

SET 9/9/08  
82744-3

COURT OF APPEALS  
DIVISION II

09 AUG 25 AM 10:13

STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

No. 36804-8-II

IN THE COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,  
Respondent,

v.

MATTHEW HIRSCHFELDER,  
Petitioner.

APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY

RESPONDENT'S BRIEF IN RESPONSE TO  
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS'  
AMICUS CURIAE BRIEF

H. STEWARD MENEFEE  
Prosecuting Attorney  
for Grays Harbor County

BY: [Signature]  
MEGAN M. VALENTINE  
Deputy Prosecuting Attorney

OFFICE ADDRESS:  
Grays Harbor County Courthouse  
102 West Broadway, Room 102  
Montesano, Washington 98563  
Telephone: (360) 249-3951  
WSBA #35570

80/ee/18 wd

---

**TABLE**

**Table of Contents**

IDENTITY OF NON-MOVING PARTY ..... 1

DECISIONS OF COURTS BELOW ..... 1

ISSUE PRESENTED FOR REVIEW ..... 1

RESPONDENT’S COUNTER STATEMENT OF THE CASE ..... 1

ARGUMENT WHY TRIAL COURT SHOULD BE AFFIRMED ..... 3

    1. THE DEFENDANT HAS NO PRIVACY INTEREST IN AN  
    INTIMATE SEXUAL RELATIONSHIP WITH A  
    REGISTERED STUDENT OF THE DISTRICT WHERE HE  
    IS EMPLOYED ..... 3

        A. The defendant may not assert RCW 9A.44.093 violates the  
        victim’s right of privacy ..... 3

        B. Hirschfelder, a Hoquiam School District Employee’s  
        intimate sexual relationship with a registered student of the  
        School District, to whom he was not married, is not  
        protected by the United States or Washington State  
        Constitutions ..... 11

    2. THERE IS A LEGITIMATE STATE INTEREST IN  
    PROHIBITING SEXUAL INTERCOURSE BETWEEN  
    STUDENTS AT A PUBLIC HIGH SCHOOL AND THE  
    EMPLOYEES OF THAT SCHOOL DISTRICT ..... 3

CONCLUSION ..... 23

## TABLE OF AUTHORITIES

### Table of Cases

<i>Anderson v. King County</i> , 158 Wash.2d 1, 128 P.3d 963 (2006) . . .	10, 11
<i>Lawrence v. Texas</i> , 539 U.S. 558, 560, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003).....	7, 8, 9, 12
<i>DeYoung v. Providence Med. Ctr.</i> , 136 Wash.2d 136, 148, 960 P.2d 919 (1998).....	11
<i>Fed. Commc'ns comm'n v. Beach Commc'ns, Inc.</i> , 508 U.S. 307, 315, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993) .....	11
<i>State v. Farmer</i> , 116 Wash.2d 414, 805 P.2d 200 (1991) .....	4-5, 11
<i>State v. Wilbur</i> , 110 Wash.2d 16, 749 P.2d 1295 (1988) .....	10
<i>Bowers v. Hardwick</i> , 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986) .....	7
<i>High Tide Seafoods v. State</i> , 106 Wash.2d 695, 725 P.2d 411 (1986), appeal dismissed, 479 U.S. 1073, 107 S.Ct. 1265, 94 L.Ed.2d 126 (1987) 3	
<i>Turner v. Safley</i> , 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987) . . .	6
<i>Roberts v. United States Jaycees</i> , 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984) .....	6
<i>Roe v. Wade</i> , 410 U.S. 113, 93 s.Ct. 705, 35 L.Ed.2d 147 (1973) .....	6
<i>Griswold v. Connecticut</i> , 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965).....	6, 8, 9
<i>Snyder v. Com. of Massachusetts</i> , 291 U.S. 97, 105 54 S.Ct. 330 .....	6
<i>Powell v. State of Alabama</i> , 287 U.S. 45, 67, 53 S.Ct. 55, 77 L.Ed. 158 .	6

*State v. McKenzie-Adams*, 281 conn. 486, 506, 915 A.2d 822 9S.Ct.Conn. 2007)..... 10, 13, 14

**STATUTES**

U.S.C.A. Cost. Amend. 14 ..... 5  
U.S.C.A. Cost. Amend. 9 ..... 14  
RCWA Cost. Art. 1 §7 ..... 5, 9  
RCW 9A.44.093 ..... 1-4, 9, 12, 14, 16

**A. IDENTITY OF NON-MOVING PARTY**

Respondent, the State of Washington, by and through Megan M. Valentine, Grays Harbor County Deputy Prosecuting Attorney, asks this court to affirm the rulings of the court below.

**B. DECISIONS OF COURTS BELOW**

Petitioner asks this court to deny the decision of the Grays Harbor County Superior Court in cause no. 07-1-294-7 denying the Defendant's Motion to Dismiss under *Knapstad*, and finding the underlying statute, RCW 9A.44.093 constitutional.

**C. ISSUE PRESENTED FOR REVIEW**

Is the sexual relationship between a school district employee and a registered student constitutionally protected?

Is there a legitimate state interest in regulating sexual intimacy between school district employees and a registered student?

**D. RESPONDENT'S COUNTER STATEMENT OF THE CASE**

Matthew Hirschfelder was charged by Information filed in Grays

Harbor Superior Court on May 18, 2007 with one count of Sexual Misconduct with a Minor in the First Degree under RCW 9.44.093(1)(b), this matter was previously filed as a preliminary hearing in Grays Harbor District Court on April 19, 2007.

The State alleges that at the time of the incident Hirschfelder was employed by the Hoquiam School District as a Choir Teacher. A.N.T. was a student at Hoquiam High School, where Hirschfelder taught, and a member of the choir. Hirschfelder was more than 60 months older than A.N.T. On the night of the book signing, held at Hoquiam High School, Hirschfelder had sexual intercourse with A.N.T. A.N.T. was 18 at the time. The book signing was held a short time before A.N.T.'s graduation from Hoquiam High School.

Hirschfelder filed a Motion to Dismiss under *Knapstad* on July 13, 2007. Hirschfelder filed his supporting brief to the Motion to Dismiss for unconstitutionality of the statute on August 1, 2007. The State filed its response to the Motion to Dismiss on August 14, 2007. Oral argument was heard by the court on August 24, 2007. On September 4, 2007, the court issued an oral ruling denying the Motion to Dismiss under *Knapstad* and for unconstitutionality of the statute. At that hearing the court entered a written order certifying the issue for review and granted a continuance of

the trial set for September 25, 2007. On September 28, 2007 Hirschfelder filed a Notice and supporting Brief and Motion for Discretionary Review with this Court. This court accepted review in a written order filed November 19, 2007.

**E. ARGUMENT**

The Washington Association of Criminal Defense Attorneys (hereinafter WACDA)'s Amicus Curiae Brief argues that RCW 9A.44.093(1)(b) violates Hirschfelder's right to privacy. The relationship between Hirschfelder and the victim, A.N.T. is not protected by the Constitution and, even if it were, the state has a legitimate state interest in restricting the intimate relationship between an employee of a school district and a registered student of the same school district. A statute is presumed constitutional. The party challenging the statute has the burden of proving its unconstitutionality beyond a reasonable doubt.<sup>1</sup>

---

<sup>1</sup> *High Tide Seafoods v. State*, 106 Wash.2d 695, 698, 725 P.2d 411 (1986), *appeal dismissed*, 479 U.S. 1073, 107 S.Ct. 1265, 94 L.Ed.2d 126 (1987).

**1. SEXUAL INTERCOURSE BETWEEN A SCHOOL DISTRICT EMPLOYEE AND A REGISTERED STUDENT IS NOT A FUNDAMENTAL RIGHT.**

**A. The defendant lacks standing to assert a violation of the victim's right of privacy**

Hirschfelder must first establish his standing to this constitutional challenge. Hirschfelder may not obtain standing to challenge the Constitutionality of RCW 9A.44.093(b) based upon how it affected the victim's right to privacy.<sup>2</sup> Hirschfelder's standing arises from the statute's affect on his right to engage in sexual activity.

Whether or not the victim has statutory authority (by reaching the age of majority according to statute) or a constitutional right to engage in sexual activity with her teacher, the defendant, does not fall within the defendant's right to assert. In *Farmer* the defendant challenged the constitutionality of RCW 9.68A, titled Sexual exploitation of children, as violating the victim's right to engage in sexual activity with whomever they wish as it applied to sixteen and seventeen year olds. The Washington Supreme Court found Farmer lacked standing to raise the

---

<sup>2</sup> *State v. Farmer*, 116 Wash.2d 414, 421, 805 P.2d 200 (1991).

challenge because he was asserting the victim's right of privacy.<sup>3</sup>

**B. Sexual intercourse between a school district employee and registered student is not a fundamental right.**

The right of privacy is a well established penumbral right guaranteed to all persons under the United States Constitution.<sup>4</sup> The right of privacy is an enumerated right guaranteed to all citizens by the Washington State Constitution.<sup>5</sup> The right to intimate association is a recognized zone of the right of privacy. The level of protection a person is guaranteed in their right of intimate association depends upon the association itself.

The right of intimate association is derived from the due process concepts of the Fourteenth Amendment and the principals of liberty and privacy found in the Bill of Rights. The right of intimate association protects "the choices to enter into and maintain certain intimate human

---

<sup>3</sup> *Farmer*, 116 Wash.2d at 421.

<sup>4</sup> United States Constitution, Article 14.

<sup>5</sup> Washington State Constitution, article I, section 7. "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

relationships”.<sup>6</sup> These “must be secured against undue intrusion by the State because the role of such relationships in safeguarding the individual freedom . . . is central to our constitutional scheme”.<sup>7</sup>

The courts have recognized a number of zones within the right of privacy. These zones of privacy are subject to varying levels of constitutional protection. Fundamental rights of privacy include the right to marital privacy, the use of contraception, bodily integrity and abortion.<sup>8</sup>

In determining which rights are fundamental, the judges are not left at large to decide cases in light of their personal and private notions. Rather they must look to the ‘traditions and (collective) conscience of our people’ to determine whether a principal is ‘so rooted (there) . . . as to be ranked as fundamental.’ The inquiry is whether a right involved ‘is of such a character that it cannot be denied without violating those ‘fundamental principles of liberty and justice which lie at the base of all our civil and political institutions’.<sup>9</sup>

---

<sup>6</sup> *Roberts v. United States Jaycees*, 468 U.S. 609, 618, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984)

<sup>7</sup> *Id.*

<sup>8</sup> *Turner v. Safley*, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987); *Roe v. Wade*, 410 U.S. 113, 155, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965).

<sup>9</sup> *Griswold*, 381 U.S. at 493, citing *Snyder v. Com. of Massachusetts*, 291 U.S. 97, 105 54 S.Ct. 330 and *Powell v. State of Alabama*, 287 U.S. 45, 67, 53 S.Ct. 55, 77 L.Ed. 158 (citations omitted).

The Supreme Court ruled in *Lawrence v. Texas* that there is a privacy interest in consensual homosexual contact. This ruling overturned *Bowers v. Hardwick*<sup>10</sup> and held that “decisions concerning the intimacies of physical relationships, even when not intended to produce offspring, are a form of ‘liberty’ protected by due process.”<sup>11</sup> In making this ruling the Court emphasized that the relationship was “the most private human conduct, sexual behavior, and in the most private of places, the home.”<sup>12</sup> The Court discussed the right as a “personal relationship . . . within the liberty of persons to choose without being punished as criminals”<sup>13</sup> and as “one element in a personal bond that is more enduring”.<sup>14</sup>

*Lawrence*, however, did not elevate consensual homosexual contact to a fundamental right subject to strict scrutiny. The Court applied a rational basis review.<sup>15</sup> The Court emphasized the legislation’s invasion into a private enduring relationship and the presence of the defendants in

---

<sup>10</sup> *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986).

<sup>11</sup> *Lawrence v. Texas*, 539 U.S. 558, 560, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003).

<sup>12</sup> *Id.*, at 558.

<sup>13</sup> *Id.* at 567.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 586 (Scalia, dissenting).

their home and found it not to be a legitimate state interest.<sup>16</sup>

The “marital zone of privacy”, a fundamental right, was enumerated in *Griswold v. Connecticut*.<sup>17</sup> The right was described as “a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred”.<sup>18</sup> The marital zone of privacy stems historically from one’s right to be secure in their home. The fundamental belief one should be secure in their home is derived from the belief that a person’s home is created through its existence as the center of the family life.<sup>19</sup> The *Griswold* Court was concerned that the Connecticut statute, regulating the use of contraceptives by married couples, invaded the right of privacy of the married couple when it focused on the use, not manufacture or distribution, of contraceptives. It, therefore, had the “maximum destructive impact upon that [marital] relationship”.<sup>20</sup>

RCW 9A.44.093 does not involve marital relationships and in fact

---

<sup>16</sup> *Lawrence*, 539 U.S. 538.

<sup>17</sup> *Griswold*, 381 U.S. at 485.

<sup>18</sup> *Id* at 486.

<sup>19</sup> *Id* at 495 (Goldberg, concurring).

<sup>20</sup> *Griswold*, 381 U.S. at 485.

RCW 9A.44.093(1)(b) specifically excludes persons married to each other. Intimate sexual intercourse between a school district employee and a registered student does not fall within the “marital zone of privacy” and sexual intercourse between a high school teacher and his student is not a fundamental and sacred relationship. Both the *Griswold* and *Lawrence* Courts recognized important privacy interests in sexually intimate relationships. But although the statutes regulated sexual intimacy, the sexual intimacy itself was not the basis of the right of privacy. The privacy interest in marriage or consensual homosexual contact recognized by the courts is a relationship that goes beyond intimacy and involves dedication and commitment to the relationship.

The conduct regulated by RCW 9A.44.093(1)(b) and at issue in the present case involves a relationship created by the defendant’s employment at the school district and the student’s enrollment at the school district. This is not a relationship of longevity or commitment and the inclusion of sexual intimacy in this relationship is not protected by the Constitution.

WACDA further argues that if the Federal Constitution does not protect this intimate sexual relationship, that article I, section 7 of the Washington State Constitution affords enhanced protection in this

particular context.

A similar statute was tested in Connecticut in *State v. McKenzie-Adams*. The Connecticut Supreme Court conducted a thorough analysis of *Lawrence* and the right of privacy and found “the right of sexual privacy purportedly delineated in *Lawrence* would not apply to the circumstances of the present case”.<sup>21</sup> The Connecticut court found the right of privacy in their State Constitution did not extend to sexual privacy between a teacher and a student.<sup>22</sup> The *McKenzie-Adams* court then applied the rational basis test and found their statute to be constitutional.

This case does not involve state intrusion into the home or other location where there is an expectation of privacy as discussed by WACDA. Washington’s privacy protection has not be expanded to include greater sexual intercourse rights than those granted by the Federal Constitution and should not be now.<sup>23</sup>

---

<sup>21</sup> *State v. McKenzie-Adams*, 281 Conn. 486, 507, 915 A.2d 822 (S.Ct. Conn. 2007).

<sup>22</sup> *McKenzie-Adams* at 508-515 (Connecticut Constitution Amendment XIV, §1 “No State shall . . . deprive any person of life, liberty or property, without due process of law”).

<sup>23</sup> See, *Anderson v. King County*, 158 Wash.2d 1, 128 P.3d 963 (2006) (declining to extend a right to homosexual marriage greater than that recognized in *Lawrence*), *State v. Wilbur*, 110 Wash.2d 16, 749 P.2d 1295 (1988) (discussing statutes criminalizing prostitution).

**2. THERE IS A LEGITIMATE STATE INTEREST IN PROHIBITING SEXUAL INTERCOURSE BETWEEN SCHOOL DISTRICT EMPLOYEES AND REGISTERED STUDENTS.**

Even where the right of privacy is infringed upon, the infringement is not unconstitutional if it can withstand scrutiny regarding the statute and the state interest.<sup>24</sup> When the State regulation intervenes with a person's constitutional rights, the legislation is subject to scrutiny depending upon the right infringed upon. If the right is a fundamental right, strict scrutiny applies and the statute must be narrowly tailored to serve a compelling government interest.<sup>25</sup> If the right is not a fundamental right, the statute must pass the rational basis standard which requires the statute be rationally related to a legitimate state interest. Generally, statutes do not fail the rational basis review. "The rational basis standard may be satisfied where 'the legislative . . . choice [is] based on rational speculation unsupported by evidence or empirical data.'"<sup>26</sup>

---

<sup>24</sup> *Farmer*, 116 Wash.2d at 421.

<sup>25</sup> *Anderson*, 158 Wash.2d at 24.

<sup>26</sup> *DeYoung v. Providence Med. Ctr.*, 136 Wash.2d 136, 148, 960 P.2d 919 (1998) (quoting *Fed. Commc'ns comm'n v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993)).

The *Lawrence* Court applied a rational basis review, not a fundamental rights analysis. *Lawrence* involved private, adult, consensual sexual behavior and the Court did not find it subject to more than a rational basis review. Further, even if the *Lawrence* court did elevate the right of privacy in a private, adult, consensual, sexually intimate relationship to a fundamental right regardless of the sex of the participants. The Court, in its finding of no legitimate state interest, specifically noted

[t]he present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter. The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle.<sup>27</sup>

The Supreme Court found that the statute based in moral regulation furthered no legitimate state interest which justified the “intrusion into the personal and private life of the individual”.<sup>28</sup> In the present case, there is a legitimate state interest.

RCW 9A.44.093(1)(b) is not dissimilar to RCW 9A.44.160 which

---

<sup>27</sup> *Lawrence*, 539 U.S. at 578.

<sup>28</sup> *Lawrence*, 539 U.S. at 578.

criminalizes sexual intercourse between employees of state correctional institutions or supervisors and those incarcerated or under supervision. Like the custodial sexual misconduct statute, the statute prohibiting sexual intercourse between a school district employee and a registered student is focused on the relationship between the two, not the age or location of the intercourse. Because guards and probation officers have authority over inmates and those being supervised, act as actors of the state, consent might not easily be refused even. Similarly, school district employees have authority over registered students and act as actors of the state during the time the student is registered at that school district.

This Court should adopt this reasoning which is similar to that in *State v. McKenzie-Adams*. In which *McKenzie-Adams* the Connecticut Supreme Court recognized the inherently coercive nature of a sexual relationship between a teacher and a student. The fact that the victims in *McKenzie-Adams* was under the age of eighteen does not render the finding that the relationship between a teacher and a student is inherently coercive faulty. The Connecticut court stated “[i]n light of the disparity of power inherent in the teacher-student relationship, we conclude that both victims were situated in an inherently coercive relationship with the

defendant wherein consent might not easily be refused.”<sup>29</sup> The Connecticut statute, like RCW 9A.44.093(1)(b) prohibited “a secondary schoolteacher from having sexual intercourse with a student enrolled in the school in which that teacher is employed, regardless of the age of the student and regardless of the allegedly consensual nature of the sexual relationship.”<sup>30</sup> The Connecticut court compared it to other Connecticut statutes criminalizing sexual intercourse between correctional officers and inmates and psychotherapists having sexual intercourse with current or former patients in certain situations.

The State has a legitimate interest and rational basis for protecting children from sexual exploitation. The state is required by the Constitution to provide public education.<sup>31</sup> And, the state must provide a safe school environment. The statute applies to school district employees and the students registered in their school district. The fact that the statute does not apply to registered students at any School District shows the

---

<sup>29</sup> *McKenzie-Adams*, 281 Conn. at 506.

<sup>30</sup> *McKenzie-Adams*, 281 Conn. at 501.

<sup>31</sup> CONST. Art. IX.

concern of the legislature for the potentially coercive nature of the contact. The fear that School District Employees with their unique access to children, might abuse their position and groom children or coerce them to engage in sexual intercourse, is a compelling and legitimate State interest. Because the statute applies to the circumstances sought to be regulated and the reasoning behind that regulation is a legitimate state interest, the State does not violate Hirschfelder's right to privacy where the statute regulates his ability to engage in sexual intercourse with registered students while employed by the school district where the student is registered.

The intercourse in the present case has been characterized as "consensual" but that is not necessarily true. Because this matter has not yet been adjudicated this Court does not have before it a complete record. Although the State is not required to prove whether or not the victim wished to engage in the sexual intercourse, that is because the legislature recognized the victim might agree to engage in sexual intercourse despite not wanting to due to the school district employee's influence over the student. The victim may have established a unique relationship confiding in the school district employee, a relationship which was exploited by the school district employee to earn the victim's trust before persuading the

victim to engage in sexual intercourse once she had turned eighteen.

Even if the sexual intercourse between Hirschfelder, a school district employee, and the victim, a registered student of the school district, is a fundamental right, RCW 9A.44.093(1)(b) still survives a strict scrutiny analysis because it is narrowly tailored and furthers a substantial governmental interest. The statute does not criminalize sexual intercourse between school district employees and students of other school districts or students married to school district employees and actually contains a five year age difference requirement thus ensuring that the statute does not criminalize sexual intercourse between two students, one of whom is also employed by the school district. The statute also regulates only public schools, thereby limiting itself to situations in which the state is actually charged with supervising the victim. RCW 9A.44.093(1)(b) does not impact the fundamental right of marriage because it excludes regulation of the intercourse if the student and employee are married to each other and applies regardless of whether or not the school district employee is married to some other person. The statute is narrowly tailored and there is a substantial state interest in ensuring the safety and well being of registered students at the public schools and preventing students from employees

with unique access to students furthers that interest abusing that access to the students furthers the substantial state interest.

**F. CONCLUSION**

For the reasons set forth above, the State respectfully requests the court affirm the decisions of the court below and remand this matter for further proceedings.

DATED this 22<sup>nd</sup> day of August, 2008.

Respectfully Submitted,

By:   
MEGAN M. VALENTINE  
Deputy Prosecuting Attorney  
WSBA #35570

FILED  
COURT OF APPEALS  
DIVISION II

08 AUG 25 AM 10:12

STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON,

Respondent,

No.: 368004-8-II

v.

**DECLARATION OF MAILING**

MATTHEW HIRSCHFELDER,

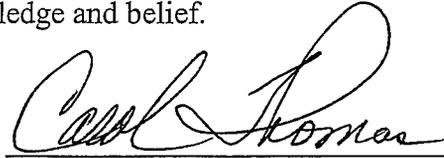
Appellant.

**DECLARATION**

I, Carol Thomas hereby declare as follows:

On the 22<sup>nd</sup> day of August, 2008, I mailed an original and one copy of the Respondent's Brief in Response to Washington Association of Criminal Defense Lawyers' Amicus Curiae Brief to Mr. David Ponzoha, Clerk, Court of Appeals, Division II, 950 Broadway, Suite 300, Tacoma, WA 98402-4454, and to Harriet K. Strasberg, Attorney at Law, 3136 Maringo Road SE, Olympia, WA 98501-3428, and to David Allen, Allen Hansen & Maybrown PS, 600 University Street, Suite 3020, Seattle, WA 98101-4105, and to Ariela L. Wagonfeld, Allen Hansen & Maybrown PS, 600 University Street, Suite 3020, Seattle, WA 98101-4105, and to Susan F. Wilk, Washington Appellate Project, 1511 3<sup>rd</sup> Avenue, Suite 701, Seattle, WA 98101-3635, and to Robert Martin Morgan Hill, Morgan Hill PC, 2102 Carriage Drive SW Bldg. C, Olympia, WA 98502-5700, and to Matthew Hirschfelder, 1415 Cunningham Lane S., Salem, OR 97302, by depositing the same in the United States Mail, postage prepaid.

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct to the best of my knowledge and belief.

3   
4 \_\_\_\_\_

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27