HILLS CHALLENGES CONSTITUTIONALITY OF COLORADO AMENDMENT

University of Michigan Assistant Law Professor Rick Hills brought more than a bright legal mind to the U.S. Supreme Court battle against a Colorado constitutional amendment restricting legal protections to gays and lesbians.

Ironically, his former boss says, his conservative background was a huge help in fighting the anti-gay Amendment 2. "I went to law school in the '60s and I'm basically an unabashed liberal," said Colorado attorney Jean Dubofsky, a former state Supreme Court justice who was retained to fight Amendment 2.

"So I have troubles understanding where conservatives' concerns on things like civil rights come from. Rick understood which arguments they might make against us and how we could counteract those.

Hills started working on the case while an associate of Dubofsky's, and he was later hired at the Law School. Last October, Hills sat in the second chair before the Supreme Court as Dubofsky made oral arguments in the civil rights case, Evans v. Romer. The case challenged the constitutionality of Amendment 2, which voters approved in 1992. The amendment barred state and local officials from passing any laws or policies that conferred any protected or minority status to gays and lesbians.

Dubofsky, with Hills' assistance, won a permanent injunction preventing the state from enacting the amendment in a state trial court, and that was upheld in the Colorado Supreme Court. The state appealed it all the way to the U.S. Supreme Court, leading to last fall's oral arguments in Washington. An decision from the Supreme Court is expected by June.

Just five years out of law school at age 31, Hills already has made a quick loop of the country, heading from Yale to a clerkship in Texas with Judge Patrick Higginbotham on the U.S. Court of Appeals for the 5th Circuit, two years of legal practice in Colorado, and then a two-year stint as an associate professor of law at U-M.

Hills grew up in Washington, D.C., in a prominent Republican family. His mother, Carla Hills, was secretary of the U.S. Department of Housing and Urban Development under President Gerald Ford, then U.S. Trade Representative under President George Bush. His father, Roderick M. Hills, headed the Securities and Exchange Commission during the Ford Administration.

By forbidding government officials in Colorado from enacting any legal protections for gays and lesbians, plaintiff-appellees' brief argued, the amendment approved by voters in 1992 prevented elected bodies from acting on their concerns, essentially cutting them out of the political process.

Hills, who had other job offers from Harvard and Northwestern law schools, chose the University of Michigan in part because his wife, Maria Montoya, had an offer from the history department at Michigan State. After a year of commuting to East Lansing, she was hired at U-M, so the couple and their daughters Emma and Sarah are settled in Ann Arbor.

Rick Hills is now teaching land use controls as a lecture course, along with a seminar on local government and localism.

But Dubofsky said family ties played no role in her deciding to hire Hills. He contacted her after his wife joined the faculty at the University of Colorado, and she was impressed by his strong grasp of constitutional law and jurisprudence and by his writing ability.

"He was kind of a gift that came to me out of the blue," Dubofsky said. "I didn't know him at all before he contacted me. I would not have thought I'd have interesting discussions with someone from Rick's background, but he's perhaps the brightest person I have worked with."

In Evans v. Romer, Dubofsky said, "the brief that we filed on the fundamental right to participate relied on some of the voting rights cases in a way that it would not have without Rick's input. He thought about those cases for a year and was able to come up with a very creative way to bring a 25-year-old, virtually untested theory on voting rights into the case."

That theory "simply states that the state may not single out a particular group and deprive them of the access to the political process that other groups enjoy," Hills said. "It could as easily be hairdressers or firefighters as gays or lesbians."

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Hills' brief argued that the amendment serves no relevant purpose, since, he says, "If you take state's narrow view, Amendment 2 has no meaning."

"Apparently the state's argument means that municipalities can protect gays and lesbians against discrimination, they just can't say they're doing that. If that's what it means, then it's obviously irrational on its face."

Hills said a recent poll showed that 75 percent of Colorado residents oppose discrimination against gays and lesbians in employment or housing, so he doubts that the amendment reflects their true feelings on the issue.

"If you combine people's concerns with sexual morality and gays and lesbians with some vague sense of special rights and affirmative action, I think people in Colorado were confused or misled," he said. "I just hope the Supreme Court agrees."