



# KANSAS JUSTICE INSTITUTE

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## Testimony to the House Agriculture Committee

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HB 2437: “AN ACT concerning agriculture; relating to the labeling of certain foods; prohibiting the use of identifiable meat terms on labels or in advertisements of meat analogs without use of proper qualifying language; amending K.S.A. 65-656 and 65-665 and repealing the existing sections.”

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Chairman Highland and Members of the Committee:

House Bill Number 2437 implicates the free speech clauses of the First Amendment to the United States Constitution and Section 11 of the Kansas Constitution Bill of Rights, among other constitutional provisions not discussed here. Kansas Justice Institute<sup>1</sup> submits this written testimony to provide the Committee with general information regarding government mandated speech regulations, so it can carefully consider the potential legal ramifications of enacting HB 2437, as proposed.

The predominant focus of this written testimony is centered on the Bill’s attempt to compel the use of certain words in labels and advertisements. Compelled speech requirements such as here “are, for all practical purposes, requirements that commercial actors communicate value-laden messages about inherently political questions.”<sup>2</sup> These government speech-mandates “burden the speech of others in order to tilt public debate in a preferred direction.”<sup>3</sup> As such, KJI opposes HB 2437.

As written and introduced, HB 2437 is a content-, viewpoint-, and subject matter-based regulation of speech directed primarily, if not solely, at plant-based food companies. By forcing these businesses to “speak a particular message” it would “alter the content of their speech.”<sup>4</sup> Federal courts apply “strict scrutiny” to evaluate the constitutionality of content- or viewpoint-based compelled speech regulations, the most stringent review possible. Virtually no law survives this level of judicial review.<sup>5</sup>

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<sup>1</sup> KJI is a non-profit, public-interest litigation firm committed to protecting individual liberty and the constitutional rights of all Kansans. It is a part of Kansas Policy Institute.

<sup>2</sup> Jonathan H. Adler, *Compelled Commercial Speech and the Consumer “Right to Know”*, 58 Ariz. L. Rev. 421, 450 (2016).

<sup>3</sup> *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578-79 (2011).

<sup>4</sup> *NIFLA v. Becerra*, 138 S.Ct. 2361, 2371 (2018).

<sup>5</sup> Even under a lesser standard of review, HB 2437 would still be potentially deemed unconstitutional.

Further, Kansas already has laws that prevent misleading labels or advertisements so there is no consumer-protection basis for HB 2437. Kansans are savvy enough to understand that veggie burgers do not come from cows; that coconut meat is not the same as beef meat; and that almond milk is not the same as dairy milk, for example. Instead of protecting the public from supposedly misleading labels, this bill appears to be more about protecting meat-based businesses from plant-based food competitors. On balance, self-interested economic protectionism should never trump another's constitutional rights.

Other states have likewise attempted to impose draconian speech laws on plant-based businesses. HB 2437 is not any better, in form or substance, than comparable bills successfully challenged in Mississippi and Arkansas. In some ways, Kansas' bill is perhaps even worse.

Setting aside the constitutional questions for a moment, this government-mandate, if enacted, will be costly for producers and consumers alike. Plant-based businesses will be forced to immediately make wholesale changes to their packaging and advertisements, the cost of which will assuredly be passed through to the consumer. Further, it's not inconceivable some plant-based businesses will simply leave Kansas for a state more inclined to support all types of food production. This bill impacts the overall agricultural economy at a time when more jobs are needed, not less. For a state that also heavily relies on corn, wheat, and soybean production, this could pose serious economic issues perhaps not previously considered. Finally, it stands to reason that if this bill passes, other self-interested lobbying groups will take the same tack as here and demand labels, disclaimers, or disclosures that target—and injure—their competitors. Kansas does not need agricultural in-fighting.

In sum, KJI opposes HB 2437 and respectfully asks this Committee to carefully consider the issues raised above before deciding whether to impose speech regulations on one group at the behest of another.