



To: Chairwoman Stephanie Kunze, and members of the Senate Transportation Committee

From: Kevin L. Futryk, Executive Director, Outdoor Advertising Association of Ohio

Date: March 12, 2021

Re: Proponent Testimony on HB 74

Chairwoman Kunze, Vice Chairman Reineke, Ranking Member Antonio, and members of the Senate Transportation Committee, my name is Kevin Futryk and I am with Government Advantage Group. I write to you today on behalf of our client, the Outdoor Advertising Association of Ohio (OAAO), for which I also serve as Executive Director.

By way of background, the OAAO is the trade association representing 21 outdoor advertising companies (i.e., billboard companies) across the state. Our members include large national companies, as well as a number of independent, family-run companies. Our membership also includes the vendors who supply the steel structures, sign faces, energy efficient lighting, advertising copy, and digital billboards that our advertising companies utilize. We are a \$85 million industry offering advertising opportunities to small businesses, state attractions, national chains and charitable organizations. Last year, during the first several months of the COVID 19 pandemic, our members provided the State of Ohio with over \$1 million in complimentary public service announcements to encourage safe practices to curb virus spread (e.g., Shelter at Home, Social Distancing, Hand Washing, Wear Masks, etc.). All of this was done at no cost to the state because OAAO members believe in being good corporate citizens and using our inventory to help with important messaging. In fact, the OAAO has a long history of donating billboard space for worthy causes.

Turning to the transportation budget, the OAAO wants to express its support for one of the provisions in HB 74, specifically, the changes to ORC 5516 relative to amending the current definition of “off-premise” advertising. To clarify for the committee, “off-premise” advertising is billboard advertising that meets the following qualifications:

- Is on property leased from private landowners
- Promotes various non-commercial messages
- Produces revenue

“Off-premise” advertising is governed by both the federal Highway Beautification Act (HBA) of 1965, as well as state regulations, which Ohio adopted in 1972.

“On-premise” advertising, on the other hand, is advertising located on the premises of the business that promotes and identifies that business for the public.

The OAAO has been following legal challenges in several states relative to the constitutionality of what constitutes off-premise advertising. Our interest in these legal challenges peaked in 2017 when the Sixth Circuit Court struck down Tennessee’s billboard regulations as being unconstitutional because they discriminate between on-premise and off-premise non-commercial messages based on their content. We watched in June 2020 as Tennessee worked to correct this definitional discrepancy by adopting a revised definition of “off-premise advertising” that used compensation as a defining trait. In other words, the state would regulate billboards that produce revenue. This definition is similar to what Texas and Oregon have adopted.

Then in May of 2020, a federal judge also ruled Kentucky’s billboard laws unconstitutional, citing the same precedent as the Sixth Circuit Court applied in Tennessee. On Tuesday, February 16th, the Sixth Circuit upheld that opinion (the Kentucky legislature is currently working to adopt a revised definition of “off-premise advertising” similar to what is being proposed here). These two cases are important because Ohio is also in the Sixth Circuit Court’s jurisdiction, so a similar ruling on the constitutionality of Ohio’s billboard regulations could occur if there was a challenge made. This is when the OAAO reached out to ODOT to see if Ohio could be proactive in trying to address a future constitutional challenge to our state’s regulations.

OAAO members want to avoid what happened in Tennessee and Kentucky when their regulations were temporarily invalidated. In those states, hundreds of signs were erected by individuals and companies along interstates that normally would not have been legal due to setback, spacing, and other permitting requirements. These individuals and companies were taking advantage of a temporary legal situation to erect signs in locations and settings that would not normally be permitted. It became, as described by people in those states, like the “Wild West” for outdoor advertising.

Madame Chair and members of the committee, I have represented the OAAO for over two decades and we have always supported a robust billboard program in Ohio that consists of strong regulations with fair enforcement. We would like to preserve the Advertising Device Control Program and prevent the potential of anyone or any company from trying to take advantage of Ohio’s program if it were to be potentially determined to be unconstitutional. For these reasons, we are supporting the change to ORC 5516 that is contained in HB 74. This minor definitional change will allow Ohio to maintain its strong regulatory program that continues to help us make our state an example other states can emulate.

Chairwoman Kunze and members of the committee, thank you for the opportunity to submit testimony to you on behalf of the Outdoor Advertising Association of Ohio.