

To: House Local Government Committee

From: Amanda Stanley, General Counsel

Date: February 13, 2019

RE: Support for HB 2135

I want to thank Chairman Thompson and the members of the Committee for allowing the League of Kansas Municipalities the opportunity to provide testimony in support of HB 2135.

HB 2135 repeals the current political sign statute, K.S.A. 25-2711. This statute prohibits the regulation of political signs in the public right of way by cities and counties during the forty-five-day period prior to any election and two days following the election.¹ We believe this statute is, on its face, unconstitutional and should be repealed.

This statute was passed during the 2015 Session and took effect July 1, 2015. On June 18, 2015, the United States Supreme Court decided *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015). The United States Supreme Court held in *Reed v. Town of Gilbert, Ariz.*² that sign regulations making distinctions in reference to the sign's message are content-based restrictions on speech or expression and are presumptively unconstitutional. Prior to *Reed*, courts tended to consider sign regulations content neutral, even if the sign regulation applied to the sign based on the sign's message, if the government had a justification for the sign regulation other than the discrimination against any particular speech. In *Reed*, the Court made clear the problem with the prior analysis was it skipped the crucial first step in a content-neutral analysis: Is the statute content neutral on its face? Of course, the presumption can be rebutted, but the law would have to be able to survive a strict scrutiny analysis. In other words, the state would have to prove the law is narrowly tailored to serve a compelling governmental interest and that the law is the least restrictive means of achieving that interest.

¹ K.S.A. 25-2711 states: "No city or county shall regulate or prohibit the placement of or the number of political signs on private property or the unpaved right-of-way for city streets or county roads on private property during the 45-day period prior to any election and the two-day period following any such election. Cities and counties may regulate the size and a set-back distance for the placement of signs so as not to impede sight lines or sight distance for safety reasons."

² *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015)

Generally speaking, if the city employee enforcing the law has to inquire as to what a sign says in order to enforce the law, then the law is not content neutral and probably violates the First Amendment of the Constitution. To properly enforce K.S.A. 25-2711 during the statutory time period, city employees are forced to ask whether the content or message of the sign is political in nature. K.S.A. 25-2711 is a facially content-based law and an intent by legislators to protect political speech does not transform it into a content neutral law. K.S.A. 25-2711 clearly treats political signs differently than any other sign solely on the basis of the type of speech involved. We acknowledge that the Kansas Attorney General has opined the protection of political speech is not discrimination; however, we respectfully disagree.

Regardless of our disagreement in whether K.S.A. 25-2711 is constitutional on its face, both the Attorney General's Office and our organization have come to the same conclusion: to comply with both the state law and the constitution, a city has only one choice, to allow all signs for 45 days prior to an election; however, even this choice is being challenged in other jurisdictions as still favoring political speech by tying the date to an election. Ultimately, to comply with both the state statute and the constitution, cities might need to allow all signs, all the time.³

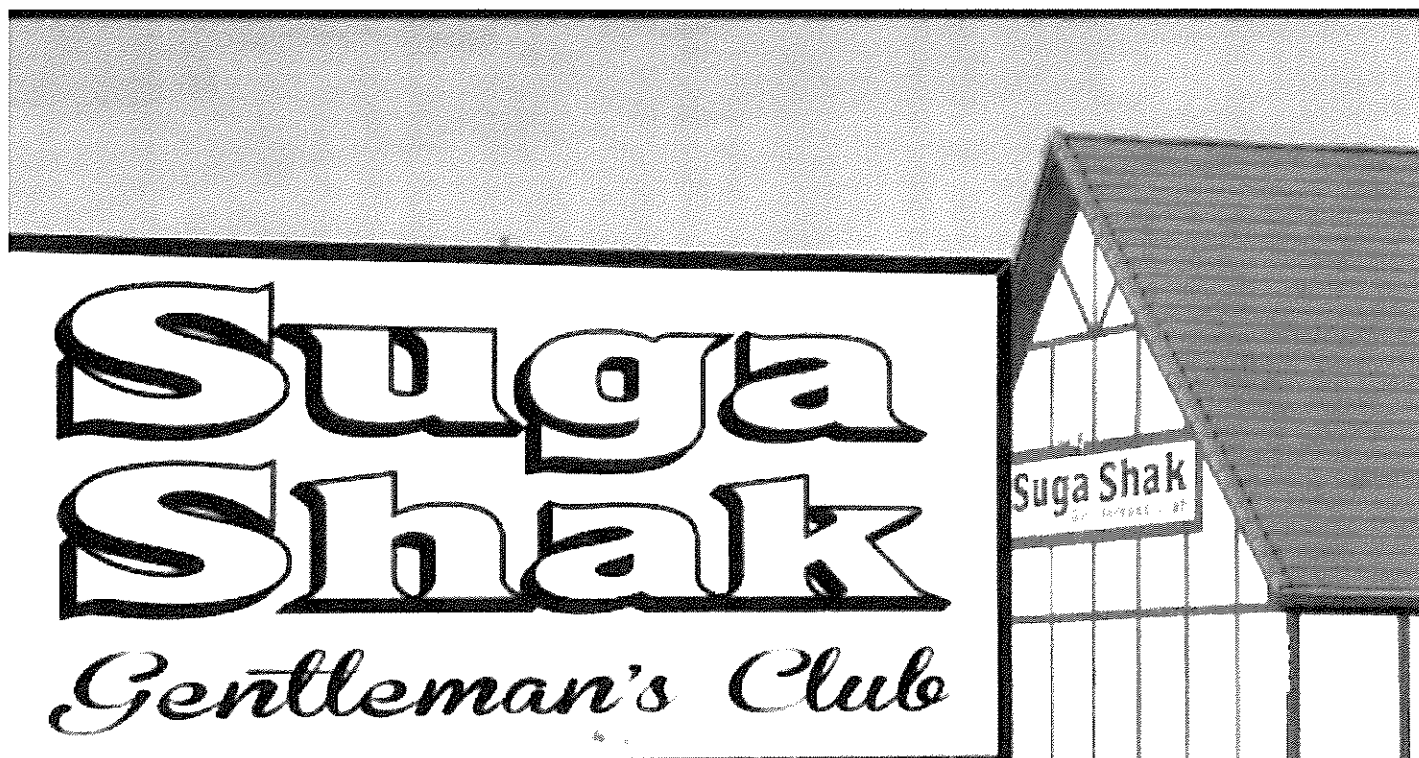
While the idea that all signs should be allowed sounds great in theory, to comply with the First Amendment, this would mean a city needs to treat all signs the same. If a sign advertising adult entertainment is placed next to a political yard sign, both signs are equal and would have to be left in the right of way or a city would risk a §1983 claim for violation of the First Amendment. It should be a local decision left up to citizens in the community based on the individual community's moral standards on whether this is a risk they would like to take. Additionally, local governing bodies are the ones who hear the endless complaints about signs in the right of way. Seeing as the local officials are the ones the citizens expect to handle these issues, the state should return to locals the ability to control their right of way.

I have attached a few news articles from around the state showing how seriously communities take signs.

For these reasons, we respectfully ask this committee pass HB 2135 favorably to the entire House for its consideration.

³ Arguments have been raised that even if the statute was amended to state that all signs are allowed 45 days before an election, by tying the allowance of signs to an election, the statute would be showing a preference for political speech and would still not be content-neutral on its face. Potentially this could be fixed by allowing all signs related to a specific event to be placed in the right-of-way for so many days; however, this would be extremely challenging to write in a constitutional manner and would result in cluttered and difficult to maintain rights-of-way all year long.

Signs for 'gentleman's club' raise concerns about plans for new business



Posted: Tue 10:23 PM, Nov 20, 2018 | Updated: Wed 1:12 PM, Nov 21, 2018

WICHITA, Kan. (KWCH) Signs for a new club that could be coming to northeast Wichita is raising concerns amongst neighbors.

They say they're concerned about two words on the sign for the Suga Shak: "Gentleman's Club."

The planned club is just a few blocks from Wichita's Central Christian Church and School near 29th North and Rock Road.

"It's not going to present a good community value," said neighbor John Smith. "I don't think that's the kind of thing that our children need to be exposed to at such a young age. They learn way too much, way too quick and we just don't need to have a business helping them along."

People say they worry the words "Gentleman's Club" mean adult entertainment. Eyewitness News asked the man behind the business to clarify his plans for the building.

Owner John Hennessy is the registered agent for Suga Shak. He said the words on his sign should not concern neighbors.

"A gentleman's club to me means you'll have men in there and maybe some women and that sort of thing," he said. "It's a place for people to relax and enjoy themselves."

When asked if there will be adult entertainment inside the Suga Shak, Hennessy said he didn't know what "adult entertainment" means.



"You mean, 'Is there going to be pornography? No,'" he said. "I don't know what that means."

He said no business plan is in place at this point and he doesn't plan to turn Suga Shak into a strip club.

David Stupay, the President and CEO of Heartsping, which is located just around the corner from the building, took his concerns to the city.

"Every single thing we've heard from the city is that this cannot go forward, that the zoning laws do not allow it to operate within 500 feet of a residential community, as well as 500 feet of a school," said Stupay. "So we're fully confident the city is going to step in."

Hennessy said the club will abide by the law.

"I will never do anything that will violate any ordinances or law for the City of Wichita," he said.

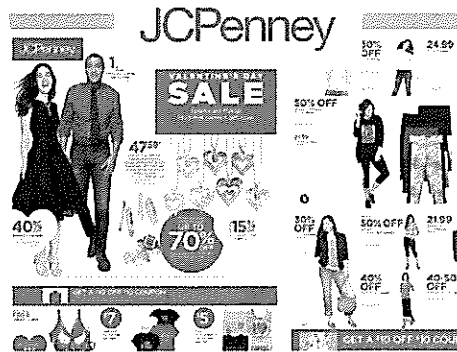
Hennessy said he isn't sure when the Suga Shak will open, but we're told it could be a while due to renovation.

Several neighbors took their concerns to Councilman Pete Meitzner and Chief Gordon Ramsay.

Ramsay said he is aware of concerns people have expressed. He said an alcohol permit was provided through the state, but the city had not received applications for alcohol, food or entertainment from the business. He said these would need to be approved and issued before the Suga Shak could open.



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College students' signs spark controversy

By Daniela Leon | Posted: Sun 10:47 PM, Aug 20, 2017

MANHATTAN, Kan (WIBW)--- On Saturday afternoon, incoming K-State students and their families were greeted by controversial signs posted by fellow students. One sign read "Hope You're 18" and the other, "Freshmen Girl Drop-Off".



Jen McFarlin took a picture of one of the signs and posted it on social media. Her post was shared hundreds of times prompting some residents to reach out to the property's owners to take the signs down. Hours later both signs were gone.

"Saying 'hope you're 18' implies that they don't care that you aren't (18)," said McFarlin.

"It's not funny to me, I am sure that they were trying to make a joke, but I think for anyone who has been raped and anyone who knows someone that has been raped... those jokes are really not that funny," said Interim Department Head of Gender, Women, Sexuality Studies, Dr. Angela Hubler.

Hubler says in the past, multiple students have come up to her saying they've experienced sexual assault their first week of school. She adds that one in five women will become a victim of sexual violence during their college years and 80% of all women are raped before the age of 25.

"What research tells us is that the way we talk about rape and the way rape is represented actually influences the way people think about forced sex," said Hubler.

"It's not funny and it makes people scared, can you imagine how parents felt dropping off their girls yesterday?" said McFarlin.

We reached out to the students who posted those signs, but none could be reached.

"This is a good opportunity to think about what kind of values those statements and values communicate," said Hubler.

In a statement to 13 News, K-State Vice President of Communication and Marketing Jeff Morris said:



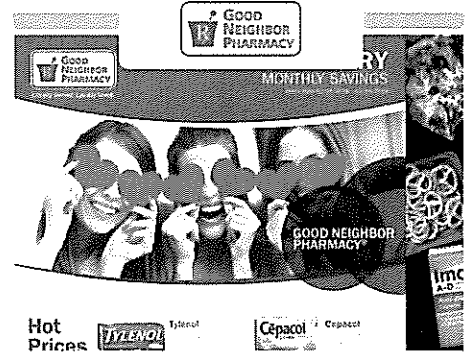
"The inappropriate signs serve as a reminder that words matter and messages can be hurtful. We want our incoming students to feel welcome and ask that all follow our Principles of Community".



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City council rejects controversial sign proposed for Delano

Posted: Feb 05, 2019 1:14 PM CST
Updated: Feb 05, 2019 1:47 PM CST

written by Lacey Williams [CONNECT](#)

WICHITA, Kan. (KAKE) - In Tuesday's [city council meeting](#), members rejected a 60-foot sign that has been at the center of controversy in Delano.

The sign was designed to advertise an [up and coming sports bar, Tight Ends](#). The sports bar is similar to a Twin Peaks or Hooters.

"We don't want become just a giant scene of signs there along Kellogg. We want people to actually like see the view of the city and enjoy it," said Christopher Parisho, a Delano resident.

Under law, signs in Delano are not to reach above 30 feet. The proposed sign would be double that height.

In addition to concerns about the sign not meeting zoning regulations, Delano residents are concerned that the new business will make the area less family friendly.

"I don't think anybody would really want that type of business right behind their house," said another Delano resident, Vincent Hancock.

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