



ABOVE AND BEYOND. BY DESIGN.

Date: Monday, February 11, 2019
To: Chairman Thompson and the House Committee on Local Government
From: City of Overland Park, Kansas
RE: Testimony in Support of HB 2135

Honorable Chairman Thompson and Members of the Committee:

The City of Overland Park supports HB 2135, an Act repealing K.S.A. 25-2711. This Statute, adopted in 2015, prohibits cities and counties from restricting the placement of political signs in the right-of-way both before and after primary and general elections.

Shortly after the adoption of K.S.A. 25-2711, the United States Supreme Court held in *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015) that sign restrictions that make distinctions in reference to a sign's message are content based and are unconstitutional. The Court found that:

A government, including a municipal government vested with state authority, “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” Content-based laws--those that target speech based on its communicative content--are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *Reed*, 135 S. Ct. at 2226.

Most cities and counties, including Overland Park, prohibit signs in the public right-of-way, except for their governmental and traffic signs (*e.g., speed limit signs, yield signs, etc.*). Signs from other third parties are not allowed. The purpose of these regulations stems from both safety and aesthetic reasons. However, K.S.A. 25-2711 places cities and counties in the position having to review the content of third party signs in order to allow political signs during election periods. Thus, K.S.A. 25-2711 in essence dictates an unconstitutional regulation based on sign content.

The Kansas Attorney General recognizes that this dilemma “could present First Amendment concerns similar to those addressed in *Reed*.” *Kan. Att’y Gen. Op. 16 (2018)*. In order to comply with both the Constitution and K.S.A. 25-2711, his only suggestion is for cities and counties to either “enforce no local sign regulations at all” (*in other words have no sign code*), or not enforce any regulations “of *any* signs, regardless of content, in the designated locations [during the election period].” *Id.* Thus, cities and counties are impacted well beyond the intended purpose of K.S.A. 25-2711, and they are effectively prohibited from regulating any signs, creating the safety and aesthetic problems cities and counties were trying to prevent.

For the above reasons, the City of Overland Park supports HB 2135 to remove the untenable restriction on cities and counties.