



# Revolt in Queens

*A New York City plan to teach first-graders about homosexuality has led parents from all ethnic groups to rise up against School Chancellor Joseph Fernandez and his bureaucrats.*

by William Tucker

All of the following are from educational materials now being distributed to children in the New York City public school system:



The Teenager's Bill of Rights:

I Have the Right to Decide Whether To Have Sex and Who to Have It With.

I Have the Right to Use Protection When I Have Sex.

I Have the Right to Buy and Use Condoms.

Condoms can be sexy! They come in different colors, sizes, flavors, and styles to be more fun for you and your partner. You can put them on together. Shop around till you find the type you like best. Be creative and be safe. . . . Guys can get used to the feel of condoms while masturbating.

SUCKING: A lot of guys still enjoy sucking and getting sucked. The biggest risk from sucking is getting cum in the mouth. The only way to be totally safe is to lick only the shaft or to use a condom.

TOYS (dildos, butt plugs, etc.) are fun. Don't share toys. Clean them with lots of soap and water after each use.

WATER SPORTS and scat are fine. Don't let anyone's p--s or s--t get inside your body.

When the *New York Post* recently ran a cartoon portraying School Chancellor Joseph Fernandez as a dirty old man hawking pornographic books to little children in the park, it

came close to describing the sense of desperation felt by most city parents.

*William Tucker is The American Spectator's New York correspondent.*

The problems arose out of something called "Children of the Rainbow," an effort by the city and state educational establishment to persuade New York's many tribal and ethnic groups to live together in peace and harmony. While it seemed benign to educational bureaucrats, to a locally elected school board in Middle Village, Queens, and to a growing chorus of parents, it was the ultimate outrage—the virtual sexual molestation of children barely old enough to read. And while the educators made a yeoman effort to characterize the debate as one of "minority rights," in fact it was New York's "people of color" who were among the most outraged. Fernandez, brought in three years ago as a skillful bureaucrat who would address minority concerns, was being pilloried on all sides as an autocrat with no understanding of *anyone's* concerns.

But that is getting ahead of our story. Before we begin, it might be worth noting why New York's educational establishment might be inclined to teach the ins and outs of homosexuality to first-graders.

In no other state is the general population more under the thumb of its educational bureaucracy (although California is catching up). Every year, Billy House, a reporter in Gannett's Albany bureau, pulls together a list of the New York state officials

who make more money than Governor Mario Cuomo, who at \$130,000 is himself the nation's highest paid governor. This year, sixty-six public officials made more than Cuomo. Of these, thirty-nine were educational bureaucrats, most of them in the sprawling State University of New York. Of the first fifteen people on the list, the only ones that are not deans or professors at the state universities are Harold Langlitz, director of the Teachers' Retirement System (\$180,000), and Stanley Brazenoff, executive director of the Port Authority of New York (\$170,000).

And these are only *state* officials. Locally, things are as bad, if not worse. Joseph Fernandez, New York City's chancellor of schools since 1990, makes \$195,000—yet even he is not the highest paid local school official. That honor goes to Edward J. Murphy, superintendent of the vocational school system in Eastern Long Island. Murphy made news recently when he announced his retirement from his \$200,000-a-year position—and was promptly awarded a \$960,000 retirement package by his local board. This included a \$100,000 "retirement incentive," plus \$860,000 in back pay he had accumulated by working most of his ninety paid vacation days a year. Murphy was also seeking to incorporate his retirement package into his pension formula, which would allow him to retire on an annual pension payment of \$300,000 a year.

Nor was Murphy the only vocational educator in that range. The special educational districts—called Boards of Cooperative Educational Services (BOCES)—operate in a gray area between state and county governments that allow most

administrators to collect two salaries (state and local) with very little public oversight. Of thirty-seven BOCES superintendents in New York, twenty-six make over \$100,000 and six make over \$125,000. Ordinary superintendents generally make between \$95,000 and \$120,000. This follows a pattern found nationally in the teachers' unions, where vocational educators form a powerful rump faction (20 percent of membership) and are extremely powerful at shaping union policies and manipulating federal and state programs to their advantage—proof of the theorem that those who have the least challenging jobs have the most time to spend on union activities.

In a state where public employment is exceptionally common and remunerative (the number of public employees per capita in New York City is more than triple the national average), school bureaucrats stand head-and-shoulders above the crowd. Albert Shanker, who represents another wing of the school bureaucracy, delights in pointing out that New York state, with a population one-tenth the size of

Western Europe, has almost one-and-a-half times as many public school administrators.

---

*The report complained of the "arrogance" of white students and said the object of the curriculum would be to raise the self-esteem of minority students and lower the self-esteem of non-minorities.*

---

So how did the Rainbow effort get started? After incidents in which blacks were killed by white gangs in Howard Beach and Bensonhurst, the New York

State Department of Education in 1989 decided to introduce a "multicultural curriculum" as a way of reducing racial tensions. At least, that's the public version; school bureaucrats are of course imposing multiculturalism on disaffected parents everywhere. Be that as it may, there was in New York at least a reasonable rationale for multicultural reform.

Some of the groundwork had already been laid by Dr. Thomas Sobol, the \$131,000-a-year state commissioner of education, a man well known for groveling before black audiences. (He once apologized to an NAACP group for "standing before you as a white male"; they booed him anyway.) In 1987, Sobol appointed a Task Force on Minorities to find out why minority students do poorly in the school system. Chairing the committee was Dr. Asa Hilliard, professor of black studies at Emory University and a pioneer of Afrocentrism.<sup>1</sup> Also sitting on the committee was Dr. Leonard Jeffries of City University of New York, originator of the "sun people/ice people" theory of black supremacy, noted more recently for his anti-Semitism.

The minority task force produced a report entitled "A Curriculum of Inclusion," which argued that "African Americans, Asian Americans, Puerto Ricans/Latinos, and

---

<sup>1</sup>See my article "Black Family Agonistes" (*TAS*, July 1984), which reported a speech that Hilliard gave to the NAACP/Urban League Black Family Summit in Nashville. Hilliard told the gathering that the movie *E.T.* represented an "Afrocentric Transformation," because *E.T.* "integrated the white neighborhood, but always knew he wanted to go home."

Native Americans have all been the victims of an intellectual and educational oppression that has characterized the culture and institutions of the United States and the European American World for centuries." The report also complained of the "arrogance" of white students and said the object of the curriculum would be to raise the self-esteem of minority students and lower the self-esteem of non-minorities. The report created a small furor, but Sobol—who if nothing else is a clever bureaucrat—mildly disavowed it while appointing another committee to start imposing it.

New York City, as it happened, had been dickering over a multicultural effort under chancellor Richard Green since 1985. When Green died of an asthma attack in 1989 and Fernandez arrived from Miami to take over, the program lurched ahead. But then an even greater crisis presented itself to Fernandez: AIDS. As a liberal scholar, Fernandez saw only one solution: condoms. Mayor Dinkins offered his support.

**T**he New York City Board of Education is one of those antiquated, unrepresentative bodies that remains in place only because the ACLU and the courts haven't yet gotten around to declaring it unconstitutional. It is made up of seven members, one appointed by each of the five borough presidents and two appointed by the Mayor.

The mayor's appointees (both black) and the representatives of the Bronx and Manhattan (both Hispanic) lined up behind Fernandez. The representatives of Queens, Brooklyn, and Staten Island (all white) opposed. After a bitter series of public hearings, the condom measure was adopted 4-3.

Notable, however, was the emergence of Brooklyn representative Irene Impellizzeri as the leader of the "conservative" faction. She has since won over the entire board by sheer intellectual brilliance. In May, Impellizzeri gave a speech to the Cathedral Club of New York that may eventually stand as a turning point in New York's cultural wars. A former public school teacher and dean at the City University, Impellizzeri almost seemed like someone out of another century:

In the City where we work, there is little or no community anymore. There is aggregation—the forming of groups. And the difference is profound. Communities have consciences. Aggregations have programs. Communities work by civility. Aggregations get their way by stridency. . . . The fundamental difference between a community and an aggregation is really the difference between what is in one's *interest* and what one *desires*—between one's hopes and one's appetites.

During one school board meeting, a subversive teacher had slipped Impellizzeri a copy of the New York City Department of Health pamphlet "Teens Have the Right," which was already being distributed in the high schools (and from which

the first two quotes at the beginning of this article are taken). Even more graphic literature from the Gay Men's Health Crisis (also quoted) came to the Board's attention when it was carried to board headquarters by an alarmed custodian.

Instead of simply railing against the pornographic aspects of the literature, however, Impellizzeri addressed the issue thus:

Self-discipline is not an instinct; it is learned from adults, sometimes subconsciously, sometimes painfully. Even when learned in childhood, it often falters in adolescence, when desire takes on new forms and an anarchic intensity, and when the young brain is awash with hormones and with the erotic imagery of popular culture. The adult who tells an adolescent "You have the *right* to obey your impulses" is guilty of treachery to the adolescent as well as to the community. . . .

[The problems of indiscipline] may not seem so pressing to the rich, who have a long way to slide, though not as long a way as

they may think. But if the children of the poor are taught that they need not be constrained by the social order and its civilities and its prudential demands; that they have the *right*—unearned—to set their own standards, or no standards at all; that they are mysteriously able to "think for themselves" without serving any apprenticeship to reality, without in fact learning to think—as distinct from feel or want—they will never, never escape poverty. . . .

---

*"Anyone who attended the hearings in the Hall of the Board of Education and heard the loud hissing when speakers used the words 'family,' 'marriage,' 'man and woman,' and 'children,' would agree that there are strong forces in this City opposed to the family."*

---

The underclass is not really a class so much as a caste; it has its own way of life; it has the strange cultural property of reducing members' desire to escape. . . . If we accept youngsters' feckless or undisciplined behavior on the grounds that it cannot really be prevented—"You know they're going to do it anyway"—we objectively (as the Marxists used to say) push them towards the underclass.

Impellizzeri pointed to the link between family values and upward social mobility, the disintegration of the family among the underclass, and the emergence—particularly among underclass blacks and rich whites—of cultural nihilism and a stark hostility to the very institution of the family:

At no time have I been more aware of the danger to the family than during the episodes last year on the condom distribution policy that constituted what the media describe as the most bitter battle in the history of the City's public schools.

Anyone who attended the hearings in the Hall of the Board of Education and heard the loud hissing when speakers used the words "family," "marriage," "man and woman," and "children," would agree that there are strong forces in this City opposed to the family.

Anyone might have thought that to hear such common sense being spoken in the public arena, especially in New York City, would have produced at least a momentary awed silence. The effect, however, was the opposite. There was a

loud clamor in the newspapers that Impellizzeri should be removed from office. Interestingly enough, though—a hint of things to come—her efforts won over the support of Ninfa Segarra, the Bronx representative. The new conservative majority on the board was quickly dubbed by the newspapers as the “Gang of Four.”

So things stood last spring when Chancellor Fernandez rolled out the city board of education’s own multicultural effort, “Children of the Rainbow.” “Children of the Rainbow” was for the most part fairly innocuous. Devoid of any of Hilliard’s or Jeffries’s blusterings about black supremacy (Hilliard was named an adviser but did not make the commute from Atlanta), “Children of the Rainbow” is a benign series of classroom games and activities designed to introduce children to other cultures.

Moreover, the whole effort was given a tone of absurdity in that the curriculum guide’s first volume—aimed only at the first grade—ran to 472 pages. “How many curriculums like this have we seen come by?” William E. Ubinas, superintendent of District 1 on the Lower East Side, told the *New York Times*. “They put it on the shelf and nothing happens. You have to understand how this works.”

At the classroom level, “Children of the Rainbow” probably would have made little difference—except for one thing. At the request of the Gay and Lesbian Teacher’s Association, a portion on “alternate families” was turned over to a single Bronx first-grade teacher, who wrote a 15-page section called “Fostering Positive Attitudes Toward Sexuality”:

Many children have lesbian/gay relatives. According to statistics, at least 10 percent of each class will grow up to be homosexual. . . . Teachers of first graders have an opportunity to give children a healthy sense of identity at an early age. Classes should include reference to lesbians/gay people in all curricular areas. . . . If teachers do not discuss lesbian/gay issues, they are not likely to come up. . . . Educators have the potential to help increase the tolerance and acceptance of the lesbian/gay community and to decrease the staggering number of hate crimes perpetrated against them.

The curriculum guide encourages teachers to introduce first-graders to “different kinds of families” and recommends three titles—*Heather Has Two Mommies* (which explains artificial insemination), *Daddy’s Roommate*, and *Gloria Goes to Gay Pride*—for the first-grade reading list. Fernandez, who later admitted he hadn’t read the curriculum, took a personal stand on the issue. “Every time I read about a gay-bashing or some homosexual being beaten up, I feel the schools are partly responsible because we haven’t taught tolerance to our children.”<sup>2</sup>

What Fernandez and the bureaucracy did not take into account was that parents might feel some alarm about having their children introduced to the fundamentals of homosexu-

<sup>2</sup>Note: the term “gay-bashing” is often used by homosexual advocates to include verbal abuse, or just saying anything negative about homosexuals or homosexuality.

ality—not on any grounds of prejudice, but on the simple observation that acceptance of homosexuality as just another “alternate lifestyle” might tend to make them more accepting of homosexual impulses in themselves. These underlying anxieties are summarized nicely by E. L. Pattullo, former director of the Center for Behavioral Sciences at Harvard, in an article in December’s *Commentary*:

It is a good bet that substantial numbers of children have the capacity to grow in either [a homosexual or heterosexual] direction. Such young waverers, who until now have been raised in an environment overwhelmingly biased toward heterosexuality, might succumb to the temptations of homosexuality in a social climate that was entirely evenhanded in its treatment of the two orientations.

Hence, to the extent that society has an interest both in reproducing itself and in strengthening the institution of the family—and to the extent that parents have an interest in reducing the risk that their children will become homosexual—there is warrant for resisting the movement to abolish all societal distinctions between homosexual and heterosexual. . . .

It is indubitable . . . that skin color and gender are genetically determined, whereas it is certain that—often, if not always—the postnatal environment influences sexual orientation. Until we know otherwise, we must assume that our conscious attitudes and behavior toward homosexuality play a part in this process.

And parents who had doubts about the ultimate intent of the curriculum might find them reinforced in “Kids ‘R’ Us,” an article in the *Village Voice* by lesbian columnist Donna Minkowitz:

I’m much more comfortable with the notion of “recruiting” than I am with the guesstimate that restricts same-sex passion to a fixed percentage of the population. . . . In a world without the heterosexual imperative, maybe kids would try on different forms of sexuality as they now try on musical styles, career choices, and haircuts. It must be this vista of infinite sexual possibilities beyond the exigencies of procreation that scares the family-values posse more than anything.

The curriculum met with a certain resistance, even among teachers and administrators. Some districts adopted the curriculum with notification that they were eliminating the offending pages—a viable option. In other districts, the pages mysteriously disappeared before or after the volume had been filed on the shelf. In District 24, in Middle Village, Queens, however, the school board decided to take a stand. It was here, on the playing fields of Middle Village, that the battle of parents against the bureaucracy was finally joined.

The community school boards themselves are an ironically appropriate battlefield. Created under Mayor John Lindsay in an effort at “decentralization,” New York’s thirty-one community school boards are given—in theory—complete control over the curriculum in New York’s elementary and junior high schools. The central school board controls finance, but has complete jurisdiction only over the high schools.

In practice, community school boards have tended to be

## BUREAUCRACY AGAINST EDUCATION

In their pathbreaking *Politics, Markets, and American Schools* (1990), John Chubb and Terry Moe argued that the depressing state of America's public schools is the inevitable result of centralization. Decision-making has been transferred to school bureaucrats, who impose decisions from the top down, with no consumer choice. In some districts—mostly suburbs—this process can be democratic: Citizens elect school boards, which have some control of teachers and administrative officials—although these sometimes-tenured officials are often immune to pressures from the public.

In the cities, however, school administrators are quite remote from the people. They are much more tied into schools of education, with their academic fads and oppressive political correctness, which sees a threat to the Republic if some rural schoolhouse bans *Catcher in the Rye*, but believes that whole future generations will live in ignorance if somebody says Columbus discovered America.

The point of winning school board elections—or electing mayors to put school board members in place—is to get your agenda into the schools. In Texas, for example, *every hour of every school day* is dictated by curriculum demands from the state legislature. Teachers, who are closer to parents and students—and more concerned with education—tend to ignore these directives. Since there is a whole civilization of administrators whose job is to make sure teachers do what other people tell them, teachers take shelter in the unions, which devise union rules that say teachers don't have to do what administrators would otherwise demand.

The result—as Chubb and Moe document—is a stand-off that is

inherently destructive of school autonomy. Whatever the technological and intellectual arguments against bureaucracy may be and however frustrated people from all walks of life may be with the unworkable constraints under which schools are forced to operate, virtually all are driven to pursue their own goals by adding to the bureaucracy problem. . . . A world of autonomous schools would be a world without educational bureaucrats.

By “a world of autonomous schools,” Chubb and Moe mean a world in which the government provides parents with the means to send their children to whatever school they choose—public or private.

—WT

centers of corruption. Electoral participation is light and local political machines have often won control. Fernandez has already suspended two local school boards for financial mismanagement.

In some ways, the nine-member Queens board seemed equally unrepresentative. Although the district is half Hispanic, the board members are all non-Hispanic ethnic Catholics with numerous family ties to the parochial schools. Mary Cummins, the 61-year-old grandmother who is board chairman, confronted Fernandez and the curriculum head on. Citing surveys by the National Academy of Sciences and the National Science Foundation, she noted:

The truth is that gays and lesbians represent about 1.6 percent to 3.3 percent of the population of the U.S. . . . We are not going to teach our children to treat all types of human behavior as equally safe, wholesome, or acceptable. On the contrary, we are going to teach them that they should never engage in conduct that would cause harm to others or to themselves. Among other things, this means we will teach them that it is extremely dangerous to engage in IV abuse, and when it is age-appropriate we will also teach them that it is extremely dangerous to engage in anal intercourse.

Cummins accused both Dinkins and Fernandez of promoting the idea that sodomy is acceptable while virginity is weird: “We will continue to present our established multicultural education program, using unslanted materials of our own choice, rather than this disgraceful propaganda tract you are trying to jam down our throats.” District 24 rejected the Rainbow curriculum and wrote letters to the other thirty districts, alerting them to the nature of the material buried in the curriculum and encouraging them to do the same.

For its efforts, District 24 won a demonstration by the Lesbian Avengers in front of one of its elementary schools. It was also pilloried in the press. Most vituperative was *Newsday*, a Long Island tabloid that has been trying to penetrate Queens and Brooklyn with its color graphics and shrill editorial style. *Newsday* has more delusions than most other New York newspapers. While the *New York Times* applauds liberal causes politely like spectators at a tennis match, *Newsday* is all cheerleaders and marching bands. “People With AIDS Can Do More Than Just Die” proclaimed one recent front-page headline above a story that one of New York's AIDS victims had graduated at the top of his class from law school.

In May, *Newsday* “broke” the story that District 24 was resisting the curriculum. Typically, the newspaper started arguing that the District 24 board did not reflect community opinion. Digging up a few disgruntled opponents, *Newsday* declared that opposition to the curriculum was being railroaded through the district by a circle of narrow-minded partisans. “There was no disagreement. No discussion. Just a unanimous vote, nine board members who apparently all agree that the guide contained inappropriate reference for first grade students,” wrote Liz Willen, both reporting and editorializing on the subject. “It may be hard to believe such cohesiveness can exist in a district of 17,000 students. . . .

Funny how democracy and free discussion manages to prevail."

(Both Impellizzeri and Cummins declined to be interviewed by *The American Spectator* for this story. Their aides expressed open skepticism that there was any newspaper or magazine in the country willing to report their point of view objectively or sympathetically.)

Chancellor Fernandez, who seemed to have convinced himself that he represents the Hispanic community, took his cue. Arguing that School Board 24 was a small coterie of unrepresentative members, Fernandez suspended the board and appointed three school bureaucrats as trustees to run the district and immediately implement the curriculum. The job titles of these trustees tell all anyone needs to know about how the schools are run. They are: "Chief Executive for Monitoring and School Improvement," "Executive Director of the Division of Instruction and Professional Development," and "Deputy Executive Director of the Division of Funded Programs." Each makes more than \$100,000 a year.

It soon became obvious that Fernandez had underestimated the depth of the opposition. As word of the real nature of the curriculum got around, the argument was reopened with violent intensity in district after district. To the bureaucracy's surprise—and alarm—minority groups were in the lead. Members of black and Hispanic churches set up pickets in front of the chancellor's office. Even the Black Muslims entered the fray, arguing that sodomy violated their religious laws. (Jeffries himself has a theory that homosexuality is a white failing that is being forced on black people.) In Park Slope, Brooklyn, an armed police guard had to be called to protect the white-liberal-dominated board against enraged Hispanic parents who argued the schools were attempting to pervert their children. A "reconciliation" meeting of the central school board broke up in disarray after the first speaker—a black woman—charged that the curriculum was written solely "for gay white males." One parent, who probably spoke for the majority, summed it up when he told a community board: "I think we should be teaching homosexuals about the benefits of heterosexuality."

Such is the power of the bureaucracy to act unilaterally that it turned out the central school board had never voted on the curriculum. When the board was asked to certify the dismissal of Community Board 24, however, Fernandez was routed. The "Gang of Four" became a 6-0 majority (with Manhattan representative Luis Reyes abstaining) in favor of immediately reinstating the Queens community board. Cummins fired off a letter telling Fernandez she would meet him to discuss the issues in the offices of Queens Borough President Claire Shulman, who was also beginning to voice doubts about the curriculum.

Fernandez, unrepentant, responded in an op-ed article in the *Wall Street Journal* that appeared three days after the school board vote. Citing *Newsday*, Fernandez argued once again that the Queens board was unrepresentative and that "other parents in the district" were on his side. He also complained that:

Some opponents of this section of the guide have found that, by talking about the "Children of the Rainbow" curriculum as if it were the same as our HIV/AIDS education program, their vicious distortions will be more readily believed by parents and the public.

The fact is, there is no discussion of sex or sexuality in the first grade, whether the guide being used is "Children of the Rainbow," the HIV/AIDS curriculum, or any other teacher's guide.

However, page 379 of the "Rainbow" teacher's guide states: "HIV is transmitted from one person to another by any of three routes: (1) unprotected sexual intercourse, including vaginal, anal, and oral intercourse; (2) parental exposure to infected blood . . . and (3) transmission from infected women to their infants." It was clear that—unlike most of his opponents—Fernandez still had not read the curriculum.

Fernandez's defeat has raised speculation that he won't be around very long. One scenario had him angling to join the Clinton Administration—where he certainly would have found a warmer reception than he got in Queens. Another speculation is that Mayor Dinkins will use Fernandez's self-immolation as an excuse to demand that the mayor himself, rather than the board of education, appoint the next school chancellor.

Unnoticed in all the controversy is that the racial and ethnic aspects of the Rainbow curriculum had been accepted without controversy. The argument that bigotry and prejudice are the heart of opposition has not stood up. When other community boards—emboldened by District 24's success—began to pick apart the curriculum, they objected, not to the lesson plans about African games or American Indian holidays, but to the conversion of "He's Got the Whole World in His Hands" into a song about ecology. Parents argued, quite legitimately, that this constituted an unwarranted appropriation of religious materials.

As far as homosexuality is concerned, it is clear that people outside the educated elite have decided it is a luxury they cannot afford. Mary Cummins and Donna Minkowitz agree about one thing: they both regard homosexuality as an adventitious condition that—apart from a small residue of hard-core cases—is strongly influenced by the culture in which a young person grows up.

Among the general public, there is also a growing recognition that the nomenclature of the education establishment is trying to drive a wedge between parents and children, appropriating responsibilities that have traditionally belonged to families. Impellizzeri did the best job of summing up what the battle is over when she quoted Chesterton:

The family instinct is the indestructible minimum of morality; the one germ of social consciousness. Whatever institution or idea we trust as a substitute for the family becomes a cold temple. The builder of that cold temple shall see his folly: the gradual dehumanization of his own children before his own eyes.

In New York, the vast, sleeping giant of normality was stirring at last. □

---

Terry Eastland

# The Tempting of Justice Kennedy

*Is it the Greenhouse Effect that has turned Anthony Kennedy into the Harry Blackmun of our time—that is, a Justice who “grew”?*

Starting in April 1992, when the case was argued, conservatives looked forward to the Supreme Court's decision in *Planned Parenthood v. Casey*. At issue was the constitutionality of a Pennsylvania statute regulating the abortion industry. Chief Justice William Rehnquist was likely to sustain all of the challenged Pennsylvania provisions, on grounds he had established in his plurality opinion for the Court three years earlier in *Webster v. Reproductive Health Services*—that abortion is not a fundamental right but a “liberty interest” subject to reasonable government regulation. There seemed little doubt that Rehnquist, the three Justices who had joined him in *Webster* (Antonin Scalia, Anthony Kennedy, and Byron White), and at least new justice Clarence Thomas would rule in favor of the Pennsylvania law. If they did so, they likely would follow the lines set forth in *Webster*. Such an opinion and *Roe v.*



*Wade* could not co-exist. *Planned Parenthood v. Casey* would thus overrule *Roe*.

But on June 29, 1992, only four justices voted for the second coming of *Webster* and a de facto overruling of *Roe*; Justice Kennedy had gone over to the other side. In their joint opinion for the Court, Kennedy and Justices Sandra Day O'Connor and David Souter upheld four of the regulations but voided the fifth under a newfangled “undue-burden test.” The big news of the majority opinion was its reaffirmation of “the

essential holding” of *Roe*.

What had gone wrong for the so-called “conservative” Court?

On September 4, Rowland Evans and Robert Novak were the first journalists to report what had been bruited about in legal circles during the summer: that Justice Anthony Kennedy had “flipped”—or changed the vote he cast in the April judicial conference—in *Casey*, thus unmaking the Rehnquist majority that would have overruled *Roe*. Kennedy's equivocation amounted to an epochal reversal for anti-abortion conservatives, but with

---

*Terry Eastland, our Presswatch columnist, is resident fellow at the Ethics and Public Policy Center and author of Energy in the Executive: The Case for the Strong Presidency (The Free Press).*