protection Clause.

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Notes

1. It is of no consequence that Amendment 2 was adopted by the voters rather than a representative legislature. "[The electorate as a whole, whether by referendum or otherwise, could not order city action violative of the Equal Protection Clause." Cleburne, 473 U.S. at 448, quoting Lucas v. Forty-Fourth General Assembly of Colorado, 377 U.S. 713, 736-737 (1964). Indeed, the "Bill of Rights removes entire areas of legislation from the concept of majoritarian supremacy." Gordon v. Lance, 403 U.S.1,6 (1971)

2. The Colorado Supreme Court based its holding on sexual orientation only, not Amendment 2's additional prohibition of protections arising from "homosexual, lesbian, or bisexual . . . conduct, practices or relationships." Likewise, the court below did not address Amendment 2's provisions related to "quota preferences" and the granting of "minority status." The court struck down Amendment 2 as a whole because the court concluded that the measure's provisions were not severable under state law. Evans v. Romer, 882 P.2d 1335, 1349 (Colo. 1994). Consequently, this brief focuses on Amendment 2's prohibition on protections against discrimination based on sexual orientation.

3. The voters were also informed that the amendment would not address the rights of heterosexual individuals to bring claims of discrimination under existing ^{of} future ordinances, Pet. Cert. F-6. As a result, if Amendment 2 is upheld, anti-discrimination policies that were adopted primarily for the purpose of responding to discrimination against gay and lesbian individuals, Pet. Cert. F-3, would be available only to protect heterosexual individuals.

Kafoury
Portland, OR
(Multnomah Co.)
Oregonian
(Cir. D. 350,978)

DEC 24 1998

Allen's P. C. B. Est. 1888

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Council promises employees trans-gender rights

10
■ Commissioners also shower praise and gifts on departing colleague Gretchen Miller Kafoury, authorize removal of automated advertising signs and allocate money for the Vintage Trolley

By BILL STEWART
of The Oregonian staff

In its last meeting of the year, the Portland City Council romped through a stack of items Wednesday, from saying goodbye to a veteran commissioner to promising equal rights for the city's trans-gender employees.

- Actions included:
- Paid tribute to retiring Commissioner Gretchen Miller-Kafoury, who in many ways served as the council's conscience since 1991.
 - Approved a program to fight discrimination against transsexual employees.
 - Took final action to block a performance amphitheater at Portland International Raceway.
 - Declared flashing, animated electric signs to be a safety hazard for motorists and authorized their removal.
 - Authorized a \$325 million sale of revenue bonds to cover the unfunded portion of city employee pensions.
 - Approved \$150,000 to help continue free Vintage Trolley service between downtown Portland and Lloyd Center.
 - Authorized a study of potential savings if the Fire Bureau's mechanics are consolidated with the city's general fleet maintenance crew.
 - Granted a 30-day grace period for processing proposed



BENJAMIN BRINK/The Oregonian

City Commissioner Gretchen Miller Kafoury laughs at her colleagues' comments during her last City Council hearing. Kafoury retires at the end of the year.

building lots less than 50 feet wide, followed by new rules to protect neighborhoods fearing excessive housing density.

Because of the holidays, the next council session will be Jan. 6.

Kafoury, who has championed affordable housing and worked for safeguards and services for communities such as the poor and the elderly, was presented a bouquet of roses to start the meeting and a floral arrangement at the session's close 2 1/4 hours later.

She also received a plaque from a fellow commissioner and numerous accolades from the public. But Mayor Vera Katz had the day's special gift, remembering Ka-

foury's start as a liberal activist: a campaign poster of the late Robert Kennedy.

Two of the meeting's major items, rights for transsexuals and the Fire Bureau mechanics, were Kafoury projects.

Gender issue

On the gender issue, the council unanimously adopted a four-point program, starting with anti-discrimination guidelines that are to be completed by spring. The guidelines will be inserted in the city's 1999-2001 affirmative plan.

Other steps will include a study next fall, investigation of a health insurance policy that would offer "necessary medical treatment for transgendered and transsexual people" and a request in January to expand the city's civil-rights mediation program to include gender identity discrimination claims. The fourth step will be to consider non-discrimination as a qualifying point in the city's contractor certification process.

Several persons, including city employees, testified about discrimination problems while they search for their identities or go through the sex change process. The city already has rules against discrimination based on race, color, religion, gender, sexual orientation, marital status, age, national origin, disability and source of income.

Portland's plan is based on language previously adopted by West Hollywood, Calif. Benton County was the first Oregon jurisdiction to adopt a transgender rights law.

Racetrack amphitheater

As expected, the council repeated last week's rejection

of an amphitheater at Portland International Raceway. Actually, the vote was to approve a long-range plan for the track/park, but that plan does not include the concert venue.

The amphitheater rejection came despite an extensive campaign by the Oregon Arena Corp., a subsidiary of the Portland Trail Blazer organization. Oregon Arena used newspaper and broadcast ads to encourage the public to lobby the council.

Commissioner Jim Francesconi, who oversees parks, said it is sad that no amphitheater is planned, but "maybe there's some possibility we can talk later" about an amphitheater elsewhere. "We want to make sure the public benefit outweighs the harm to neighborhoods."

Francesconi hammered the Trail Blazer effort, saying, "We don't do business in Portland that way." He termed the campaign an attempt "to manufacture public response."

Commissioner Charlie Hales said the campaign was "a case of the tail doing a pretty severe job of wagging the dog."

Trolley financing

Vintage Trolley, now operating four replica streetcars, has at least one more year of free rides between downtown Portland and Lloyd Center. After that, the nonprofit group has a contract to fill in as needed on the new Central City Streetcar line.

In the meantime, some additional money was needed. It came Wednesday when the council handed over \$150,000 originally budgeted to work on extending "fareless square" boundaries to include Lloyd Center. The commissioners said that because the trolleys are providing free rides, the money was appropriate.

Gay-rights ruling threatens OCA

THE DECISION: The U.S. Supreme Court strikes a Colorado constitutional amendment

By **N BISKUPIC**

Washington Post Service

WASHINGTON — The Supreme Court on Monday struck down a Colorado constitutional amendment that barred government efforts to protect homosexuals from discrimination, saying no state may “deem a class of persons a stranger to its laws.”

The 6-3 ruling was a huge victory for the gay community because it clears the way for local governments to enact measures designed to protect people from bias because of their sexual orientation.

The majority opinion was written with a generous tenor toward the legal rights of homosexuals. This contrasted with the court’s last major decision on the subject, a 1986 ruling letting states make certain homosexual behaviors a crime.

Justice Anthony M. Kennedy, who wrote for Monday’s majority, said Colo-

rado had no legitimate reason for precluding all legislative, executive or judicial action designed to protect people based on their sexual orientation.

The Colorado constitutional amendment was adopted in 1992 with 53 percent of the vote in a statewide referendum after three cities enacted ordinances prohibiting discrimination in jobs, housing and other matters. Although never enforced because of court challenges, the Colorado amendment produced boycotts and years of argument about whether gays and lesbians should be protected under civil-rights laws.

Monday’s ruling marked one of the rare times when the words of opposing justices went to the core of an impassioned social debate that is playing out in legislatures and living rooms: How people with a different sexual orienta-

Please turn to COURT, Page A7

It is no small matter for the court to invalidate a popularly adopted measure. ... Quite apart from the particular context of the Colorado case, all Americans should be profoundly troubled by the effect of this decision on our democratic way of life,” Canady said.

Sen. John Kerry, D-Mass., said: “I hope that this final word will help to quash anti-gay initiatives in some states and the anti-gay political pandering of some conservatives. ... This results in violence against gay men and lesbians and is anti-American hate-mongering of the

by, John Paul Stevens, Sandra Day O’Connor, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.”

■ **DISSENTING:** Justice Antonin Scalia, Chief Justice William H. Rehnquist and Justice Clarence Thomas.

traditional sexual mores against the efforts of a “politically powerful minority.”

Scalia said the court was placing “the prestige of this institution be-

hind the proposition that opposition to homosexuality is as reprehensible as racial or religious bias.”

Whether homosexuality is reprehensible, Scalia said, should be answered by America’s cultural debate about gay rights and is no business of the courts. Scalia, who accused the court of taking sides in the “culture wars,” took the unusual step of voicing his vigorous dissent from the bench Monday.

GAY RIGHTS & THE LAW

■ **WHAT THE COURT DID:** The U.S. Supreme Court ruled 6-3 Monday against a Colorado constitutional amendment that forbids laws specifically protecting homosexuals from discrimination.

■ **WHAT IT MEANS NATIONALLY:** For years, the legal debate has hinged on a key question: Do anti-discrimination laws give gays and lesbians equal rights or special rights? The answer, according to the highest court in the land, is equal rights.

■ **WHAT IT MEANS FOR OREGON:** It seriously calls into question the legality of a proposed Oregon Citizens Alliance initiative that would “forbid basing civil rights on homosexuality.” Nevertheless, OCA founder Lon Mabon says he will go forward, confident that his initiative avoids constitutional problems.

NEWS FOCUS
PAGE A6

Tossing out the Colorado anti-gay rights amendment puts such efforts in other states in limbo. A new petition is in the works for the Oregon ballot in November. Today’s News Focus offers excerpts from the divided court’s majority opinion and from the dissent.

■ IN OREGON: The ruling argument about ‘special

By **TOM BATES and MARK O’KEEFE**
of The Oregonian staff

Since 1988, Lon Mabon has made Oregon a nationally watched battlefield over gay rights. With Monday’s U.S. Supreme Court decision, he may have lost the war, legal analysts say.

Ruling that gays and lesbians are entitled to the equal protection of the law, the high court struck down a sweeping Colorado amendment that would have invalidated local ordinances protecting homosexuals from discrimination. The ruling undercuts the argument by Mabon and his Oregon Citizens Alliance that gay rights are “special rights.”

“It means the OCA has taken a major hit,” said David Schuman, associate professor of constitutional law at the University of Oregon. “It takes the wind out of their sails. It makes it almost impossible for them to pursue their goals by means of a constitutional

