



KANSAS JUSTICE INSTITUTE

Testimony to the Senate Committee on Government Efficiency

S.B. 432: Updating certain provisions of the Kansas dental practices act relating to in-person practice requirements in a dental office owned by a licensee.

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Proponent / In-person testimony.

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Chairwoman Erickson and Members of the Committee:

Kansas Justice Institute¹ strongly supports the elimination of unreasonable occupational barriers. To that end, KJI supports S.B. 432, which removes the “20% Rule” as currently set forth in K.S.A. § 65-1435(d).

In our view, the “20% Rule” is unreasonable, irrational, arbitrary, oppressive, protectionist, and not appropriately tailored to serve a legitimate public interest. The percentage appears to be completely made up, there’s no apparent factual basis for it, and there’s no readily apparent public health or public safety justification for it either. Indeed, it’s difficult to imagine a reasonable, legitimate, and rational basis for both the initial and continued implementation of the “20% Rule.”²

With that in mind, there are serious and credible arguments that the “20% Rule” violates Kansas Constitution Bill of Rights Sections 1, 2, 18, and 20 under *any* legal standard of review, properly considered and applied. The Kansas Constitution forbids unreasonable, unequal, and arbitrary occupational barriers, after all.

In Kansas, courts sometimes apply what’s called the “real and substantial relation” test to statutes like the “20% Rule.”

The “real and substantial relation” test relies on “human judgment, natural justice, and common sense. Whether or not a restriction is reasonable may depend on many factors, no single factor being ordinarily decisive” and examines the “total situation.” *Ernest v. Faler*, 237 Kan. 125, 130-131 (1985). This means “the legislature cannot use a cannon to kill a cockroach.” *Id.* at 130. In other words, a “legislative body cannot” “enact unequal, unreasonable, and oppressive legislation[.]” *City of Baxter Springs v. Bryant*, 226 Kan. 383, 391(1979); *see also*, *Capital Gas &*

¹ KJI is a nonprofit, *pro bono*, public-interest litigation firm committed to upholding constitutional freedoms, protecting individual liberty, and defending against government overreach and abuse. KJI litigates occupational licensing cases, among other types.

² The exception to the “20% Rule”—that *some* licensees are able to have two dental offices—helps prove the point. If the “20% Rule” were so valuable, it would apply to everyone.

Electric Co. v. Boynton, 137 Kan. 717, 728, 730 (1933) (law did not promote the public welfare, and was “unreasonable, arbitrary, unjust, and oppressive.”) (cleaned up).

What’s more, in *Thompson v. KFB Ins. Co.*, 252 Kan. 1010, 1022–23 (1993), the Kansas Supreme Court explained that although deference is sometimes given to legislative classifications, where “the only basis for the classification is to deny a benefit to one group for no purpose other than to discriminate against that group, the statutory classification is not only mathematically imprecise, it is without a rational basis and is arbitrary,” and is therefore unconstitutional.

In short, KJI respectfully urges this Committee to abandon the outdated and arbitrary “20% Rule,” by adopting S.B. 432. Thank you for your time and consideration.

Respectfully submitted,

/s/ Samuel G. MacRoberts
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