



KANSAS JUSTICE INSTITUTE

Testimony to the House Committee on Agriculture

SB 346, as amended: “AN ACT concerning agriculture; relating to milk and dairy products; allowing on-farm retail sale of milk and milk products; extending certain milk and dairy license fees; authorizing the secretary of agriculture to declare an imminent health hazard; authorizing civil penalties for certain dairy law violations; amending K.S.A. 65-771, 65-778, 65-781, 65-786 and 65-788 and repealing the existing sections.”

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Chairman Rahjes and Members of the Committee:

Kansas Justice Institute (KJI) is a non-profit, public-interest litigation firm committed to defending against government overreach and abuse. KJI’s particular interest in this topic stems from our 2019 lawsuit which successfully ended the government’s unconstitutional regulation of speech involving raw milk, in *Bunner, et al., v. Beam*, 2019-cv-000785 (Shawnee County).

KJI is a proponent of SB 346, as amended, for the reasons set forth below.

Background

For years, Kansas criminalized the “promotion” of raw milk away from the farm. On one side of the dirt road, you could talk about it; on the other side, you could wind up in handcuffs.

This speech-ban muzzled dairy farmers like the Mark and Coraleen Bunner, who were just trying to earn an honest living. They couldn’t put information on their website, print flyers for their local co-op, or post church bulletins.

Farmers weren’t just offended by the speech ban. They were scared they’d end up in jail for simply talking about raw milk. Farmers went to great lengths to avoid saying the wrong thing, to the wrong person, in the wrong place, at the wrong time. For some, they talked about raw milk in code. For others, they felt compelled to lie if someone asked whether they had raw milk for sale. At state and county fairs, raw milk farmers remained silent.

This didn’t just hurt raw milk farmers; it hurt consumers and the Kansas economy. Frederick Douglass correctly said, “[t]o suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker.” Some consumers had no idea how or where they could buy raw milk, a perfectly legal product.

Imagine for a moment if the government prevented Coca-Cola from advertising their beverages? Or banned the advertisement of a book because it didn't like what was in the book. That's what happened here. There's no telling how many businesses failed because of the ban.

The speech ban was not well received across the state. The overwhelming consensus was that the ban was unfair and unconstitutional, and people were upset. The government was robbing people of their voice.

KJI partnered with the Bunners to end the government's ban on speech. The Kansas Attorney General eventually agreed the prohibition on speech was "plainly unconstitutional."

Today, thanks to the Bunners for standing up for what they believed in, the First Amendment casts its light beyond their gates. After all these years, they finally have the right to talk about raw milk.

SB 346 Labeling Requirement

State law already requires raw milk labeling. And in our view, amended SB 346's labeling requirement is appropriate, clear, makes sense, and protects consumers. If you're traveling to a farm to buy raw milk—the only place it can be sold—it's beyond any reasonable doubt you know what raw milk is—unpasteurized milk. There is no good reason to make the labeling requirement any more restrictive than it currently is.

In short, since our lawsuit in 2019, the facts and circumstances have not changed in any significant or meaningful way justifying any additional labeling at all. Quite simply, there is no good reason to foist additional administrative burdens on raw milk producers.

Advertising

The advertising language in SB 346, as amended, is—again—appropriate, clear and makes sense. The advertisement cannot be false or misleading and must let consumers know the products are raw or unpasteurized. Of course, raw milk producers *want* consumers to know their products are raw—that's the whole value-add.

Thank you for the opportunity to submit this testimony.