

Court nominee aided gay rights case: Roberts helped gay-rights group win in 1996

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John Roberts, President Bush's nominee to the Supreme Court, donated legal work on behalf of gay-rights groups that helped them win a landmark 1996 case before that panel, according to the *Los Angeles Times*.

While he was a private attorney, Roberts helped prepare the attorneys arguing on the side of gay-rights groups in *Romer v. Evans*. That decision overturned a Colorado law that struck down all local gay-rights provisions. Justices in the 6-3 majority said the law violated gay Coloradoans' constitutional right to equal protection.

Romer v. Evans was considered the most important legal victory for the gay-rights movement to that point. It provided some of the legal basis for the Supreme Court's 2003 *Lawrence v. Texas* decision, which invalidated laws banning gay sex.

According to the *Times*, Roberts contributed help on legal briefs and held moot-court sessions to ready the attorneys for oral arguments before the high court. At the time, Roberts was an attorney with a Washington firm and had successfully argued several cases before the justices. The firm expected its lawyers to perform pro bono work for various causes.

The lawyer who then headed that department said Roberts did not hesitate when asked to help. "He said, 'Let's do it.' And it's illustrative of his open-mindedness, his fair-mindedness," Walter Smith told the newspaper. "He did a brilliant job."

Roberts was recommended to the lead attorney for the case, Jean Dubofsky, who was a former Colorado Supreme Court justice. She was told that he had "a better idea on how to make an effective argument to a court that is pretty conservative and hasn't been very receptive to gay rights."

Ironically, the three justices who dissented in *Romer v. Evans* are the ones to whom social conservatives have favorably compared Roberts. That dissent, authored by Justice Antonin Scalia, who was joined by Chief Justice William Rehnquist and Associate Justice Clarence Thomas, excoriated the very legal reasoning that Roberts reportedly recommended.

“Coloradans are entitled to be hostile toward homosexual conduct.” Scalia wrote, adding that the majority opinion had “no foundation in American constitutional law, and barely pretends to.”