



KANSAS JUSTICE INSTITUTE

Testimony to the House Agriculture Committee

SB 308: “AN ACT concerning agriculture; relating to milk, cream and dairy products; on-farm retail sale of milk; labeling and advertising requirements; amending K.S.A. 65-771 and repealing the existing section.”

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Chairman Highland and Members of the Committee:

Last year, Kansas Justice Institute¹ partnered with Mark and Coraleen Bunner to end the government’s regulation of speech involving raw milk. The Bunnors successfully litigated the matter in Shawnee County District Court. With that context, and the below background, KJI supports the current version of Senate Bill 308.

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, dairy farmers remained silent.

This didn’t just hurt dairy 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.

¹ 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.

That's what happened here. There's no telling how many businesses failed because of the ban. What a shame.

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. But people were terrified that if they spoke up, they'd either get arrested or retaliated against. The Secretary of Agriculture continued enforcing the speech restrictions for years.

KJI partnered with the Bunnars 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 Bunnars 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.

For all of the above reasons, *any* advertising or labeling amendments would invite immediate scrutiny and potentially lead to more litigation. As this Committee is aware, government regulation of labels or advertisements implicates the free speech clauses of the United States and Kansas Constitutions.

In sum, KJI supports the current version of SB 308, and respectfully asks this Committee to reject any amendments that would impose nonsensical, unreasonable, and unconstitutional speech regulations on labels or advertisements.