

TESTIMONY BY
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TO
THE NEW HAMPSHIRE HOUSE OF REPRESENTATIVES
COMMITTEE ON PUBLIC WORKS AND HIGHWAYS
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Madame Chairman, my name is Kevin Fry. I am the president of Scenic America, a national non-profit organization dedicated to scenic conservation, the preservation of community character, and the prevention of visual blight.

I am very happy to be here today to express our strong support for efforts to ban digital billboards in New Hampshire and to protect the fundamental character of this beautiful state.

I am here, of course, in an official capacity representing a national organization. But I also have a strong personal interest in this bill and this state. My dad, an Air Force officer, was stationed at Pease Air Force Base for the last several years of his career. We moved to Hampton when I was 9, and I am a proud graduate of Winnacunnet High School. I learned many lifelong values growing up here, including a respect for history, a reverence for the land and natural beauty, an appreciation of community character, and a willingness to stand up and be counted to protect all of those things.

I took those New Hampshire values with me when I went off to start a life elsewhere, and I have never lost them. This brings me full circle to my testimony today, and to why I feel so privileged to address the committee this morning.

Although this looks on the surface like a bill that's about hard-core transportation and land use policies and sign regulation, it really is a bill about fundamental values, about what matters to the citizens of New Hampshire, about preserving and protecting the natural and built worlds that define New Hampshire life. It is hard to reconcile New Hampshire values, which center on authenticity, heritage, and the freedom to be left alone, with giant, ugly, brightly illuminated structures that by design force us to look at them against our will and then separate us from the natural beauty of landscape and communities.

Beyond these broader cultural issues, Scenic America's opposition to digital billboards is rooted in three fundamental areas of concern: driver safety, environmental consequences, and aesthetic considerations.

Let me begin with the safety issues. In April 2006, the National Highway Traffic Safety Administration (NHTSA), a division of the U.S. Department of Transportation, issued the results of a study entitled, *The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data*.

The study concluded that, “The analysis of eye-glance behavior indicates that total eyes-off-road durations of greater than 2 seconds significantly increased individual near-crash/crash risk.” In other words, there is a two second threshold for driver distraction that, if exceeded, poses a clear hazard to motorists. Digital billboards, by definition, often cause distractions over and above the two-second distraction threshold. The reasons are clear and incontrovertible.

First, these signs are by far the brightest object in the driver’s field of vision. This is especially true at night or in dim light. In fact, depending on the geometry of the roadway, many electronic billboards can be seen for well over a mile away, sometimes much further. The human brain is hard-wired to look at any bright and moving object on the edges of vision as part of its built-in threat detection systems. A digital billboard with extremely intense, intermittently changing colored lights makes inadvertent glances almost obligatory and reflexive.

Unlike more traditional billboards, which are not as vivid and don’t have changing images, digital signs are impossible to avoid, which, of course, is the whole point of their popularity with sign companies. As an ad company executive said last week in an article in the Pittsburgh Post-Gazette, some advertisers like billboards more than radio because “You can’t turn it off.”

The second factor contributing to the danger of these signs is that the images change intermittently every few seconds. Any normally curious person who knows the images rotate will often continue looking at the sign to see what comes up next – and next, and next. Drivers stuck in dense, slow-moving traffic might be tempted to allow their attention to wander even more, keeping their focus on the rotating messages through several image changes. Further, if a driver catches only the last second or two of a message about which he or she has an interest, their attention will either stay on the sign or return repeatedly to the sign in order to see the message of interest when it comes around again in the rotation. All of these behaviors are both common and dangerous.

Finally, the messages on the signs are often visually complex and take several seconds to comprehend. In fact, the outdoor advertising industry has said the “dwell time” on regular signs needs to be five seconds or greater for the message to be received.

The committee should draw the obvious and indisputable conclusion that the brightest object in the driver’s field of vision containing frequently changing complex messages is often going to distract drivers for more than two seconds. It will also distract them from important official signs along the roadway, which are almost always illuminated at levels lower than digital billboards. There are significant concerns that official signs will be overlooked or given secondary importance by drivers due to the extraordinary distractions posed by bright digital signs positioned on high poles located on the side of the roadway.

This is especially true in areas with frequent congestion and dense traffic, or in places where the driver is confronted with a lot of official signage and many decisions, such as interchanges, intersections, toll plazas, merge areas, and the like. In fact, highway researchers are largely in agreement that distraction thresholds drop to well under two seconds under these conditions.

The bottom line is that these devices obliterate well-established safety thresholds. In fact, if the two-second barrier is not routinely broken, the signs aren't functioning as an effective advertising media.

There is considerable concern among safety experts about digital signage. As the committee may know, the Federal Highway Administration, the American Association of State Highway and Transportation Officials (AASHTO), and a subcommittee of the Transportation Research Board (TRB) of the National Academy of Sciences are all examining the issue.

Incidentally, the chairman of the TRB subcommittee is the respected human factors and highway safety expert, Jerry A. Wachtel, who is the author of a report commissioned by the Maryland State Highway Administration that assessed the two recent industry-funded studies which purported to show that digital billboards pose no dangers to motorists. The Maryland report thoroughly debunked the validity of the industry-funded reports and, in fact, came to the conclusion that, "Having completed this peer review, it is our opinion that acceptance of these reports as valid is inappropriate and unsupported by scientific data, and that ordinance or code changes based on their findings is ill advised." If the committee is relying on the industry reports in its deliberations, it should obtain a copy of the Maryland report before accepting the data contained in them.

But the New Hampshire legislature does not have to wait for all studies to be completed in order to make a decision. In considering this bill, the committee can use common sense. As the U.S. Fourth Circuit Court of Appeals stated in *Major Media of the Southeast v. City of Raleigh* in 1986, "No empirical studies are necessary for reasonable people to conclude that billboards pose a traffic hazard, since by their very nature they are designed to distract drivers and their passengers from maintaining their view of the road." What the court said about regular signs in the mid-1980s is true by orders of magnitude for modern digital signs for the reasons spelled out above.

No reasonable person can maintain that these signs are not dangerous, either in the context of the scientifically established two-second distraction threshold or by employing simple common sense.

It is important for the committee to remember that those affected by these signs are not merely the passing motorists, but include those who live and work within the cone of illumination that the billboards throw. These signs are enormously bright and are on 24 hours a day. They amount to giant TVs hovering high in the air. Who among us would like to have a brightly illuminated television set with constantly changing images suspended outside the windows of our home or office, day and night?

One might reasonably ask what effect proximity to these signs would have on property values or on the quality of life of those living in sight of them. One might also ask how roadside businesses with less garish signage can hope to be noticed when these huge attention-dominating devices are attracting a disproportionate amount of attention from passing motorists.

The committee should also be aware that digital billboards are extraordinary energy hogs. They are, after all, enormous LED screens that are designed to be *brighter than the sun* in order to be seen in broad daylight. Although they get turned down at night, the billboards remain massively intense and consume enormous amounts of energy, particularly during peak daytime hours.

Information provided by a local Texas chapter of the U.S. Green Buildings Council indicates that one digital billboard, which contains 449,280 light-emitting diodes, consumes an estimated 397,486 kWh/year, or an amount of electricity equal to 49 traditional billboards.

The environmental impacts of these devices cannot be overstated, nor should they be overlooked. New Hampshire has recently embarked on a laudable statewide effort to fight climate change and reduce energy consumption. It is impossible to reconcile this bill, which permits the construction of devices with massive carbon footprints, with that effort.

Finally, Scenic America believes, and many New Hampshire citizens agree, that digital billboards represent visual blight of the worst kind. They are garish and distracting, and because of their inherent brightness, automatically become the dominant visual element in any landscape or cityscape in which they sit. New Hampshire is renowned around the world for its picturesque communities and natural beauty, and it should stay that way, particularly since the state is sandwiched between two of the four states that ban all billboards. The experience of visiting New Hampshire should not be less appealing than visiting Maine or Vermont. Allowing enormous television screens to appear along the state's highways is not a good business development strategy in today's highly competitive race for visitor dollars.

We understand that the sign companies often offer to use their digital billboards to convey public service messages, including Amber Alerts. First and foremost, it makes no sense to create one public safety problem in order to solve another one. Nor should anyone think that the infinitesimally small amount of time that these signs would be devoted to public safety messages in any way outweighs the danger they pose or the visual degradation they bring. There are many alternative and existing methods of conveying Amber Alert or public safety messages, including via the state's own extensive network of highway signs, which of course are not affected by this bill.

Scenic America strongly urges the committee to support this legislation. The state currently has approximately 385 conforming billboards along its highways. Currently, there are no statutory or regulatory barriers to their conversion to digital display technologies.

New Hampshire is an anomaly among the states in not including in its original agreement with the federal government implementing the Highway Beautification Act language banning signs illuminated with "flashing and intermittent lights." This bill corrects that.

Regrettably, the Federal Highway Administration last September undermined its own long-standing policies and unilaterally and without any public input changed the definition of “intermittent lights,” essentially saying digital billboards that change images as frequently as every four seconds are not intermittent. Because of this action, we strongly recommend that the committee amend the original language of the bill to explicitly define the terms “flashing” and “intermittent” so that there is no ambiguity in the statute and no basis for a later challenge.

New Hampshire, which provides national leadership on so many environmental and transportation issues, should set an example for the country by standing firm in protecting its citizens and visitors against dangerous digitized blight along its roadways, no matter what other states do.

When I left New Hampshire to go off to college, I left a state justly proud of its visual heritage and the character of its communities. I want to believe that it will always be that way. It is hard for me to reconcile the fundamental scenic and visual character of the state with enormous TV screens perched on poles 40 feet in the air. Signs more appropriate for Las Vegas or Times Square should stay there. Let Vegas be Vegas, and let New Hampshire be New Hampshire. I urge the committee to support this important legislative bulwark against the unnecessary degradation of one of this nation’s most beautiful states.

Thank you allowing me to be here to today and I would be happy to answer any questions you have.

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