No. 00-85898-A

IN THE COURT OF APPEALS
OF THE STATE OF KANSAS

STATE OF KANSAS
Plaintiff-Appellee

v.

MATTHEW R. LIMON
Defendant-Appellant

APPELLANT'S REPLY BRIEF ON REHEARING

Appeal from the District Court of Miami County, Kansas
Honorable Richard M. Smith
District Court Case No. 00 CR 36

Paige A. Nichols, Kansas Bar No.# 16400
Attorney at Law
P.O. Box 582
Lawrence, KS 66044
(785) 832-8024
Attorney for Appellant Matthew Limon

TABLE OF CONTENTS

REPLY BRIEF

Appellant Matthew Limon hereby reasserts all arguments and authorities in his prior briefs and submits this reply to address new matters raised by the State's brief:

I.

Making the Romeo & Juliet Law Apply Equally to Gay Teenagers Will Not Restrict the State's Authority to Criminalize Sexual Abuse of Children

The consensual sexual activity at issue in this case took place between two developmentally-disabled teenagers, both of whom were students in a private residential school. The State's suggestion that this case is about a man in a position of authority abusing a developmentally-disabled boy in a state-run institution, Appellee's Brief at 1-2, 5-6, 9, is incorrect and serves only to distract the Court from the simple legal issue presented here: whether punishing gay teenagers more severely than their heterosexual peers when they engage in the same consensual sexual activity violates the Equal Protection Clause. The United States Supreme Court's decisions in *Lawrence v. Texas,* 123 S. Ct. 2472 (2003), and *Romer v. Evans,* 517 U.S. 620 (1996), answer that question. Appellant's Opening Brief on Rehearing ("Appellant's Brief") at 7-18.

The Kansas legislature has already decided that consensual sexual activity between teenagers who are close in age should not be punished as severely as sexual abuse of a teenager by a much older adult. February 1, 2002 Memorandum Opinion ("Opinion") at 6. Requiring the State to treat gay teenagers equally will not prevent the State from prosecuting and convicting adults who sexually abuse young children, nor will it prevent the State from prosecuting and convicting older teenagers who engage in consensual sexual activity with a 14 or 15 year old. Contrary to the State's assertions, Matthew is neither seeking to invalidate age of consent statutes nor asserting a "privacy interest in

committing sexual offenses against children." Appellee's Brief at 26 n.11, 25. Matthew is not asking this Court to overturn the Romeo & Juliet law; to the contrary, he wants to be charged and prosecuted under it. Appellant's Brief at 26, n.11.

Although the State points out that sexual orientation has nothing to do with being a child molester, it nevertheless invokes a myth that gay people are dangerous to children when it argues that striking the Romeo & Juliet law exclusion will weaken "the statutory framework that protects children from sexual predators." Appellee's Brief at 6 n.5, 7. Myths about gay people molesting children cannot justify harsher punishments based on sexual orientation any more than myths about African American men raping white women could justify harsher punishments based on race. *See, e.g.,* Carole Jenny, T. Roesler, and K. Poyer, "Are Children at Risk for Sexual Abuse by Homosexuals?" in *Pediatrics* vol. 94:1 (July 1994) (finding risk that a child will be molested by a relative's heterosexual partner is over 100 times greater than risk of molestation by someone gay).

Moreover, the State does not explain *how* Matthew's argument undermines the statutory framework for protecting children. The existing statutory framework protects young children under a set of laws that are not implicated here. And it protects teenagers by making it a serious crime for a much older adult to sexually abuse a 14 or 15 year old and by imposing smaller penalties – while still making it a crime – for an older teenager to engage in consensual sexual activity with a 14 or 15 year old. Thus, younger teenagers are protected from older teenagers and older teenagers are protected from excessive prison terms. Matthew's is simply asking that the State be required to treat gay teenagers and heterosexual teenagers equally when it punishes them for consensual sexual activity

with other teenagers.[1] The Attorney General himself has stated that he voted against the Romeo & Juliet law in part because he did not like the "differentiation [based on] sexual orientation" and that he is "not saying Mr. Limon's conviction is justified or his sentence is justified." Interview with Attorney General Phill Kline, 710 KCMO.

The State makes the same sort of detour from the legal question presented when it asserts that Matthew's sentence was based solely on his criminal history score and not on the discriminatory exclusion in the Romeo & Juliet law. Appellee's Brief at 30-31. The State ignores the fact that a heterosexual teenager with the very same criminal history score who engaged in the very same consensual sexual act would have been sentenced to a maximum of 15 months in prison. *Id*. There is no getting around it; excluding gay teenagers from the Romeo & Juliet law creates a massive disparity in sentencing no matter what the defendant's criminal history is. Appellant's Brief at 5.

II.

The Court Need Not Consider Whether Heightened Scrutiny Applies Because Punishing Gay Teenagers More Severely for the Same Activity Does Not Satisfy Even the Rational Basis Test

The State's brief creates some confusion about how to analyze Matthew's equal protection claims. Appellee's Brief at 5-15. Matthew respectfully submits that the equal protection analysis in this case should proceed in the following order:

---

[1] The State attempts to distinguish *Lawrence* because it did "not involve minors." Appellee's Brief at 5. But equal protection principles do not change simply because a case involves a minor. The equal protection principles discussed in *Lawrence* apply here with equal force. In contrast, because this case involves a minor, Matthew has not asserted a due process claim, and concedes that the State's interest in protecting younger teenagers justifies subjecting older teenagers to the criminal sanctions imposed by the Romeo & Juliet law.

1. The Court should determine whether punishing gay teenagers more severely than their heterosexual peers when they engage in the same consensual sexual activity rationally advances a legitimate governmental interest. Because it does not, the Court need go no further. Appellant's Brief at 14-22.

2. If the Court were to find a rational basis for the State's discrimination against Matthew based on his sexual orientation, then, and only then, would the Court need to address whether the State has an exceedingly persuasive justification that is substantially related to an important state interest that would excuse its discrimination against Matthew based on his sex. *Id.* at 29-32. (The State does not dispute that discrimination based on sex is subject to heightened scrutiny, nor does the State suggest that it has an exceedingly persuasive justification for discriminating against Matthew based on his sex by making the Romeo & Juliet law apply only when the two teenagers are "members of the opposite sex." Indeed, the State does not appear to contest Matthew's sex discrimination argument at all.).

3. Only if the Court finds a rational basis for the State's discrimination based on sexual orientation *and* rejects Matthew's sex discrimination claim will it be necessary to resolve whether heightened scrutiny of the sexual orientation classification is required, *either*:

    a. Because sexual orientation is a suspect or quasi-suspect classification that triggers heightened scrutiny, *id.* at 17, n.4; Appellant's Brief (Original) at 12-29; *or*

    b. Because punishing gay teenagers and heterosexual teenagers differently for engaging in the same private, consensual sexual activity differentially burdens a fundamental liberty interest under the Due Process Clause. Matthew agrees that the State's interest in protecting children is a compelling reason justifying the criminal penalties in the Romeo & Juliet law even though they burden teenagers' fundamental liberty interest. But because a fundamental right is at stake, Kansas's *unequal* burden on gay teenagers is subject to heightened scrutiny under the Equal Protection Clause. *Id.*

The State makes two arguments in response to issues 3 (a) and 3 (b). First, the State suggests that this is the first time Matthew has asserted that his equal-protection claim should be analyzed under the strict-scrutiny test and argues that "at this late hour the Defendant should be estopped from pulling the strict scrutiny lever." Appellee's Brief at 13 n.7. But the strict-scrutiny question has been in the case from the very beginning.

Matthew argued at length in his original briefs that strict or intermediate scrutiny applies to classifications based on sexual orientation, Appellant's Brief (Original) at 12-29, and this Court considered Matthew's heightened scrutiny argument in its original decision. Opinion at 12.

Second, with respect to 3 (b), the State contends that *Lawrence* did not establish that gay people have an equal fundamental right to sexual intimacy. Appellee's Brief at 9, 14. But the State's interpretation of *Lawrence* is based on the wishful thinking of the dissent. *Bowers v. Hardwick* held that the fundamental right to privacy did not extend to "homosexual sodomy," 478 U.S. 186, 190 (1986), and the *Lawrence* majority explicitly overruled *Bowers* on that point when it held that "individual decisions by married persons concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of 'liberty' protected by the Due Process Clause of the Fourteenth Amendment. Moreover this protection extends to intimate choices by unmarried as well as married persons." *Lawrence,* 123 S. Ct. at 2483-84 (quoting *Bowers,* 478 U.S. at 216 (Stevens, J., dissenting)). *Lawrence* establishes that the right to autonomy in decisions concerning sexual intimacy is one component of the fundamental right to liberty identified in a long line of Supreme Court decisions including *Pierce v. Society of Sisters,* 268 U.S. 510 (1925), and *Griswold v. Connecticut,* 381 U.S. 479 (1965). *Id*. at 2476-77, 2481-82, 2484. After *Lawrence,* that right extends equally to gay people. *Id*. at 2482.

Although the State has addressed these questions about heightened equal protection scrutiny at some length, Appellee's Brief at 8-9, 13-15, ultimately they are nothing more than a side show because Kansas's discrimination against gay teenagers does not satisfy even the lowest level of equal protection review. And it is well established that

courts should not reach out to decide new constitutional questions concerning heightened scrutiny when the challenged discrimination fails even the rational basis test. Appellant's Brief at 16-17.

III.

None of the State's Asserted Justifications for Discriminating Against Gay Teenagers Satisfy Rational Basis Equal Protection Review

A. *The Rational Basis Test*

The parties agree that to satisfy the Equal Protection Clause the Romeo & Juliet law's discrimination against gay teenagers must – at a minimum – rationally advance a legitimate state interest. Appellee's Brief at 8; Appellant's Brief at 14-15. But the State incorrectly asserts that "it should be irrelevant to this Court's deliberation whether it . . . accepts or rejects the inferred or stated reasons supporting that legislative action." Appellee's Brief at 12. To satisfy equal protection, this Court must conclude that at least one of the "stated reasons" for limiting the Romeo & Juliet law to "members of the opposite sex" is legitimate, is independent of the classification (i.e., is not discrimination for its own sake), and is rationally advanced by the decision to discriminate. Appellant's Brief at 14-17, 21-22.

The State's mere assertion that some state interest is served by the classification does not end the inquiry. Whether there is a rational basis for the state's discrimination is not decided in a theoretical vacuum. *Heller v. Doe*, 509 U.S. 312, 321 (1993) ("[E]ven the standard of rationality . . . must find some footing in the realities of the subject addressed by the legislation[.]"). There must be a "factual context" from which to discern a relationship between the classification and a legitimate state interest. *Romer*, 517 U.S. at 635. Even systems for taxing property, which are judged under an "especially

deferential" form of rational basis review, *Nordlinger v. Hahn,* 505 U.S. 1, 11 (1992), must be rational in reality and not just in theory, *Allegheny Pittsburgh Coal Co. v. Webster County,* 488 U.S. 336, 343 (1989) (holding "theoretically" effective assessments violated equal protection because they *in fact* yielded dramatic disparities).

Where the factual reality makes asserted state interests "impossible to credit," the only option is to conclude that the actual motive was a desire to disadvantage the targeted group, an impermissible basis for state action. Appellant's Brief at 15-17. Justice O'Connor explained in *Lawrence* that when a law discriminates in a way that suggests "a desire to harm a politically unpopular group," the Supreme Court has previously applied a "more searching form of rational basis review." *Lawrence,* 123 S. Ct. at 2485 (O'Connor, J., concurring) (citations omitted).

B. *The Equality Principles in* Lawrence *and* Romer *Control the Outcome Here*

The State's assertion that *Lawrence* has no bearing on this case because it decided solely due process rather than equal protection issues is mistaken. Appellee's Brief at 7-9, 14. The equal protection principles set forth in *Romer* not only were applied in Justice O'Connor's concurrence in *Lawrence*, but were also expressly approved in Justice Kennedy's decision for the majority in *Lawrence.* The majority in *Lawrence* endorsed the argument that making consensual sodomy a crime for gay people but not for heterosexual people violated equal protection because it was "born of animosity toward the class of persons affected" and "had no rational relation to a legitimate governmental purpose." 123 S. Ct. at 2482 (quoting *Romer,* 517 U.S. at 634). The majority explained that it ultimately rested its ruling on due process grounds not because there were problems with the equal protection theory but because it would not go far enough to remedy the

discriminatory effects of sodomy laws. *Id*. The Court again invoked equal protection principles when it held that "Justice Stevens' analysis . . . should have been controlling in *Bowers*." *Id*. at 2484. Justice Stevens wrote in his *Bowers* dissent that "[a] policy of selective application [of a criminal law to gay people] must be supported by a neutral and legitimate interest – something more substantial than a habitual dislike for, or ignorance about, the disfavored group." *Bowers,* 478 U.S. at 219. That is the same equal protection argument Matthew makes here.

The State argues that *Lawrence* has no bearing here because the majority did not join and was "strangely silent" about Justice O'Connor's concurrence on equal protection grounds. Appellee's Brief at 8.[2] But the fact that the Justices in the majority did not join Justice O'Connor's concurrence is not at all remarkable – doing so would have meant ruling on two constitutional issues when ruling on one issue sufficed, and that would have violated a cardinal rule of constitutional decision-making. What *is* remarkable is that the majority, far from being "silent," actually went out of its way to cite Lawrence's equal protection claim approvingly. *Lawrence,* 123 S. Ct. at 2482.

Implicitly acknowledging that Matthew will prevail if *Romer* is applied to the facts of this case, the State asserts that the Equal Protection Clause applies to gay people only when the government discriminates in access to political rights. Appellee's Brief at 8, n.6. But *Lawrence* makes it clear that *Romer* applies to *all* classifications that target gay

---

[2] The State's reliance on Justice Scalia's dissent suggests that the State simply disagrees with *Lawrence*. But the Kansas Supreme Court has long recognized that "the interpretation placed on the Constitution and laws of the United States by the decisions of the supreme court of the United States is controlling upon state courts and must be followed." *Trinkle v. Hand*, 184 Kan. 577, 579 (1959).

people, whether they are based on "orientation, conduct, practices or relationships." 123 S. Ct. at 2482; Appellant's Brief at 10-13.

C. *Moral Condemnation of Homosexuality Cannot Justify The State's Discrimination Against Gay Teenagers*

The State argues that discrimination based on sexual orientation is a legitimate exercise of the police power to promote morality. Appellee's Brief at 15-20. Matthew does not dispute that the State has the power to pass *even-handed* laws to promote morality. Appellant's Brief at 22-24; *Berman v. Parker,* 348 U.S. 26 (1954). Neutral laws to promote morality, including laws that outlaw "predatory acts of an adult man against a minor girl or minor boy" or that prohibit older teenagers from having sex with younger teenagers, do not offend the Equal Protection Clause. But while punishing *all teenagers* for having sex may rationally promote morality, to defeat Matthew's equal protection challenge the State must explain how punishing *gay teenagers* more severely promotes morality. Appellant's Brief at 25-26. The State offers no such explanation because the only connection between the State's discrimination based on sexual orientation and morality is the State's desire to enforce society's moral disapproval of homosexuals. That sort of discrimination for its own sake violates equal protection. Appellant's Brief at 22-24.

By arguing that punishing sexually active gay teenagers more severely than sexually active heterosexual teenagers advances a legitimate state interest in promoting morality, Appellee's Brief at 15-20, 26-28, the State is asking this Court to ignore both the holding and the concurrence in *Lawrence* and to resuscitate the "morality" argument from *Bowers*. But *Lawrence* establishes that even where the majority "condemn[s]

homosexual conduct as immoral" based on deeply held moral principles, religious beliefs and "respect for the traditional family," it may not "use the power of the State to enforce these views on the whole society through the operation of the criminal law." 123 S. Ct. at 2480; *id*. at 2486-87 (O'Connor, J., concurring).

The *Lawrence* majority reiterated that moral disapproval of homosexuality cannot justify punishing gay people more severely when it adopted Justice Stevens' dissent in *Bowers*. In that dissent, Justice Stevens wrote that gay people have an equal right to liberty, including "the right to engage in nonreproductive, sexual conduct that others may consider offensive or immoral." He also explained that "[a] policy of selective application must be supported by a neutral and legitimate interest – something more substantial than a habitual dislike for, or ignorance about, the disfavored group." *Bowers,* 478 U.S. at 219. After *Lawrence,* the State cannot use the "morality" argument to justify its decision to single out gay teenagers for more severe punishment. Indeed, the very assertion of the argument demonstrates that the exclusion was "born of animosity toward the class of persons affected." *Lawrence,* 123 S. Ct. at 2482 (quoting *Romer,* 517 U.S. at 634); *id*. at 2486-87 (O'Connor, J., concurring).[3] Punishing gay teenagers more severely than their peers because the legislature disapproves of their "orientation, conduct, practices or relationships" violates the Equal Protection Clause. *Id*.

D. *Discriminating Against Gay Teenagers Does Not Promote Marriage*

---

[3] Although the State asserts that "no statute regarding homosexual sodomy has been successfully challenged on *equal protection grounds*," Appellee's Brief at 14-15, *Lawrence* cited with approval two equal protection decisions that struck down discriminatory sodomy laws and rejected the morality argument asserted here. *See Jegley v. Picado,* 80 S.W.3d 332, 351-53 (Ar. 2002); *Commonwealth v. Wasson,* 842 S.W.2d 487, 499 (Ky. 1992).

The State argues that punishing gay teenagers more severely than heterosexual teenagers who engage in the same consensual sexual activity rationally advances the State's interest in promoting marriage by encouraging heterosexual teenagers to marry. Appellee's Brief at 7, 20-21, 29.[4] The argument fails because there is no rational connection between the discrimination and the asserted interest in promoting marriage. No one could rationally think that reducing the penalty for engaging in consensual sexual activity encourages heterosexual teenagers to marry. People marry because they are in love and want to spend their lives together, not because the State reduces the penalty for maintaining a sexual relationship *outside of marriage*. Moreover, to satisfy equal protection the discrimination must *itself* rationally advance the State's asserted purpose. Appellant's Brief at 25. But subjecting gay teenagers to more severe penalties cannot possibly encourage heterosexual teenagers to marry.

It is similarly irrational to think that treating gay teenagers equally would make heterosexual teenagers become gay and decide not to marry, *but see* Appellee's Brief at 21, or that punishing gay teenagers more severely will make them decide to marry people of the opposite sex. *Lawrence v. Texas,* 2003 WL 153338 (Jan. 16, 2003), Brief for Amici Curiae American Psychological Association, *et al.* in Support of Petitioners. And, as *Lawrence* establishes, the government has no legitimate interest in using criminal sanctions to influence sexual orientation. *Lawrence,* 123 S. Ct. at 2481. Nor does the State have a legitimate interest in using criminal penalties to influence "personal decisions

---

[4] The State's suggestion that an equal protection ruling in this case would affect the constitutionality of the marriage defense to K.S.A. 21-3505(b) is a red herring. Appellee's Brief at 20. Matthew has never claimed that he wanted to marry the teenager with whom he engaged in consensual sexual activity.

relating to marriage," *id.,* including the decision not to marry.

Finally, despite the State's ruminations about the implications of an equal protection decision in Matthew's favor, the outcome of this case will not determine the outcome of any future challenge to the marriage laws. Appellee's Brief at 29. As the Supreme Court intimated in *Lawrence,* a case involving the right to marry would involve the State's asserted interests in determining the contours of "an institution the law protects," and would involve a different set of considerations than a case, like this one, that involves criminal punishment and "state-sponsored condemnation attendant to the criminal prohibition." *Lawrence*, 123 S.Ct. at 2478, 2482.

E. *Discriminating Against Gay Teenagers Does Not Promote Pregnancy*

The State makes the puzzling argument that punishing gay teenagers more severely than heterosexual teenagers rationally advances the State's interest in encouraging procreation. Appellee's Brief at 23-24. Of course, punishing gay teenagers more severely than heterosexual teenagers will not make heterosexual teenagers procreate (any more than it will make them get married), nor will it encourage gay teenagers to procreate. The State's discrimination against gay teenagers does not rationally advance the asserted goal – encouraging teen pregnancy.

Moreover, it is simply not credible that the legislature's purpose in discriminating against gay teenagers was to encourage pregnancy among unwed teenagers. Indeed, the State's own prosecutors, the Kansas County and District Attorneys Association, lobbied against the Romeo & Juliet law because they were concerned about teen pregnancy. *See* Legislative History in Appendix of Brief of Amicus Curiae Liberty Project (Original).

F. *Discriminating Against Gay Teenagers Does Not Prevent Disease*

The State argues that punishing gay teenagers more severely than heterosexual teenagers rationally advances its interest in reducing "the spread of disease pathogens." Appellee's Brief at 22-23. The State's entire argument is based on assertions made in an *amicus* brief that was submitted to the Supreme Court in *Lawrence*. *Id*. The arguments in that brief were repudiated by none other than the American Public Health Association, the world's largest public health organization with over 50,000 members, and the National Alliance of State and Territorial AIDS Directors, the national association of state health department directors. *See Lawrence v. Texas*, 2003 WL 164135 (Jan. 16, 2003), Brief of the American Public Health Association, *et al.* In Support of Petitioners (explaining that criminal sanctions for same-sex sodomy are not rationally related to preventing disease and actually undermine public health by increasing sexual transmission of disease).

The exclusion in the Romeo & Juliet law is so far removed from the asserted public health objective that it is impossible to credit the State's contention that it punishes gay teenagers more severely for the very same sexual acts in order to promote public health. The facts in this case demonstrate that punishing gay teenagers more severely for engaging in consensual sexual activity has little to do with preventing disease. Very few diseases are transmitted through oral sex, and a boy is no more likely than a girl to transmit disease by performing oral sex on another boy. *Id*. at 14. Yet Matthew received 17 years in prison instead of a maximum of 15 months because he was a boy performing consensual oral sex on another teenaged boy. Equal protection will not permit "a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne v. Cleburne Living Center,* 473 U.S. 432, 446 (1985) (citation omitted).

G. *Discriminating Against Gay Teenagers Does Not Protect Children in Single-Sex Facilities*

The State contends that its discrimination against gay teenagers is intended to protect children in state-run residential facilities. Appellee's Brief at 24-26. But the assertion that there are different constitutional rules for state-run or for state-funded institutions is a red herring. The equal protection violation does not depend on where the consensual sexual activity occurs. Moreover, the State's suggestion that the Romeo & Juliet law is limited to "members of the opposite sex" in order to protect 14 and 15 year olds who live in residential facilities is impossible to credit. It is simply not rational to think that punishing gay teenagers more severely than heterosexual teenager will protect teenagers living in group homes. *Cleburne,* 473 U.S. at 446.

In the absence of any rational basis for the legislature's decision to limit the Romeo & Juliet law to heterosexual teenagers, the only plausible conclusion is that the limitation was "aimed at homosexuals." Opinion at 6. Limiting this law to "members of the opposite sex" violates the Equal Protection Clause because it targets gay people for legal disadvantage based on their same-sex "orientation, conduct, practices or relationships." *Lawrence,* 123 S. Ct. at 2482 (quoting *Romer,* 517 U.S. at 624).

IV.

CONCLUSION

While the State advances a host of "policy arguments" for refusing to correct the gross inequality created by the exclusion of gay teenagers from the Romeo & Juliet law, Appellee's Brief at 26, the State does not offer any justification for its discrimination that is sufficient to satisfy the requirements of the Equal Protection Clause. Although the State

may fear the outcome of future cases interpreting *Lawrence,* it is *Lawrence* itself that will determine the outcome in those cases, not this Court's application of *Lawrence* to the limited question presented in this case.

The State protests that enforcing the constitution would be "judicial activism," Appellee's Brief at 29-30, but in our constitutional democracy, the separation of powers is enhanced rather than undermined when courts fulfill their assigned role of enforcing the constitution, even when that role requires them to strike down legislation that is inconsistent with constitutional guarantees. It is emphatically "the province of the judiciary to say what the law is," *Marbury v. Madison,* 5 U.S. 137 (1803), and that includes "saying" when discriminatory legislation violates the constitutional promise of equality. It also includes forging a remedy that satisfies the constitution, even if there is "no provision in [Kansas] law" for the remedy Matthew seeks. Appellee's Brief at 32; Appellant's Brief at 33-37.

Respectfully submitted,

Paige A. Nichols Kansas Bar No. 16400 Attorney at Law P.O. Box 582 Lawrence, KS 66044 (785) 832-8024 (785) 832-8024 (fax)	Tamara Lange, California Bar No. 177949 ACLU Lesbian & Gay Rights Project 1663 Mission St., Ste. 460 San Francisco, CA 94103 (415) 293-6361 (415) 255-8437 (fax)	James D. Esseks California Bar No. 159360 ACLU Lesbian & Gay Rights Project 125 Broad St., 18th Fl. New York, NY 10004 (212) 549-2627 (212) 549-2650 (fax)

Certificate of Service

I hereby certify that true and correct copies of the foregoing Reply Brief were placed in the United States mail, first class postage prepaid, on this 3rd day of October, 2003, addressed to:

Phillip Kline
Attorney General
120 SW 10th, 2nd Floor
Topeka, KS 66612-1597
(5 copies)

Matthew Limon, # 70713
Ellsworth Correctional Facility
P.O. Box 107
Ellsworth, KS 67439
(1 copy)

_____
Paige A. Nichols, Kansas Bar No. 16400