PERSONAL EXPLANATION

HON. HERBERT H. BATEMAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 26, 1996

Mr. BATEMAN. Mr. Speaker, I rise today to inform my constituents of my position on eight rollcall votes I missed on June 10 and 11, 1996, because of the primary election in Virginia's First Congressional District. Had I been present, my votes would have been recorded as follows: Rollcall Nos. 222, ''aye''; 223, ''aye''; 224, ''aye''; 225, ''aye''; 226, ''nay''; 227, ''nay''; 228, ''aye''; 229, ''aye.''

CONSERVATIVE ADVOCATE DEFENDS SUPREME COURT COLORADO OPINION

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 26, 1996

Mr. FRANK of Massachusetts. Mr. Speaker, when the U.S. Supreme Court upheld the decision of the Colorado Supreme Court invalidating a Colorado law which put gay men and lesbians at a particular disadvantage with regard to antidiscrimination legislation, a number of people on the right responded with stirring denunciations of the Supreme Court majority. And Justice Scalia wrote an angry and poorly reasoned dissent in which he denounced the majority and misrepresented their decision. I was therefore particularly pleased to read a thoughtful, reasoned defense of the Supreme Court majority opinion which upheld the Colorado Supreme Court's rejection of this law as an unconstitutional effort to impose special burdens on lesbians and gay men, written by Clint Bolick. Mr. Bolick is a very prominent advocate of the conservative position on legal issues, and serves as the Litigation Director at the Institute for Justice in Washington. As the printed article notes, the Institute itself has no position on the Supreme Court decision in this case.

Mr. Bolick's article is an example of intellectual honesty and integrity because as he notes, he does not favor laws that protect gay men and lesbians against discrimination, but unlike many others—on both sides of the ideological spectrum—he does not allow his public policy preference to cloud his analysis of the underlying legal and constitutional principles that are at stake. Because this is an issue of great importance to the country, and because the Supreme Court majority opinion has been so grievously misrepresented by Justice Scalia and by many Members of this body, I ask that Clint Bolick's very sensible discussion be printed here.

[From the Los Angeles Daily Journal, June 4, 1996]

''ROMER'' COURT STRUCK A BLOW FOR INDIVIDUALS AGAINST GOVERNMENT

(By Clint Bolick)

Reaction to the U.S. Supreme Court's opinion striking down Colorado's Amendment 2 predictably was morally charged: Generally those who disapprove of gay lifestyles reviled it; those who don't liked it. The superficial reaction overlooks the decision's deeper implications, which go far beyond gay rights. For the court may have recognized in the Constitution's equal protection guarantee significant new restraints on majoritarian tyranny.

I anticipated the court's ruling in Romer v. Evans with decidedly ambivalent feelings. I hold the classic libertarian position toward gay rights: An individual's sexual orientation is a private matter, and properly outside the scope of governmental concern. But I also cherish freedom of association and believe people should be free to indulge their moral judgments about other people's lifestyles and proclivities, even though I do not share those judgments.

The Amendment 2 case presented a libertarian conundrum. On one hand, Colorado municipalities were adopting gay rights ordinances that interfered with freedom of association, adding sexual orientation to other ''protected categories'' such as race and gender on which private discrimination is prohibited. On the other hand, Amendment 2 singled out gays for hostile treatment under law, rendering them alone incapable of attaining protected-category status through democratic processes.

So in my view the case was a close one. But in the end the Supreme Court's 6-3 majority got it exactly right: Amendment 2 was impermissible class legislation. ''Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection,'' declared Justice Anthony Kennedy for the majority, ''is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance.''

Noteworthy is what the court did not do. It did not, contrary to some analyses, recognize gays as a ''protected class'' or apply heightened judicial scrutiny. It was the state that defined the class and subjected it to adverse treatment under law.

What the court did was to breathe new life into the equal protection guarantee. Since the New Deal, the court generally has invalidated legislative line-drawing only when it involves a ''suspect classification'' (such as race) or a ''fundamental'' right (such as voting or free speech). Most other governmental classifications need have only a ''rational basis'' to survive judicial scrutiny.

As first-year law students learn, ''rational-basis'' review almost always translates into carte blanche deference to government regulators. That means a green light for nakedly protectionistic laws, particularly in the economic realm.

In recent years, my colleagues and I have managed successfully under the rational-basis standard to challenge the District of Columbia's ban on street-corner shoeshine stands and Houston's anti-jitney law. But challenges to Denver's taxicab monopoly and to Washington, D.C.'s cosmetology licensing scheme on behalf of African hair-braiders were dismissed under rational basis, even though the regulations were aimed at excluding newcomers. For those entrepreneurs, the judicial abdication rendered equality under law a hollow promise.

Such class legislation was of paramount concern to the Constitution's framers, who worried about the power of ''factions'' to manipulate the coercive power of government for their own ends.

The Colorado amendment is a textbook example of class legislation. ''Homosexuals, by state decree, are put into a solitary class with respect to transactions and relations in both the private and governmental spheres,'' Justice Kennedy remarked. Amendment 2 ''imposes a special disability on those persons alone.''

In such instances, reflexive deference to governmental discretion would nullify constitutional freedoms. So the court required the government to show that its classification in fact was rationally related to a legitimate state objective. As Justice Kennedy declared, ''The search for the link between classification and objective gives substance to the Equal Protection Clause.''

In this case, the state justified its classification on grounds of freedom of association and conserving resources to fight discrimination against other groups. But as the court concluded, ''The breadth of the Amendment is so far removed from these particular justifications that we find it impossible to credit them.''

Contrary to Justice Antonin Scalia's dissent, the ruling does not mean the community cannot enforce moral standards. It merely must make its rules applicable to everyone. The state can prohibit various types of conduct, it can refrain from adding gays to the list of specially protected classes—indeed, it can cast its lot with freedom of association and eliminate all protected classes. What it cannot do is to impose a distinctive legal disability upon a particular class, unless it can demonstrate legitimate objectives advanced through rationally related methods.

Nor should equal protection depend on whose ox is gored. The same government that can impose legal disabilities upon gays can inflict them upon veterans, or the disabled, or home-schoolers, or entry-level entrepreneurs, or any other class targeted by those who control the levers of government.

The court's decision in Romer v. Evans is the latest in an important but unremarked trend in which the Supreme Court has revitalized constitutional limits on government power in a variety of contexts. Exhuming the Fifth Amendment's ''takings'' clause, it has protected private property rights against overzealous government regulation. Last term, for the first time in 50 years, it invalidated a federal statute as exceeding congressional power under the interstate commerce clause. It has extended First Amendment protection to religious and commercial speech. And under the equal protection clause, it has sharply limited government's power to classify and discriminate among people on the basis of race.

Alexis de Tocqueville observed that ''the power vested in the American courts of pronouncing a statute to be unconstitutional forms one of the most powerful barriers that have ever been devised against the tyranny of political assemblies.'' Largely unheralded, the current Supreme Court has become a freedom court. Though comprising shifting majorities, the court seems quietly to be constructing a constitutional presumption in favor of liberty—precisely what the framers intended.

PITFALLS OF THE MEDIA BUSINESS IN ASIA

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 26, 1996

Mr. DIXON. Mr. Speaker, I rise to share with my colleagues the recent remarks of Marc Nathanson of Los Angeles, who was confirmed in August 1995 as a member of the Broadcasting Board of Governors of the United States Information Agency. Mr. Nathanson spoke on June 4 at the 1996 Business in Asia Media and Entertainment Conference in Los Angeles. The conference was sponsored by the Asia Society, the national nonprofit educational organization dedicated to increasing

American understanding of the culture, history and contemporary affairs of Asia.

As a pioneer in cable ventures in several Asian countries, Mr. Nathanson is well versed in the obstacles facing American media investments in Asia. With our continued emphasis on ensuring American global competitiveness, I commend to my colleagues the points he makes on the subject.

PITFALLS OF THE MEDIA BUSINESS IN ASIA

(By Marc B. Nathanson, Chairman, Falcon International Communications)

Many of you at this conference are interested in developing software produced here in California for the Asian marketplace. In my opinion, without the rapid development of multimedia distribution systems in Asia, there will not be long term economic gain to the providers of music, TV shows, and motion pictures and their allied fields. The growth of the media infrastructure through viable joint international ventures in Asia is critical to the growth of the entertainment industry in Los Angeles. If these infrastructure projects are successful, this will mean jobs, co-production deals, greater residuals and an increase in economic payments to the holders of copyrights. This assumes that the Governments of Asia including China rigorously enforce the international laws of property.

When I entered the American cable industry 27 years ago, 5 percent of US residents subscribed to cable TV for more entertainment, information, and education. Today, almost 70 percent of all TV homes are cable customers and shortly 8 million Americans will have direct broadcast satellite dishes.

The world is behind us in multi-national viewing options. 95 percent of all global citizens receive less than 5 TV channels. In Asia, the number is only slightly higher. This will all change.

There is an insatiable appetite for more entertainment choices among young and old in Cebu, Calcutta, Auckland, Phuket, Singapore and Kathmandu.

In my opinion, the growth and dissemination of California produced programming in Asia will have much more important benefits to the world than just to our pocketbooks.

The reach of MTV to young people in Russia had a tremendous effect on the collapse of the Soviet Union. The Voice of America and Radio Free Europe hastened the demise of communism in the Czech Republic, Poland, Hungary and Central Europe.

The Future programming of USIA sponsored Pacific Asia Network will give the people of Cambodia, Myanmar, Vietnam and China their only source of factual news in their mother tongues.

But, in spite of the efforts of great statesmen like Senator Jun Magsaysay and others, there are many more problems with the orderly growth and distribution of multiculturally produced channels than just copyright violations.

I say this to you as a man that has and is experiencing the problems of entrepreneurial entertainment joint ventures in Asia.

Today, Falcon International Communications has over 2.5 million customers worldwide. 1.5 million are located off our shores in England, Mexico, France, and Brazil through partnerships and investments. In Asia, we are operating in India and the Philippines and actively engaged in exploring joint ventures in Thailand, Malaysia, Taiwan and Indonesia.

But, the obstacles that prevent the future growth of American media investments should not be taken lightly or overlooked. Let me focus on them:

1. Infrastructure—there is a lack of Infrastructure in Asia. While many American companies have a focus on programming and satellite distribution systems, there has not been enough concentration, investment or expertise directed toward improving the basic communications infrastructure.

Let me give an example: The engineering talent and educational levels are very high in India and the Philippines. They just have a lack of expertise in dealing with fiber and need hands on training by their American partners. However, this cannot solve the slow development of the telephone and transportation systems in these countries.

2. Corruption—corruption, bribery and bureaucracy are still rampant in many places in Asia. A European friend of mine who is in the power plant business told me that he could not even meet with a provisional governor in China unless he agreed to deposit $150,000 in his Swiss account. Our Foreign Corrupt Practices Act—right or wrong is the law of the land. It does not matter whether or not other corporations based in other countries follow it. The American Government must face the age old problem of dealing with corruption overseas if we want to be competitive and we must work with local authorities to clean up their act. I'm optimistic about this happening.

3. Right Partner—You must have the right partner in your media joint venture * * * one who shares your common goals. Each must respect each other's strengths in order for your project to be successful. You must learn how to communicate with each other in Asia. I believe it is foolish for American companies to invest a lot of money in a country like India with the wrong local partner. Let me say that this obvious statement is much more complex. Often, local partners who have funds are looking for rapid returns and do business at a pace (using a methodology) that are totally alien to American business. They often talk the same language and enter into MOU's or contracts that say the right things but the reality of their actions is totally different. In a joint venture outside of Asia, we found a partner who wanted our money but would not listen to our expertise—our considerable expertise in the orderly and efficient development of a cable television business over the last twenty years. We were the first to admit that we did not have expertise of their market or culture, yet this local partner with incompetent management would constantly reverse our second cable management decisions. This type of reform, especially when we are the minority partner, will cause a rapid deterioration in the venture and hurt the joint venture's ability to buy programming and expand.

4. The Old Management—The biggest problem to getting cable TV systems built in Asia and bringing training and American expertise is the ''old guard.'' These companies and often family dynasties talk a good game but don't really want American joint ventures in their nation where they have dominated the media business for so many years. They only want the new technology to come to their fellow countrymen when they and only they bring it at their own pace. These old but truly powerful media barons who often dominate several media empires do not want competition. They want to own it all. They only want American investment dollars to flow to them . . . not to go to a local entrepreneur who has teamed up with a minority American partner. The level playing field does not exist in many parts of Asia. Foreign ownership laws sponsored by the local media monopolist prevent true competition and members of the old guard disguise their greed in the forum of the nationalism and information control. Yet it is ironic that in Asia in particular, in all the ventures that I can think of, the foreigner is a clear minority partner who brings capital, expertise and training to the project. The cultural sensitivities are and should continue to be dominated by the local majority partner. However, international joint ventures hasten the development of American programming in those countries.

In my opinion, the Clinton Administration must demand a level playing field in Asia. New laws need to be introduced by Congress to prevent monopolistic enterprises who lobby against American investments in their country but continue to gain access to our financial markets. These media moguls must be prevented from blocking minority foreign investment in the media in order for them to selfishly perpetuate their local domination and justify the slowness of their upgrading the infrastructure. This old guard is limiting the choice of people of their nation to experience and view the abundance of globally produced diverse programming.

Our government needs to work with the nations of Asia not to exclude other countries from forming local joint ventures but to ensure that there is an open and level playing field to satisfy the insatiable demand of Asian consumers for more information, education, and yes, good old fashion Hollywood entertainment.

OAK HILL-DURHAM VOLUNTEER FIRE CO., CELEBRATES 50 YEARS OF SERVICE

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 26, 1996

Mr. SOLOMON. Mr. Speaker, anyone who visits my office cannot help but notice the display of fire helmets that dominates my reception area. They are there for two reasons. First, I had the privilege of being a volunteer fireman in my hometown of Queensbury for more than 20 years, which helps explain the second reason, the tremendous respect that experience gave me for those who provide fire protection in our rural areas.

In a rural area like the 22d District of New York, fire protection is often solely in the hands of these volunteer companies. In New York State alone they save countless lives and billions of dollars worth of property. That is why the efforts of people like those firefighters in the Oak Hill-Durham Fire Department is so critical.

Mr. Speaker, I have always been partial to the charm and character of small towns and small town people. The town of Durham, NY, and the village of Oak Hill is certainly no exception. The traits which make me most fond of such communities is the undeniable camaraderie which exists among neighbors. Looking out for one another and the needs of the community make places like the Oak Hill-Durham area great places to live. This concept of community service is exemplified by the devoted service of the Oak Hill-Durham Volunteer Fire Department. For 50 years now, this organization has provided critical services for their neighbors on a volunteer basis.

Mr. Speaker, it has become all to seldom that you see fellow citizens put themselves in harms way for the sake of another. While almost all things have changed over the years, thankfully for the residents there, the members of their fire department have selflessly performed their duty, without remiss, since the