



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, Chair, Kansas Equality Coalition
Senate Committee on the Judiciary
In Support of SB56
February 8, 2011

Good morning Mr. Chairman and members of the committee. I am here today to speak in support of SB56, and I thank you for the opportunity to do so.

My name is Thomas Witt. I am Chair of the Kansas Equality Coalition, which works to eliminate discrimination based on sexual orientation and gender identity. In the five 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.

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 In Kansas, the ban on consensual sodomy was repealed for all heterosexual couples, married or not.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. As a practical matter, that means that we can still be arrested, charged, and held for bail or arraignment until a judge reviews the case. You may think that this is unlikely to happen, and you may be right. In at least one case, however, a senior law enforcement official made clear, in his words to an assembly of adult college students, that "...even to this day, homosexuality is a crime in Kansas."¹ 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.

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 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, the only continued purpose for which is to threaten and harass law-abiding Kansans with arrest and imprisonment, certainly meets the requirements laid out by our Governor.

I urge this committee to support SB56, and to strike this unconstitutional vestige of a less tolerant society from our statute books.

¹ Garden City Telegram, February 14, 2008

WHEREAS, the economic well-being of the great State of Kansas and the growth of liberty and economic opportunities for the citizens of Kansas and for Kansas businesses are major priorities of this Administration; and

WHEREAS, the citizens of Kansas and all persons doing business in the State of Kansas have a mutual interest in a system of government, laws, regulations, and other governing instruments that are reasonable, comprehensible, consistent, predictable, and minimally burdensome; and

WHEREAS, in furtherance of this Administration's constitutional duty to supervise and direct the executive departments and agencies of state government for the purpose of carrying out the laws, regulations, and other governing instruments of the State of Kansas, I have established a new common sense approach to the task of governing; and

WHEREAS, unreasonable, unduly burdensome, duplicative, onerous, and conflicting laws, regulations, and other governing instruments are detrimental to the economic well-being of Kansas; hinder the growth of liberty and opportunities for Kansans and Kansas businesses; and defy a common sense approach to governance; and

WHEREAS, there currently exists in Kansas certain laws, regulations, and other governing instruments that meet these criteria and should therefore be immediately repealed;

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby create within the Kansas Department of Administration a new office to be called the Office of the Repealer. The Office of the Repealer shall be directed by an executive officer to be named the State Repealer. The State Repealer shall be appointed by the Governor and shall serve at the pleasure of the Governor. The Secretary of Administration shall commit and make available to the Office of the Repealer such resources and personnel as may be required to carry out this Order at the discretion of the State Repealer.

The Office of the Repealer shall undertake as its sole task and charge the following duties:

1. The Office of the Repealer shall investigate the system of governance of the State of Kansas including its laws, regulations, and other governing instruments to determine instances in which those laws, regulations, or other governing instruments are unreasonable, unduly burdensome, duplicative, onerous, or in conflict.
2. The Office of the Repealer shall cause to be created at the earliest possible date a system for receiving public comment suggesting various laws, regulations, and other governing instruments to be considered for possible repeal by the Office of the Repealer. This system shall include an online portal for the receipt of such public comment.
3. When the Office of the Repealer shall determine that any such law, regulation, or other governing instrument meets the standard set forth in paragraph 1 above, the State Repealer shall cause a recommendation for either outright repeal or for modification to be delivered to the originating body of such law, regulation, or other governing instrument; for example, to the Legislature for laws and to the promulgating state agency for regulations. The recommendation shall set forth with specificity the justification for the requested repeal or modification. Any recommendation made by the State Repealer shall carry the full weight and force of this Administration.
4. The Office of the Repealer shall implement a tracking system to follow the action taken by any originating body on any recommendation made by the State Repealer in order to prepare regular reports to the Office of the Governor regarding the progress of repeal or modification.

The Office of the Repealer shall have the authority to determine and implement such internal policies, standards, and procedures as may be necessary for the orderly and efficient carrying out of its mission as set forth in this Order.

This document shall be filed with the Secretary of State as Executive Order No. 11-01 and shall become effective immediately.

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."