



Allison Mazzei, President, Kansas Association of Broadcasters
SB 150 – Opponent
In Person

House Committee on Commerce, Labor and Economic Development
Thursday, March 10, 2022

Chairman Tarwater and members of the Committee:

I am Allison Mazzei, President/Executive Director of the Kansas Association of Broadcasters, representing nearly 280 commercial and noncommercial radio and television stations across the state.

By advancing SB 150 to this point, the Legislature seems to have identified a state interest in regulating what proponents believe to be false or misleading attorney advertising. But the KAB is opposed to this bill because it is more extensive than it needs to be to serve that interest and thus violates the First Amendment.

The Kansas Supreme Court has long applied U.S. Supreme Court precedent to determine whether a content-specific government regulation on advertising, such as SB 150, is permissible under the First Amendment. See *Robert L. Rieke Bldg. Co. v. City of Overland Park*, 232 Kan. 634 (1983). Such regulations must “not [be] more extensive than is necessary to serve” a particular state interest. *Id.*, 232 Kan. at 644, citing *Central Hudson Gas v. Public Service Comm'n*, 447 U.S. 557, 566 (1980). Here, the primary state interest, according to proponent testimony before the Senate Judiciary Committee, is to hold accountable those responsible for “daytime and late-night advertisements for legal services” on television related to “products such as medications, medical devices, or consumer products.” In other words, the bill purports to punish purveyors of such content.

But the bill defines the word “person” so that it applies not only to the originator of the purportedly offending content, but also to any “entity that advertises legal services.” That definition violates the First Amendment because it is more expansive than it needs to be to serve the purported state interest. For example, any broadcaster happening to run a noncompliant advertisement would be subject to penalties under the Kansas Consumer Protection Act, even though the broadcaster had nothing to do with the advertisement’s content. Further, the bill amounts to unlawful prior restraint under the First Amendment because it would force KAB members trying to avoid liability to censor material that, but for the bill, has been and would be constitutionally permissible.

At minimum, the bill needs to be amended to clarify that only those paying for the advertising, not the entity broadcasting the advertising, is subject to the bill. To do so, the Committee could replace the word “advertises” as it appears on page 2, line 18 of the Senate’s amended version with the words “pays to advertise.” **But given the obvious overbreadth of this bill and its readily apparent First Amendment infirmities, the KAB urges the Committee to determine that it should not advance further.** Thank you very much for your time.

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