

518 U.S. 1001; 116 S. Ct. 2519;  
135 L. Ed. 2d 1044; 1996 U.S. LEXIS 4045, \*

**EQUALITY FOUNDATION OF GREATER CINCINNATI INC., ET AL. v.  
CITY OF CINCINNATI, ET AL.**

**No. 95-239**

**SUPREME COURT OF THE UNITED STATES**

**June 17, 1996, Decided**

**PRIOR HISTORY:** Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit, Reported at: 1995 U.S. App. LEXIS 10462.

**OPINION**

The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Romer v. Evans*, 517 U.S. 620, 134 L. Ed. 2d 855, 116 S. Ct. 1620 (1996).

**DISSENT BY: SCALIA**

**DISSENT**

JUSTICE SCALIA, with whom THE CHIEF JUSTICE and JUSTICE THOMAS join, dissenting.

I dissent from the decision to remand this case in light of *Romer v. Evans*, 517 U.S. 620, 134 L. Ed. 2d 855, 116 S. Ct. 1620 (1996). *Romer* involved a state constitutional amendment prohibiting special protection for homosexuals in a city (or other electoral subunit) that wishes to accord them

special protection cannot be compelled to achieve a state constitutional amendment in order to have the benefit of that democratic preference. [\*2] The present case, by contrast, involves a determination by what appears to be the lowest electoral subunit that it does not wish to accord homosexuals special protection. It can make that determination effective, of course, only by instructing its departments and agencies to obey it -- which is what the Cincinnati Charter Amendment does. Thus, the consequence of holding this provision unconstitutional would be that nowhere in the country may the people decide, in democratic fashion, not to accord special protection to homosexuals. Unelected heads of city departments and agencies, who are in other respects (as democratic theory requires) subject to the control of the people, must where special protection for homosexuals are concerned, be permitted to do what they please. This is such an absurd proposition that *Romer*, which did not involve the issue, cannot possibly be thought to have embraced it.

I would deny certiorari in this case, or else set the case for argument to decide for ourselves the ultra-*Romer* issue that it presents.