



Chairman Thompson and members of the committee, thank you for allowing me to testify as a neutral party regarding SB 555.

My name is Dr. Brian Posler. My Ph.D. is in political science, and even though I am primarily a legislative scholar, I have over 20 years of experience teaching many different courses, including constitutional law.

I represent Lamar Advertising Company, one of the largest outdoor advertising companies in the world, with approximately 363,000 displays across the United States and Canada. Lamar offers advertisers a variety of billboard, interstate logo, transit, and airport advertising formats, helping both local businesses and national brands reach broad audiences every day. We employ over 3500 people, supporting local communities in Kansas and around the nation.

We are currently neutral on SB 555 because we would like to see medical marijuana become legal in the state of Kansas, but we have a vested interest in being able to advertise it on our outdoor signs once it does. We would like to see this bill become law, but only if it is amended to allow our constitutionally protected commercial speech.

Section 13 of the bill currently fails all four parts of the Central Hudson four-part test established as clear precedent by the Supreme Court. If it fails any one of the parts, the state is not allowed to regulate commercial speech in that way.

While it is the case that states have the right to regulate the time, place, and manner of protected speech, the Supreme Court has ruled multiple times that commercial speech does have basic protections that must be honored.

In the 1980 case of Central Hudson Gas & Elec. v. Public Service Commission, the court created a four-part test to determine whether a restriction on commercial speech is allowable:

- If the government can demonstrate that the speech is misleading or involves illegal activity, it is likely OK to restrict the speech. Once medical marijuana is a legal product, it is not constitutional to restrict my client's speech.
- The government must prove a "substantial interest" in regulating the speech. Even if one doesn't like billboards, we allow them for all sorts of other legal products, so why not for this legal product?
- The regulation must relate directly to the reason the speech needs to be limited. In this instance, since advertising is allowed on the internet, there is no reasonable reason that it must be banned for billboards.
- The regulation must not be more strict than necessary. For example, a ban on any alcohol advertising whatsoever in grocery stores would be too broad. If the state has a legitimate interest in limiting billboards, then let's discuss the limits on time, place, and manner that would be least intrusive. It is hard to think of a stricter regulation than the ban in this bill.

I submit to you that this bill fails on all four of the tests, though even if it fails only one, then the Court will find that the restrictions are unconstitutional.

The Supreme Court has been adamant in enforcing their four-part test, and has struck down state laws multiple times that violate this rule.

A Rhode Island law restricting liquor advertisements to the stores themselves was struck down in 44 Liquormart Inc. v. Rhode Island (1996) because the public has a right to learn about alcohol, a legal product.

A unanimous Supreme Court ruled in Greater New Orleans Broadcasting Association Inc. v. United States (1999) that a federal law banning radio and television advertisements for gambling could not be applied in states where gambling is legal.

Fortunately, a very simple amendment will allow the bill to pass constitutional muster, and would move Lamar advertising from neutral to become a proponent for SB 555. We propose that you amend section 13, by striking the first sentence of part b. This will keep in place all of the legitimate regulations listed in the section, while also allowing the bill to pass the certain constitutional challenge forthcoming if it should remain unchanged.

The new section 13 would be:

New Sec. 13. (a) No signage, including any advertisements for medical cannabis or

medical cannabis products, shall be visible from the exterior of any facility of a medical cannabis operator used for cultivation or processing.

~~(b) No medical cannabis operator shall advertise the sale, possession or use of medical cannabis or medical cannabis products through television, radio, billboards, portable signage or other broadcast media, except advertisements for medical cannabis or medical cannabis products may be published via the internet.~~ Advertisements permitted under this section, including any advertisements published by a distribution hub, shall not contain any:

(1) Representation or suggestion that any medical cannabis or medical cannabis product is an effective treatment for any illness, disease, adverse condition or malady, whether such illness, disease, condition or malady is a qualifying medical condition;

(2) representation or suggestion that a medical cannabis brand or product is more effective or safer than other drugs or treatments, including other medical cannabis brands or products;

(3) statement that is false or misleading or is otherwise in violation of the Kansas consumer protection act;

(4) statement that falsely disparages a competitor's products;

(5) statement, design, representation, picture or illustration that:

(A) Is obscene or indecent;

(B) encourages or represents the use of cannabis or cannabis products for any purpose other than for treating a qualifying medical condition; or

(C) portrays anyone under 21 years of age;

(6) offer of a prize or award to any person; or

(7) statement that indicates or implies that the product or entity in the advertisement has been approved or endorsed by any agency, officer or agent of the state of Kansas or any person or entity associated with the state.

(c) No medical cannabis operator or pharmacy shall engage, contract or otherwise enter into any agreement with any person for the purpose of advertising medical cannabis or medical cannabis products in any manner prohibited by this section.

We anticipate that this amendment will be viewed as a friendly amendment by the proponents of the bill. Although the offending sentence also forbids broadcast media including radio and TV, those restrictions are unnecessary in our bill due to existing FCC regulations governing those media. Until the federal government changes law on marijuana, you need not fear any commercials on the airwaves. In practice, the amendment would only truly allow billboards and portable signs in addition to the internet advertising already allowed in that section.

I'll be happy to take any questions at the appropriate time, Mr. Chair.