

**Three arrested in raid plan to challenge law banning gay sex**  
by Matthew Hathaway of the *Post-Dispatch*

Missouri's ban on gay sex, already thrown out in the western part of the state by a Kansas City appeals court, might face another challenge from three of the men charged after a raid on a Jefferson County sex shop. An attorney representing the men said he would file a motion this week to dismiss the cases on the grounds that the Missouri statute no longer prohibits consensual gay sex.

An amendment added to Missouri's sexual misconduct law prohibits a form of sexual touching "without that person's consent. In 1999, the court of appeals for Missouri's western district ruled that the amendment's consent clause applied to every offense in the statute, including gay sex. Missouri law states: "A person commits the crime of sexual misconduct in the first degree if he has deviate sexual intercourse with another person of the same sex or he purposely subjects another person to sexual contact or engages in conduct which would constitute sexual contact except that the touching occurs through the clothing without that person's consent."

The Kansas City decision isn't binding in Missouri's eastern and southern districts because the Missouri Supreme Court has not heard this case. Richard Sindel, who is defending the men on behalf of the American Civil Liberties Union, said that if the motion to dismiss is thrown out, "This case will almost certainly go before the state Supreme Court." Jefferson County Prosecutor Bob Wilkins says he believes the law is wrongheaded and possibly unconstitutional, but he added that it clearly forbids gay sex even if it's consensual. Although he disapproves of the statute, Wilkins said he was applying it because, "It is the only weapon I have to protect my community from what was going on at this establishment." In March, undercover police arrested 13 people in a raid on Award Video, now called Maximus Video, an adult video store in the High Ridge area of Jefferson County. Police said they responded to a tip claiming people were having sex - sometimes for money - in a small room where adult films were shown.

Misdemeanor charges were filed against two customers for allegedly possessing marijuana. Also, six men were accused of having homosexual sex. No prostitution charges were filed. Police said at least one woman was engaged in a heterosexual sex act but was not charged. Sindel said that if charges were not dropped, he would argue that the law violates the men's constitutional rights to equal protection. Denise Lieberman, legal director of the ACLU of Eastern Missouri, said that if the law is interpreted to prohibit consensual gay sex, it is unconstitutional.

"There were heterosexuals engaged in sexual activity and there were same-sex couples involved in the very same activity, but only the same-sex couples were charged," Lieberman said. "If you're going to have a law, it should be applied equally." Wilkins said that he was not prosecuting the men because of their orientation.

"It is not the homosexual conduct that offends me. It is the group sex in a public setting that offends me," Wilkins said. "If this was a consensual act between adults in a private setting, I wouldn't do anything about it." Wilkins said that he had asked area legislators to amend Missouri's sexual misconduct law to make it easier to prosecute heterosexuals who have sex in public.

Texas, Oklahoma and Kansas are the only other states that outlaw sex between same-sex partners, although other states prohibit specific sex acts. In March, an Arkansas judge ruled that the state's ban on gay sex acts was unconstitutional, saying it unfairly singled out homosexuals for prosecution.