

# Kansas Equality Coalition

**Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans.**

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Testimony of Thomas Witt, Executive Director  
Kansas Equality Coalition  
Senate Committee on the Judiciary  
In Support of SB308  
January 31, 2012

Good morning Mr. Chairman and members of the committee. I am here today to speak in support of SB308, and I thank you for the opportunity to do so.

The Kansas Equality Coalition works to eliminate discrimination based on sexual orientation and gender identity. In the six years since we formed, we have organized eleven chapters around the state and have nearly 2000 members. Today we ask you to amend Kansas Statutes to remove the unconstitutional criminalization of gay and lesbian Kansans.

The recodification bill before you today will, among other matters, repeal the unconstitutional provisions of statute, K.S.A. 2011 Supp. 21-5504 and K.S.A. 2011 Supp. 21-5507, which bans consensual sexual relations between members of the same sex. In the 2011 session, you heard SB56, which was a stand-alone bill that sought to repeal only K.S.A. 2011 Supp. 21-5504. You recommended that bill for passage; it went to the Senate calendar, where it languished until returned to this committee at Sine Die. Also in the 2011 session, the House Committee on Corrections and Juvenile Justice heard a recodification bill similar to SB308; that bill contained the same repeal provisions as this. After being persuaded that HB2321 would fail if the sodomy repeal language came to the House floor, the committee removed that language. In a fit of irony, on a vote of 32 to 91, HB2321 refused to pass the full House *without* the sodomy repeal language, which is presumably why SB308 is before you today.

Beginning in 1961 and continuing through 2003, states began repealing their consensual sodomy laws. While most states enacted blanket repeals, a few states made a distinction between married and unmarried heterosexual couples, leaving in place criminal penalties for unmarried couples. In Kansas, the ban on consensual sodomy was repealed for all heterosexual couples, married or not. Only acts committed by members of the same sex remained against the law in our state, in effect making it illegal to be gay or lesbian in the State of Kansas.

As most of you are aware, in 2003, the Supreme Court of the United States, in the case of Lawrence v Texas (539 U.S. 558), found that criminalizing same-sex sodomy was a violation of the due process and equal protection provisions of the United States Constitution. In their 6 to 3 ruling, the majority struck down all state laws criminalizing consensual relationships, gay or straight.

Unfortunately, the State of Kansas still has this unconstitutional law on its books. Kansans are still being harassed by government officials, who use this law as justification to engage in legalized discrimination and intimidation.

In one case, a senior law enforcement official made clear, in his presentation to an assembly of adult college students, that "...even to this day, homosexuality is a crime in Kansas." That statement was

made by Finney County Attorney John Wheeler in 2008, nearly five years after the US Supreme Court rendered such laws unenforceable. Mr. Wheeler is, incidentally, the President of the Kansas County and District Attorneys Association, so one would assume that his views on this matter carry significant weight. We have an audio recording of his remarks, and the PowerPoint slides he used in his presentation. You'll find attached to this testimony an excerpt of the slides, and a copy of the Garden City Telegram article reporting on the incident. We can provide the full presentation, and the recording, to this committee if needed. At the time this incident occurred, members of our Southwest chapter were able to meet with Mr. Wheeler and secure his agreement that he would stop pushing what he knew was an unconstitutional and unenforceable law. Frankly, though, it should not take a public confrontation with civil rights activists to ensure that prosecutors fairly enforce laws and court orders.

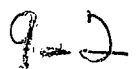
Also attached to this testimony is a March 18, 2011 letter from the Internal Revenue Service, denying "head of household" filing status to a Kansas taxpayer. The taxpayer, who has asked that his name not be made public, is in a domestic partnership with a disabled Marine veteran. They live in a very small town in south-central Kansas, where he cares for his partner. They are retired working-class men, and live frugally. In their letter, the IRS specifically cites the unconstitutional same-sex sodomy law as a reason for his denial.

That this law remains on the books is an offense to every gay and lesbian Kansan, and to every citizen of our state who believes in fair treatment under law. That top law enforcement and other government officials are still citing this law as a means to threaten law-abiding Kansans with arrest and prosecution, and to justify discrimination against us, is an outrage.

In the very first Executive Order issued by his administration, Governor Brownback declared that "the growth of liberty" called for creation of the Office of the Repealer. The Repealer is charged with recommending immediate repeal of laws found to be "unreasonable, unduly burdensome, duplicative, onerous, and conflicting...[and] detrimental to the economic well-being of Kansas." This unconstitutional statute certainly meets the requirements laid out by our Governor, who less than ten days ago refused to act on our repeated requests for repeal.

Nothing can be more "onerous and burdensome" than an unconstitutional law that is used to threaten Kansans with arrest and imprisonment, and that is used to deny rights and privileges enjoyed by everyone else. I urge this committee to support SB308, and to strike this unconstitutional vestige of a less tolerant society from our statute books.

Thank you for your time and attention. I am available to stand for questions.



Student, group offended by Wheeler's remark  
Published 2/14/2008 in the Garden City Telegram  
By EMILY BEHLMANN

A Garden City Community College student and an advocacy group leader took offense at recent statements from Finney County Attorney John Wheeler, who called homosexuality a crime, though Wheeler said he was simply presenting the facts about Kansas law.

The issue arose at a Jan. 30 presentation on campus at which Wheeler said he was asked to inform students of sex crimes in Kansas — "what is lawful and what is not" — as a measure of prevention.

The purpose of the presentation was to educate college-level students about the implications of interacting with minors, since people of various ages interact on the open campus, said college spokesman Steve Quakenbush.

According to an audio clip from the presentation, while providing a definition of sodomy Wheeler said "Sodomy is oral contact or oral penetration of female genitalia or oral contact of the male genitalia; oral or anal sexual relations or sexual intercourse between a person and an animal; ... Anal penetration, however slight, of a male or female by any body part or object is sodomy — so by that definition, I will tell you that even to this day, homosexuality is a crime in Kansas."

Sodomy with a person of the same sex or an animal is punishable by a \$1,500 fine, six months in jail or both, he told the group.

The talk and an accompanying PowerPoint presentation also defined sex offenses like rape, indecent liberties with a child, sexual battery and unlawful voluntary sexual relations (known as Romeo and Juliet laws), Wheeler said.

He said his explanations reflected the laws on the books in Kansas, which he is charged to uphold.

But GCCC student Kristie Stremel, who said she attended the presentation as one of many steps for getting involved on campus, said she couldn't believe she had heard a public official make such a comment.

Stremel, 33, said she has been open about her own homosexuality since age 19.

"I thought he misspoke, or this guy's got an agenda," she said. "It's just hurtful, and I feel discriminated against, quite frankly."

Since the presentation, she has heard fellow students on campus discussing whether homosexuality is legal, she said.

"I have some pretty tough skin," she said. "But for any young kid at college trying to come out and dealing with this, that is detrimental."

Stremel said she obtained a video of the presentation and showed it to Anne Mitchell, chairwoman of the southwest branch of the Kansas Equality Coalition. The group states that through education, support and advocacy, it works to end discrimination based on sex or gender identity.

Mitchell said she thought Wheeler's statements about homosexuality were "ill-informed" or that he was trying to say something for shock value. She said it was an incorrect statement of the law because the 2003 Supreme Court case Lawrence v. Texas rendered the same-sex sodomy law unenforceable.

Lawrence v. Texas arose after two Texas men were convicted of "deviate sexual intercourse" for engaging in sexual acts in one man's home. Police discovered the acts when they entered the home in response to a reported weapons disturbance.

In a 5-4 decision, the Supreme Court stated that the Texas statute making it a crime for two persons of the same sex to engage in sexual conduct violated their right to due process under the law, in effect rendering Texas' sodomy statute unconstitutional.

Wheeler said that the Kansas law specifically, however, has not been overturned in appellate courts, and it's still on the books.

"I think it may well not withstand constitutional muster," he said. "However, (sodomy statute) does by definition cover those acts. The language is self-explanatory."

Wheeler, first elected as county attorney in 1992, said his office has prosecuted sodomy cases related to forced sexual acts or sex with animals. However, no cases have been filed regarding consensual, of-age homosexual relations, he said.

Still, Mitchell said she wonders whether homosexuals would receive fair treatment in Wheeler's office.

She said coalition members likely will be encouraged to write letters or make calls to let people know of Wheeler's statements, and to let their views of opposition be known.

In response to Mitchell's comments, Wheeler said, "I'm surprised that such a well-intentioned presentation has been taken grossly out of context. Everyone is treated fairly in this office, and in my 16 years as county attorney I have never filed a homosexual case and will not unless it is a nonconsensual forced sexual act on another person."

Not all who attended the presentation found Wheeler's remarks regarding homosexuality to be offensive.

For instance, Doris Meng, a GCCC English instructor, said she interpreted the statements to be a statement of the law, and not a judgment of whether the law is right or a condemnation of homosexuals. The county attorney's job is to uphold the law, she said.

"I didn't take offense at it," Meng said. "I try to be pretty sensitive — we have a diverse population here."

# SEXUAL CRIMES

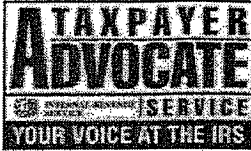
John P. Wheeler, Jr.  
Finney County Attorney

## SODOMY DEFINED

1. **Oral contact or oral penetration of the female genitalia or oral contact of the male genitalia.**
2. **Oral or anal sexual relations or sexual intercourse between a person and an animal!!!**
3. **Anal penetration, however slight, of a male or female by any body part or object.**
4. **Yes, homosexual sexual relations are UNLAWFUL in Kansas.**

## CRIMINAL SODOMY

1. Sodomy with a person of the same sex (or animal). **PENALTY:** \$1,500.00 Fine/Six months jail
2. Sodomy with a child 14 to 16 years of age. **PENALTY:** 55 to 247 months prison (4.58 yrs to 20.58 yrs)



The Office of the Taxpayer Advocate operates independently of any other IRS Office and reports directly to Congress through the National Taxpayer Advocate.

Date: March 18, 2011

[REDACTED]  
Nashville, KS 67112

Case Number: [REDACTED]

Taxpayer Identification Number: [REDACTED]

Dear Mr. [REDACTED]

This is an update on the status of your inquiry received in our office on May 10, 2010. I have received a response back from our Technical Advisor. It is our opinion that your domestic partner does not qualify as your dependent as a "qualifying relative".

A "qualifying relative" must have gross income of less than the dependency exemption amount for an applicable tax year. Since Internal Revenue Code section 61 defines "Gross Income" as "all income from whatever source derived . . ." and Internal Revenue Code sections 101 through 140 does not specifically exclude Social Security Disability income from "Gross Income", we believe that the amount of Social Security Disability income your domestic partner receives is considered "Gross Income" for purposes of this criteria.

In addition, the relationship between you and your domestic partner must not violate local law in order for the domestic partner to meet the "qualifying relative" test. The state of Kansas has both a constitutional and a statutory ban against same-sex marriages and anti-sodomy laws per Section 68 of Chapter 136 of the 2010 Session Laws of Kansas.

I have enclosed reference material regarding the above two paragraphs. I am also enclosing information on how you can request a private letter ruling to obtain guidance from the IRS in your specific situation. There is a required user fee of \$275.00 that has to be submitted with the request for a letter ruling. Please refer to Appendix B and Appendix C of the enclosed material for a sample format for a letter ruling request and a checklist to ensure that your letter ruling request is complete.

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Taxpayer Advocate Service, STOP 1005, 271 W. Third St. N. Wichita, KS 67202  
Contact: Sheri Moore - Employee Number 48-00209 Available Hours 7:00 a.m. - 3:30 p.m. M-F  
Direct Extension 316-352-7357 Toll-Free 866-316-6405 Fax 316-352-7212 Toll-Free 866-571-0147  
Web Site Address [www.irs.gov](http://www.irs.gov)

TAS Letter 2903

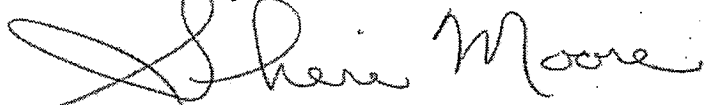
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Please review the enclosed material and let me know by April 6, 2011, how you would like to proceed. If you have any questions, you can reach me at the telephone numbers and hours of operation listed below. If you prefer, you can write to me at the address or faxes below. I am happy to assist you in filing your 2008 and 2009 returns without claiming your domestic partner as a dependent. If you decide to request a letter ruling, I can try to prevent the IRS from making substitute for return assessments on tax years 2008 and 2009 until you receive a letter ruling from the IRS. I'm sorry I cannot give you a definite timeframe that it takes the IRS to provide a letter ruling after you submit your request.

I'm sorry the response I received from our Technical Advisor was not the answer you were hoping for. I will contact you again on April 12, 2011, if I have not heard from you by that date.

Sincerely,



Sheri Moore  
Lead Case Advocate

Enclosures