

Legal and Public Notices Need to be Where the Public Notices: Why Kansas’s Antiquated Laws Requiring Notice by Publication in Print Newspapers Violate Kansans’ Procedural Due Process Rights

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I. INTRODUCTION

“Have you ever wished you were better informed?”¹

To better inform Kansans, legal and public notices need to be where the public will notice them, and that location may no longer be in print newspapers.² Although print newspapers have long served as the

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1. This advertising slogan for *The Times*, a daily newspaper published in London, highlights the overarching goal of legal and public notices: effectively informing the public. *The Times*, BRITANNICA, <https://www.britannica.com/topic/The-Times> [<https://perma.cc/34UC-3PN4>] (last visited Apr. 2, 2021); *Database of Slogans: Advertising Slogans of Newspapers*, <http://www.textart.ru/database/english-advertising-slogans/newspapers-advertising-slogans.html> [<https://perma.cc/L25M-KERS>] (last visited Apr. 2, 2021); *A 1970s Magazine Advert for The Times Newspaper*, ALAMY, <https://www.alamy.com/stock-photo-a-1970s-magazine-advert-for-the-times-newspaper-133865576.html> [<https://perma.cc/598W-ZVU5>] (last visited Apr. 2, 2021).

2. The terms “legal notice,” “public notice,” and “notice by publication” are frequently used interchangeably. Each term refers to notices to the public regarding “matters of public concern” that are “publish[ed] in a newspaper of general circulation.” See *Notice*, BLACK’S LAW DICTIONARY (11th ed. 2019); *Legal Notice*, BLACK’S LAW DICTIONARY (11th ed. 2019); *Public Notice*, BLACK’S LAW DICTIONARY (11th ed. 2019); *Notice by Publication*, BLACK’S LAW DICTIONARY (11th ed. 2019); see also Richard Karpel, *Why We Call It “Public Notice”*, PUB. NOTICE RES. CTR. (Sept. 3, 2019), <https://www.pnrc.net/2019/09/03/why-we-call-it-public-notice/> [<https://perma.cc/62PR-KD4H>]. The Public Notice Resource Center (PNRC) notes that there is “public confusion over public notice advertising, including the fact that the newspaper industry can’t agree on a name for them.” *Id.* The PNRC also notes the role that legislators play in the confusion. *Id.* For example, “[t]he general statutes of Arkansas, Colorado, Kentucky and many other states refer to them as ‘legal notices,’” while “[t]he laws in California, South Dakota and Oregon call them ‘public notices.’” *Id.* Adding to the confusion, “[s]ome state statutes, like Massachusetts, refer to them as both.” *Id.* For purposes of the clarity of this Comment, “public notices” refer to notices in the legislative and administrative settings, which are often required to be placed in a print newspaper but are not subject to a *Mullane* procedural due

statutorily required location for disseminating notice to the public, this method of notice has become somewhat outdated.³ As print newspapers in Kansas increasingly shift from daily to weekly circulations,⁴ or fold completely,⁵ it is unlikely that they meet the requirement of procedural due process set out in *Mullane v. Central Hanover Bank & Trust Co.*, which states that notices of pending lawsuits must be “reasonably certain to inform those affected.”⁶ It is also unlikely that they meet Kansas’s non-constitutional public policy goal of providing the public with reasonable

process argument controlled by the Fourteenth Amendment of the Federal Constitution. “Legal notices” refer to notices that are required to be placed in a print newspaper and are subject to a *Mullane* procedural due process argument. See *What is the Difference Between a Legal Notice and Public Notice?*, MY CLASSIFIED ADS, <https://www.myclassifiedads.net/legal-notice-and-public-notice/#:~:text=What%20is%20The%20Difference%20Between,but%20is%20required%20to%20run.> [<https://perma.cc/B84S-E92F>] (last visited Apr. 2, 2021).

3. See Shannon E. Martin, *State Laws Mandating Online Posting of Legal and Public Notices Traditionally Published in Newspapers*, 25 COMM’NS & L. 41, 42 (2003) [hereinafter Martin, *State Laws Mandating Online Posting*] (noting that “[p]ublic notice through newspaper publication has served both state and federal government in the United States since the organization of the nation”); Shannon E. Martin, *Record Newspapers, Legal Notice Laws and Digital Technology Solutions*, 8 INFO. & COMM’NS TECH. L. 59, 59 (1999) [hereinafter Martin, *Record Newspapers*] (noting that “many states are reviewing those statutory requirements to see if public notice might be achieved more efficiently through electronic venues rather than by the long-used newsprint distribution of community newspapers”); Lauren A. Rieders, Note, *Old Principles, New Technology, and the Future of Notice in Newspapers*, 38 HOFSTRA L. REV. 1009, 1010 (2010) (noting that print newspapers have become somewhat outdated by pointing out that “[i]n the twenty-first century . . . citizens are not reading print newspapers like they used to; instead, they are using the Internet to fulfill their information needs”); Brian Walters, “Best Notice Practicable” in the Twenty-First Century, 2003 UCLA J.L. & TECH. 4 (2003) (noting that “the Internet has overtaken print newspapers as the standard of mass communication in legible media”).

4. See Penelope Muse Abernathy, *The Expanding News Desert: Kansas*, UNC HUSSMAN SCH. OF JOURNALISM & MEDIA [hereinafter Abernathy, *The Expanding News Desert: Kansas*], <https://www.usnewsdeserts.com/states/kansas/> [<https://perma.cc/L2XA-7S9Z>] (last visited Apr. 2, 2021) (breaking down the statistics of Kansas’s changing newspaper business climate from 2004 to 2019); see also *Pratt Tribune Announcement: Paper to Become Weekly Edition*, PRATT TRIB. (Aug. 27, 2019, 12:00 AM) [hereinafter *Pratt Tribune Announcement*], <https://www.pratttribune.com/news/20190826/pratt-tribune-announcement-paper-to-becomeweekly-edition> [<https://perma.cc/T9TM-RLE2>] (an example of a Kansas newspaper that has recently shifted from daily to weekly circulations).

5. Kansas newspapers that have closed include *The Kiowa News* and the *Baldwin City Signal*, among others. See Yvonne Miller, *The Gyp Hill Premiere of Medicine Lodge Now to Cover Kiowa and All Barber County, Kansas*, ALVA REV.-COURIER (May 8, 2019), <https://www.alvareviewcourier.com/story/2019/05/08/local/the-gyp-hill-premiere-of-medicine-lodge-now-to-cover-kiowa-and-all-barber-county-kansas/51244.html> [<https://perma.cc/L83C-FNR7>] (noting that “The Kiowa News closed [in 2019] after 126 years in operation”); *Baldwin City Signal Ending Publication with Current Edition*, BALDWIN CITY SIGNAL (Dec. 30, 2015) [hereinafter *Baldwin City Signal Ending Publication*], <http://signal.baldwincity.com/news/2015/dec/30/baldwin-city-signal-cease-publication-dec-31/> [<https://perma.cc/MXG9-XD63>] (noting that the *Baldwin City Signal* closed in 2015).

6. 339 U.S. 306, 315 (1950); see also U.S. CONST. amend. XIV, § 1 (“No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .”).

notice of meetings of its administrative and legislative bodies.⁷ Informing the public has always been the goal of notices.⁸ For years, print newspapers provided an effective method for reaching this goal and ensured that Kansans received proper notice. Because the print newspaper industry in Kansas is experiencing a steady decline in subscribers and overall readership, however, placing notices in print newspapers alone may no longer provide the most effective method of disseminating notice.⁹

This Comment argues that, as they currently stand, Kansas's notice by publication laws violate the Fourteenth Amendment's requirement of procedural due process because placing notices in print newspapers alone is no longer "reasonably certain" to inform affected Kansans. It also argues that this method of disseminating notice is unlikely to meet Kansas's long-standing public policy goal of providing the public with reasonable notice of meetings of its administrative and legislative bodies. To better comport with procedural due process and meet this public policy goal, Kansas should update its notice by publication laws to include online newspapers and government websites. Because Kansans are increasingly relying on the internet as their primary source for receiving information,¹⁰ updating the state's notice by publication laws to include these online websites in addition to print newspapers will provide a more sufficient

7. *Legislative Procedure in Kansas*, KAN. LEGIS. RSCH. DEP'T 5 (Nov. 2006), http://www.kslegislature.org/li/m/pdf/kansas_legislative_procedure.pdf [https://perma.cc/Q759-YT7E] ("An act of the Legislature is not in force until the enacting bill has been published so that the public has proper notice that it is law.")

8. *About Public Notice*, PUB. NOTICE RES. CTR. [hereinafter *About Public Notice*, PUB. NOTICE RES. CTR.], <https://www.pnrc.net/about-2/about-public-notice/> [https://perma.cc/A2DJ-9EZA] (last visited Apr. 2, 2021) (stating that the goal of notices is "to display information in places where the public is likely to come into notice"); Jennifer Lee Case, Note, *Extra! Read All About It: Why Notice by Newspaper Publication Fails to Meet Mullane's Desire-to-Inform Standard and How Modern Technology Provides a Viable Alternative*, 45 GA. L. REV. 1095, 1096–98 (2011) (stating that the goal of notices is to inform the public and asserting that newspapers may no longer be the best method of disseminating notices due to declined readership in recent years); Rieders, *supra* note 3, at 1010, 1016 (stating that the goal of notices is to inform the public and ensure notices are given the widest publicity practicable).

9. See, e.g., Joel Mathis, *As Newspapers Dwindle, Residents in Hutchinson and Elsewhere Notice What's Missing*, KAN. LEADERSHIP CTR. J. (May 15, 2019), <https://klcjournal.com/as-newspapers-dwindle-residents-in-hutchinson-and-elsewhere-notice-whats-missing/> [https://perma.cc/99GZ-BN4Y] (noting the decline of the print newspaper industry in Kansas); Chris Lester, *Stop the Presses: Kansas City Star to Cease Printing Saturday Newspapers*, FLATLAND (Nov. 14, 2019, 11:37 AM), <https://www.flatlandkc.org/news-issues/stop-the-presses-kansas-city-star-to-cess-printing-saturday-newspapers/> [https://perma.cc/GK2F-QFNT] (noting that *The Kansas City Star*, which had been a daily newspaper since the nineteenth century, will stop printing physical newspapers on Saturdays by the end of 2020); Case, *supra* note 8, at 1098 (noting a shift in how Americans receive information and drawing attention to the decline in newspaper readership).

10. See, e.g., *Pratt Tribune Announcement*, *supra* note 4 (noting that "[t]he decision to change [its] print distribution [was] part of a much broader digital transformation, impacting . . . newspapers across the country" and stating that its digital platforms, including the online version of its newspaper and its social media pages, have been experiencing an increase in visitors).

method of notice and leave Kansans better informed.

Section II of this Comment examines the current status of print newspapers in Kansas and addresses the historical custom and reasons for providing notice in print newspapers. Next, Section II scrutinizes Kansas's notice by publication laws and notes that there has been an increasing acceptance of online publication in various Kansas cities. Section II then goes on to briefly discuss Kansas's non-constitutional public policy goal of providing the public with reasonable notice of meetings of its administrative and legislative bodies. Lastly, Section II addresses procedural due process and the requirement that notices of pending lawsuits be "reasonably certain to inform those affected." Section III of this Comment analyzes these requirements of reasonable notice and asserts that Kansas's notice by publication laws, as they currently stand, fail to meet the state's public policy goal, and violate Kansans' procedural due process rights. Section III next addresses the national trend from state legislators to shift to online publication. Finally, Section III advises that Kansas should follow this trend and update its notice by publication laws to include online newspapers and government websites because doing so will place legal and public notices where the public will notice them and better ensure that these statutes meet the state's public policy goal and no longer violate Kansans' procedural due process rights.

II. BACKGROUND

A. *The Current Status of Print Newspapers in Kansas*

Print newspapers in Kansas are dwindling.¹¹ In 2004, Kansas had a combined total of 202 daily and weekly newspapers.¹² Their circulation totaled 920,000 copies.¹³ By 2019, however, only 174 daily and weekly newspapers remained, and their circulation had decreased to 590,000 copies.¹⁴ To survive, many print newspapers have had to make the

11. Abernathy, *The Expanding News Desert: Kansas*, *supra* note 4 (noting a fourteen percent decrease in print newspapers in Kansas between 2004 and 2019 and a thirty-six percent decrease in circulation); Mathis, *supra* note 9 (highlighting the fact that print newspapers in Kansas are dwindling); Elizabeth Grieco, *Fast Facts About the Newspaper Industry's Financial Struggles as McClatchy Files for Bankruptcy*, PEW RSCH. CTR. (Feb. 14, 2020), <https://www.pewresearch.org/fact-tank/2020/02/14/fast-facts-about-the-newspaper-industrys-financial-struggles/> [https://perma.cc/457J-RLZ6] (noting that newspaper chain McClatchy—which owns media companies in fourteen states, including *The Kansas City Star*—filed for bankruptcy).

12. Abernathy, *The Expanding News Desert: Kansas*, *supra* note 4.

13. *Id.*

14. *Id.*

difficult decision to shift from daily to weekly circulations.¹⁵ Weekly circulations have become increasingly common, accounting for 146 of the 174 remaining print newspapers in Kansas.¹⁶ One such newspaper, the *Pratt Tribune*, announced in 2019 that it would be transitioning from printing three days a week to one day a week.¹⁷ This decrease in print circulation left Pratt County's approximately 9,000 residents with just one chance a week to be informed of the legal and public notices that may affect them because the *Pratt Tribune* serves as the county's only newspaper.¹⁸ Counties with only one newspaper are prevalent in Kansas.¹⁹ Of its 105 counties, sixty-one counties have only one newspaper, and one county has no newspaper.²⁰

Although being a one-newspaper or no-newspaper county does not violate Kansas's notice by publication laws,²¹ if Kansas's print newspapers continue to decrease in circulation, the newspapers that do remain will find themselves spread thin trying to provide coverage for a vast area. Douglas County, which has approximately 122,000 residents,²² recently experienced this when it became a one-newspaper county in 2015 when the *Baldwin City Signal* closed due to a lack of advertising and

15. *Id.* (listing Kansas's print newspapers in a chart and noting those with daily circulations and those with weekly circulations); *see also Pratt Tribune Announcement*, *supra* note 4 (one example of a print newspaper in Kansas that recently shifted to a weekly printing schedule).

16. Abernathy, *The Expanding News Desert: Kansas*, *supra* note 4.

17. *Pratt Tribune Announcement*, *supra* note 4.

18. *Quick Facts: Pratt County, Kansas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/prattcountykansas> [<https://perma.cc/UX8C-JB58>] (last visited Apr. 5, 2021) (the United States Census Bureau listed Pratt County as having a population of 9,164 residents on July 1, 2019); Abernathy, *The Expanding News Desert: Kansas*, *supra* note 4 (listing the *Pratt Tribune* as the sole newspaper in Pratt County, Kansas).

19. *See* Abernathy, *The Expanding News Desert: Kansas*, *supra* note 4 (listing the counties in Kansas with only one newspaper).

20. *Id.* (showing through its fifteen-year study that there are sixty-one counties in Kansas with only one newspaper and one county in Kansas that has no newspaper). Kansas counties with only one newspaper include Cheyenne, Sherman, Wallace, Greeley, Hamilton, Stanton, Morton, Rawlins, Thomas, Logan, Wichita, Kearny, Grant, Stevens, Decatur, Sheridan, Scott, Gove, Lane, Finney, Haskell, Seward, Norton, Graham, Trego, Ness, Hodgeman, Meade, Clark, Rush, Pawnee, Edwards, Pratt, Barber, Smith, Jewell, Lincoln, Ellsworth, Ottawa, Saline, Washington, Clay, Geary, Chase, Butler, Lyon, Jackson, Shawnee, Osage, Coffey, Woodson, Doniphan, Douglas, Franklin, Anderson, Allen, Wyandotte, Johnson, Miami, Linn, and Bourbon. Elk County does not have a newspaper. Note that although this website states that "Kansas has one county without a newspaper and 58 counties with a single newspaper," if you scroll through and add up the numbers, there are actually sixty-one counties with a single newspaper. *Id.*

21. *See* KAN. STAT. ANN. § 64-101 (2005) (listing Kansas's notice by publication laws for "first-class" cities); KAN. STAT. ANN. § 12-1651 (2001) (listing Kansas's notice by publication laws for "second-class" and "third-class" cities).

22. *Quick Facts: Douglas County, Kansas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/douglascountykansas/PST045219> [<https://perma.cc/6WV3-2AF7>] (last visited Apr. 5, 2021) (the United States Census Bureau listed Douglas County as having a population of 122,259 residents on July 1, 2019).

subscription revenue.²³ Though Baldwin City is a smaller town in Kansas, with approximately 4,600 residents,²⁴ the closure of its newspaper has left its residents concerned regarding how they will stay informed of the important events and issues that may affect them.²⁵ One resident, expressing these concerns, noted that because the town now shares one journalist with other communities, “[t]here is no way he can be here [covering] the school board, city council and university and high school activities . . . and still cover other communities.”²⁶ The community’s news coverage suffers the additional consequence of reduced timeliness.²⁷ As another resident noted, “[n]ow [we] get news about things that will happen after they have already happened.”²⁸

These problems are happening in towns throughout Kansas, not just Baldwin City, and have left these communities searching for additional ways to keep their residents informed. To address the rising issues of reduced coverage and timeliness, many towns have begun to supplement their print newspapers with online, digital versions.²⁹ Online newspapers have increased in popularity in recent years.³⁰ The *Pratt Tribune*, for

23. *Baldwin City Signal Ending Publication*, *supra* note 5; Penelope Muse Abernathy, *The Expanding News Desert: The Loss of Newspapers and Readers*, UNC HUSSMAN SCH. OF JOURNALISM & MEDIA [hereinafter Abernathy, *The Expanding News Desert: The Loss of Newspapers*], <https://www.usnewsdeserts.com/reports/expanding-news-desert/loss-of-local-news/loss-newspapers-readers/> [https://perma.cc/2TNV-TBNB] (last visited Apr. 5, 2021) (citing a lack of advertising and subscription revenue as being the reason the *Baldwin City Signal* closed in 2015); Abernathy, *The Expanding News Desert: Kansas*, *supra* note 4 (noting that Douglas County is a one-newspaper county and listing the *Lawrence Journal-World* as its remaining print newspaper); *Lawrence Newspaper to End Monday Print Edition*, U.S. NEWS & WORLD REP. (May 16, 2020, 6:27 PM) [hereinafter *Lawrence Newspaper to End Monday Print Edition*], <https://www.usnews.com/news/best-states/kansas/articles/2020-05-16/lawrence-newspaper-to-end-monday-print-edition> [https://perma.cc/M4A5-4AYD] (noting that the *Lawrence Journal-World* is now printed only six days a week, as it has stopped publishing a print newspaper on Mondays).

24. *Baldwin City, KS*, CENSUS REP., <https://censusreporter.org/profiles/16000US2003900-baldwin-city-ks/> [https://perma.cc/T2U5-8E3K] (last visited Apr. 5, 2021) (noting that Baldwin City has a population of 4,670 residents); Abernathy, *The Expanding News Desert: The Loss of Newspapers*, *supra* note 23 (noting that Baldwin City is “home to 4,600 residents”).

25. Abernathy, *The Expanding News Desert: The Loss of Newspapers*, *supra* note 23.

26. *Id.* (referencing the Kansas State University panel discussion, “Silent Signal: Baldwin City Adjusts to Life Without a Newspaper”); see also Steven Smethers, *Silent Signal: Baldwin City Adjusts to Life Without a Newspaper*, KAN. STATE UNIV.: HUCK BOYD NAT’L CTR. FOR CMTY. MEDIA A.Q. MILLER SCH. (Apr. 11, 2018), <https://mediasite.k-state.edu/mediasite/Play/656774809de44a25b0890dd8802a90361d> [https://perma.cc/3U9G-5XXB] (video of the panel discussion).

27. Abernathy, *The Expanding News Desert: The Loss of Newspapers*, *supra* note 23.

28. *Id.*

29. See, e.g., *Pratt Tribune Announcement*, *supra* note 4; Mathis, *supra* note 9.

30. See Rieders, *supra* note 3, at 1034 (noting that online newspapers “are increasing in popularity”); A.W. Geiger, *Key Findings About the Online News Landscape in America*, PEW RSCH. CTR. (Sept. 11, 2019), <https://www.pewresearch.org/fact-tank/2019/09/11/key-findings-about-the-online-news-landscape-in-america/> [https://perma.cc/QFR8-UMBX] (noting that “[t]he share of

example, which cited its decrease in print circulation as being “part of a much broader digital transformation, impacting . . . newspapers across the country,” noted that the online version of its newspaper has received increased readership.³¹ The online version features new stories every day, unlike its weekly print counterpart.³² Additionally, the *Pratt Tribune* supplemented its print newspaper with a Facebook page.³³ This page features daily updates and, notably, “visitors from social media more than doubled” in 2019.³⁴

Contrastingly, visitors to print newspapers continue to decrease and this trend will likely continue in light of McClatchy filing for bankruptcy protection.³⁵ McClatchy is the second-largest newspaper publishing company by circulation in the United States and operates thirty daily newspapers in fourteen states.³⁶ These newspapers, which include *The Wichita Eagle* and *The Kansas City Star*, will be no longer be “daily” by the end of 2020, however, as the company will have to stop printing physical newspapers on Saturdays due to its financial struggles.³⁷

Americans who prefer to get their news online is growing”); Mark Sweney, *Newspapers Now the Least Popular Medium for News, Says Ofcom Study*, GUARDIAN (Dec. 16, 2015, 7:14 AM), <https://www.theguardian.com/media/2015/dec/16/newspapers-now-the-least-popular-medium-for-news-says-ofcom-study> [<https://perma.cc/3Q3F-CCMA>] (asserting that print newspapers “have become the least popular medium people use to keep up to date with news and current affairs” and noting that this “unsurprisingly reflects the increase in popularity of going to digital sources for news”); *Lawrence Newspaper to End Monday Print Edition*, *supra* note 23 (noting that “reader interest in digital-only subscriptions has grown” for the *Lawrence Journal-World*).

31. *Pratt Tribune Announcement*, *supra* note 4 (noting that the online version of its newspaper has “experienced double-digit, year-over-year visits”).

32. *Id.*

33. *Id.*; The Pratt Tribune, FACEBOOK, <https://www.facebook.com/PrattTribuneKS> [<https://perma.cc/254U-4NWD>] (last visited Apr. 5, 2021).

34. *Pratt Tribune Announcement*, *supra* note 4. The social media presence of the *Pratt Tribune* also includes its Twitter page, though this page appears to be less frequently utilized than its Facebook page. See The Pratt Tribune (@PrattTribune), TWITTER, <https://twitter.com/PrattTribune> [<https://perma.cc/T5UH-5Q5L>] (last visited Apr. 5, 2021).

35. Lukas I. Alpert, *Newspaper Publisher McClatchy Files for Chapter 11 Bankruptcy*, WALL ST. J. (Feb. 13, 2020, 3:00 PM), <https://www.wsj.com/articles/newspaper-publisher-mcclatchy-files-for-chapter-11-bankruptcy-11581598316> [<https://perma.cc/6QF5-RGAX>]; Katie Robertson & Marc Tracy, *McClatchy, a Major U.S. Newspaper Chain, Files for Bankruptcy*, N.Y. TIMES (July 9, 2020), <https://www.nytimes.com/2020/02/13/business/media/mcclatchy-bankruptcy.html> [<https://perma.cc/77DF-28RM>]; Grieco, *supra* note 11; Paul Farhi, ‘A Lot of Uncertainty’: Staffers at Renowned McClatchy Newspapers Mull Bankruptcy Sale to Tabloid-Owning Hedge Fund, WASH. POST (July 14, 2020, 5:00 AM), https://www.washingtonpost.com/lifestyle/style/a-lot-of-uncertainty-staff-of-renowned-mcclatchy-newspapers-mull-bankruptcy-sale-to-tabloid-owning-hedge-fund/2020/07/13/0264079a-c537-11ea-a99f-3bbdfb1af38_story.html [<https://perma.cc/AJ4K-HKT4>]; *McClatchy Has 30 Papers in 14 States, Operations Continue*, U.S. NEWS & WORLD REP. (Feb. 13, 2020, 11:46 AM), <https://www.usnews.com/news/us/articles/2020-02-13/mcclatchy-has-30-papers-in-14-states-operations-continue> [<https://perma.cc/HCA4-SHWB>].

36. *McClatchy Has 30 Papers in 14 States, Operations Continue*, *supra* note 35.

37. Lester, *supra* note 9 (noting that *The Kansas City Star* will now only be printed six days a

Although this was another bad headline for the struggling Kansas print newspaper industry, to reach more Kansas residents and ensure they remain informed, the company has turned the page and now utilizes online, digital versions of its newspapers with more frequency.³⁸ *The Wichita Eagle*, for example, now describes itself as “a digital news organization that also prints a paper.”³⁹

As one of the seven print newspapers in Sedgwick County, *The Wichita Eagle* was the only one printed daily; the other six are printed weekly.⁴⁰ Sedgwick County has approximately 516,000 residents,⁴¹ nearly 390,000 of whom live in the city of Wichita.⁴² Wichita, the largest city in Kansas,⁴³ has noted a decline in the print circulation of *The Wichita Eagle* in recent years.⁴⁴ In the mid-1990s, it had a circulation of 122,000 copies and it was distributed in seventy-three of the state’s 105 counties.⁴⁵ By 2018, however, its circulation had decreased to 30,000 copies and it was distributed in a mere ten counties.⁴⁶ Notably, *The Wichita Eagle* is not printed in Wichita; it is printed by *The Kansas City Star*, located nearly 200 miles away in Kansas City.⁴⁷ This location is problematic because “[e]arly printing deadlines make it difficult to offer timely coverage of . . . government meetings, and therefore lessens the relevance to readers and impact of the paper on the communities where it still circulates.”⁴⁸

week, not seven—it had been a daily newspaper since the nineteenth century); Michael Roehrman, *Why We’re No Longer Printing a Saturday Paper—And What You Can Expect*, WICHITA EAGLE (Nov. 10, 2019, 5:02 AM), <https://www.kansas.com/news/local/article237179408.html> [<https://perma.cc/7MG5-F3PJ>] (noting that *The Wichita Eagle* will now only be printed six days a week, not seven—it had been a daily newspaper since 1886).

38. Lester, *supra* note 9; Roehrman, *supra* note 37.

39. Roehrman, *supra* note 37.

40. Abernathy, *The Expanding News Desert: Kansas*, *supra* note 4. The six newspapers printed weekly in Sedgwick County are the *Ark Valley News*, *The Clarion*, *Derby Informer*, *Haysville Sun-Times*, *Mulvane News*, and *Times Sentinel*. *Id.*

41. *Quick Facts: Sedgwick County, Kansas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/sedgwickcountykansas> [<https://perma.cc/YC2H-CQKB>] (last visited Apr. 5, 2021) (the United States Census Bureau listed Sedgwick County as having a population of 516,042 residents on July 1, 2019).

42. *Wichita, KS*, CENSUS REP., <https://censusreporter.org/profiles/16000US2079000-wichita-ks/> [<https://perma.cc/S46Y-XZ6C>] (last visited Apr. 5, 2021) (noting that Wichita has a population of 389,914 residents).

43. *10 Largest Cities in Kansas*, WORLD POPULATION REV., <https://worldpopulationreview.com/states/cities/kansas> [<https://perma.cc/Z5KB-ZMGP>] (last visited Apr. 5, 2021) (listing Wichita as the largest city in Kansas, with approximately 390,000 residents, Overland Park as the second-largest city in Kansas, with approximately 201,000 residents, and Kansas City as the third-largest city in Kansas, with approximately 153,000 residents).

44. Abernathy, *The Expanding News Desert: The Loss of Newspapers*, *supra* note 23.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

The rise of online newspapers helps with this relevancy problem and *The Wichita Eagle* notes that every day “nearly four times as many people read us online as read the printed paper.”⁴⁹ Despite the declining use of print newspapers, however, they remain the statutorily required location in Kansas for disseminating notice to the public.⁵⁰

B. The Historical Custom and Reasons for Providing Notice in Print Newspapers

Disseminating notice in print newspapers dates back to the first session of the first Congress, which required that the Secretary of State publish every “law, order, resolution, and vote . . . in at least three of the public newspapers printed within the United States.”⁵¹ Newspapers were seen as an effective way to keep the public informed regarding the actions of the local, state, and federal government,⁵² and until recently, no other easily accessible method of mass communication existed.⁵³ Although print newspapers received praise in the past for the regularity of their publication and easy accessibility,⁵⁴ today it is questionable whether they

49. Roehrman, *supra* note 37.

50. See KAN. STAT. ANN. § 64-101 (2005) (listing Kansas’s notice by publication laws for “first-class” cities); KAN. STAT. ANN. § 12-1651 (2001) (listing Kansas’s notice by publication laws for “second-class” and “third-class” cities).

51. An Act to Provide for the Safe-Keeping of the Acts, Records and Seal of the United States, and for Other Purposes, ch. 14, § 2, 1 Stat. 68, 68 (1789); see also Rieders, *supra* note 3, at 1015; Martin, *Record Newspapers*, *supra* note 3, at 59; Martin, *State Laws Mandating Online Posting*, *supra* note 3, at 42–43; SHANNON E. MARTIN & KATHLEEN A. HANSEN, *NEWSPAPERS OF RECORD IN A DIGITAL AGE: FROM HOT TYPE TO HOT LINK* 55–56 (1998); Daniel S. Cohen & Brian D. Koosed, *Extra!! Extra!! Click All About It? Modernizing Public Notice Laws in a Digital Age*, 26 VA. J. SOC. POL’Y & L. 1, 3 (2019); *About Public Notice*, PUB. NOTICE RES. CTR., *supra* note 8.

52. See, e.g., *About Public Notice*, PUB. NOTICE RES. CTR., *supra* note 8.

53. Rieders, *supra* note 3, at 1010 (“In the past, no other easily accessible, inexpensive vehicle for mass communication existed . . .”); Case, *supra* note 8, at 1125 (“In a world where business and news gathering is accomplished via the Internet, service by newspaper publication does not meet the constitutional standard articulated in *Mullane*. The Court should not hold on to an antiquated and ineffective method of notification when a better and more reasonable alternative exists.”); Rachel Cantor, Comment, *Internet Service of Process: A Constitutionally Adequate Alternative?*, 66 U. CHI. L. REV. 943, 943–44 (1999) (noting the internet’s “efficiency in communication and information gathering”); Angela Upchurch, “Hacking” *Service of Process: Using Social Media to Provide Constitutionally Sufficient Notice of Process*, 38 U. ARK. LITTLE ROCK L. REV. 559, 559–60 (2016) (“Never before has communication changed so quickly and in a way accessible to the general public.”); Walters, *supra* note 3 (“While the Internet continues on its glorious rise, the reach of the traditional newspaper suffers through an incremental deterioration.”); Cohen & Koosed, *supra* note 51, at 2 (“For over 100 years, print newspapers have been a bedrock institution in American society, providing an affordable and effective means of mass communication. . . . The mass adoption of the Internet, however, has disrupted the print newspaper industry, giving rise to digital news. As a result, the demand for print newspapers has declined.”).

54. Martin, *State Laws Mandating Online Posting*, *supra* note 3, at 44–45; *About Public Notice*, PUB. NOTICE RES. CTR., *supra* note 8.

still provide reasonable notice.⁵⁵ Because a goal of publishing notices, both in the legislative context and in the procedural due process context, is to ensure that they receive the widest publicity practicable, the steady decline of the print newspaper industry in Kansas makes print newspapers an increasingly concerning location to place notices.⁵⁶

Print newspapers are not the only method of disseminating notice to the public. The United States Supreme Court addressed this in the procedural due process context in the 1983 case, *Mennonite Board of Missions v. Adams*, in which the Court articulated a distaste for notice by publication.⁵⁷ There, the Court held that notice by publication violated the Fourteenth Amendment's requirement of procedural due process because placing notice in a print newspaper was not reasonably certain to inform a mortgagee of a pending tax sale of property on which he held a mortgage.⁵⁸ Although the auditor had complied with the state's notice by publication laws by publishing notice of the sale once a week for three consecutive weeks in the newspaper, the Court stated that this method of disseminating notice was not enough to inform the mortgagee.⁵⁹ To better inform the mortgagee and better comport with due process, the Court stated that the auditor should have provided personal service or mailed the notice to the mortgagee's last known available address.⁶⁰ Describing print newspapers as "less reliable forms of notice," the Court noted that this method of notice was not reasonable because the "inexpensive and efficient mechanism" of mail service was available.⁶¹

The Court had expressed doubt about print newspapers' ability to serve as an effective location for disseminating notice to the public more than thirty years earlier in the 1950 case, *Mullane v. Central Hanover Bank*

55. Rieders, *supra* note 3, at 1010–11 (addressing this question and asserting that print newspapers no longer provide reasonable notice); Case, *supra* note 8, at 1125 (addressing this question and asserting that print newspapers "are not reasonably calculated to provide any notice, much less adequate notice, in our twenty-first century world").

56. See *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (expressing this goal in the procedural due process context); *Legislative Procedure in Kansas*, *supra* note 7 (expressing this goal in the legislative context); Rieders, *supra* note 3, at 1010 (stating that a goal of publishing notices is ensuring they are "given the widest publicity practicable"); MARTIN & HANSEN, *supra* note 51, at 5 (stating that "the primary purpose of the printing of legal notices is to give the widest publicity practicable").

57. 462 U.S. 791, 799 (1983) (stating that notice by publication is not a means "such as one desirous of actually informing the [mortgagee] might reasonably adopt to accomplish it" (quoting *Mullane*, 339 U.S. at 315)).

58. *Id.* at 799–800.

59. *Id.* at 793.

60. *Id.* at 798.

61. *Id.* at 799 (quoting *Greene v. Lindsey*, 456 U.S. 444, 455 (1982)).

*& Trust Co.*⁶² There, the Court stated that although notice by publication in print newspapers is often constitutionally sufficient, “[c]hance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper”⁶³ Because the standard *Mullane* establishes is that the method of disseminating notice must be “reasonably certain to inform those affected,” determining whether notice by publication in print newspapers is sufficient requires a case-by-case analysis.⁶⁴ Although Kansans’ ever-increasing reliance on the internet as their primary source for receiving information suggests that online newspapers and government websites could supplement print newspapers and help ensure that they are “reasonably certain” to inform affected Kansans, Kansas’s current notice by publication laws only allow print newspapers. Additionally, although states have traditionally used print newspapers as the statutorily required location for disseminating notice to the public, there is no consensus among them regarding what type of newspaper is sufficient for notice by publication.⁶⁵

C. *Kansas’s Notice by Publication Laws*

In Kansas, there are two statutes that determine what type of newspaper is sufficient for notice by publication.⁶⁶ The first statute lists the requirements for print newspapers in “first-class” cities, while the second lists the requirements for print newspapers in “second-class” and “third-class” cities.⁶⁷ If a print newspaper meets the statute’s requirements, the city may designate it as the “official city newspaper” in which it will place its legal and public notices.⁶⁸

62. *Mullane*, 339 U.S. at 315 (asserting that people find notices in print newspapers through “[c]hance alone” and noting that “if [these people] make [their] home[s] outside the area of the newspaper’s normal circulation the odds that the information will never reach [them] are large indeed”); see also *Chance*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/chance> [<https://perma.cc/JWK4-8LBK>] (last visited Apr. 5, 2021) (defining “chance” as “something that happens unpredictably without discernible human intention or observable cause”).

63. *Mullane*, 339 U.S. at 315.

64. *Id.* (“[W]hen notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.”).

65. Rieders, *supra* note 3, at 1026 (“there is no consensus among states on the type of newspaper sufficient for publication”); Martin, *State Laws Mandating Online Posting*, *supra* note 3, at 46 (Noting that “[t]here has been much discussion in state legislatures, and dozens of court opinions issued about the particular definitions of ‘newspaper’ for the purpose of legal advertising and public notice.”).

66. See KAN. STAT. ANN. § 64-101 (2005); KAN. STAT. ANN. § 12-1651 (2001).

67. *Id.* §§ 64-101, 12-1651.

68. *Id.*

1. Requirements for “First-Class” Cities

The statute for “first-class” cities, Kan. Stat. Ann. § 64-101, applies to Kansas cities with more than 15,000 residents.⁶⁹ In those cities, for legal and public notices to have effect, the print newspaper chosen as the official city newspaper must be one that: (1) “is published at least weekly 50 times a year”; (2) “is entered at the post office as periodical class mail matter”; (3) “has general paid circulation on a daily, weekly, monthly, or yearly basis in the county in which the city is located”; (4) “is not a trade, religious, or fraternal publication”; and (5) “is published in the county in which the city publishing the official publication is located.”⁷⁰ If the county has no newspaper, the newspaper chosen as the official city newspaper merely has to “be published in Kansas” and “have general paid circulation in the county.”⁷¹

Under this statute as it currently stands, nothing prohibits a city from choosing an obscure newspaper as its official city newspaper. In 2017, the city of Wichita did just that when it moved its notices about “mill levies, sales, fund balances and delinquent personal and real estate property taxes” from the much larger *The Wichita Eagle* to the smaller *Derby Informer*.⁷² These print newspapers are both located in Sedgwick County, which, as mentioned previously, has approximately 516,000 residents, nearly 390,000 of whom live in the city of Wichita.⁷³ Derby, a suburb of Wichita located roughly eleven miles from the city center, has approximately 24,000 residents.⁷⁴ Although Derby’s newspaper, the *Derby Informer*, complies with the requirements for newspapers in “first-class” cities and can thus be designated as Wichita’s official city newspaper, its circulation rate is drastically lower than that of *The Wichita*

69. See KAN. STAT. ANN. § 13-101 (2001) (“Whenever it shall have been duly ascertained by any census of enumeration taken under any law of the United States or of the state of Kansas or by any city that any city has attained a population of more than fifteen thousand (15,000), such fact shall thereupon, by the governing body of such city, be certified to the governor of the state, who shall thereupon by public proclamation declare such city to be a city of the first class.”).

70. *Id.* § 64-101(a) (2005).

71. *Id.* § 64-101(a)(4).

72. Daniel Salazar, *County Votes to Contract with Derby Informer for Legal Ads*, WICHITA EAGLE (Mar. 1, 2017, 5:44 PM), <https://www.kansas.com/news/local/article135843308.html> [<https://perma.cc/P6ZT-JXN9>] (“Legal ads from Sedgwick County will soon start appearing in a Derby newspaper instead of The Wichita Eagle.”).

73. Abernathy, *The Expanding News Desert: Kansas*, *supra* note 4; *Quick Facts: Sedgwick County, Kansas*, *supra* note 41 (listing Sedgwick County as having a population of 516,042 residents on July 1, 2019); *Wichita, KS*, *supra* note 42 (noting that Wichita has a population of 389,914 residents).

74. *Derby, KS*, CENSUS REP., <https://censusreporter.org/profiles/16000US2017800-derby-ks/> [<https://perma.cc/2F3Z-MNHR>] (last visited Apr. 5, 2021) (noting that Derby has a population of 24,067 residents).

Eagle.⁷⁵ While *The Wichita Eagle* has a daily, Monday through Saturday, circulation rate of over 30,000 copies, the *Derby Informer* has a weekly circulation rate of only 1,500 copies.⁷⁶

When a city chooses a smaller, more obscure newspaper as its official city newspaper, this raises concerns regarding whether its residents will remain reasonably informed of the legal and public notices that may affect them. It also raises the question of why a city like Wichita would choose the somewhat ill-named *Informer*, knowing that the newspaper's chances of informing residents of the potentially critical notices that may affect them would be significantly less than had it retained *The Wichita Eagle*. The answer to this question, the Sedgwick County Commissioners noted, was based on the significant cost differences between the two newspapers.⁷⁷ While *The Wichita Eagle* would have charged the city of Wichita nearly \$133,000 to publish the city's notices in its newspapers yearly, the *Derby Informer* charged only \$56,000.⁷⁸ It is no secret that publishing notices in print newspapers is expensive,⁷⁹ and the Commissioners ultimately chose the *Derby Informer* because they saw this as an opportunity "to save the taxpayers as much as [they could]."⁸⁰ Although this choice saved the city a significant amount of money, it did so at a cost to its residents because they are now less likely to receive notice. As one Commissioner noted, however, "[i]n the information age of the 21st century, we have lots of ways to get this data out to people," including publishing notices online and on the Sedgwick County smartphone app.⁸¹ Additionally, the Commissioners "expressed interest

75. Salazar, *supra* note 72; Abernathy, *The Expanding News Desert: The Loss of Newspapers*, *supra* note 23. Note that there is a slight discrepancy between these two sources regarding the circulation rate of *The Wichita Eagle*. The Abernathy report lists the circulation rate as being 30,000 copies. The Salazar news article from *The Wichita Eagle*, however, lists an even higher circulation rate—33,705 copies.

76. Salazar, *supra* note 72.

77. *Id.*

78. *Id.*

79. See Rieders, *supra* note 3, at 1040 (noting that the cost of publishing advertisements in print newspapers is increasing); Alyssa L. Eisenberg, Comment, *Keep Your Facebook Friends Close and Your Process Server Closer: The Expansion of Social Media Service of Process to Cases Involving Domestic Defendants*, 51 SAN DIEGO L. REV. 779, 808–09 (2014) (noting that "publishing notice in newspapers is more expensive than sending a message over the Internet"); Keely Knapp, Comment, *#serviceofprocess @socialmedia: Accepting Social Media for Service of Process in the 21st Century*, 74 LA. L. REV. 547, 573 (2014) (discussing notice by publication in print newspapers and describing it as being "antiquated and unreasonably expensive"); Cohen & Koosed, *supra* note 51, at 15–16 (discussing the New Jersey Legislature's debate over public notice reform and New Jersey's law requiring public notices be published in print newspapers—a law then-Governor Chris Christie described as "archaic" and "costly").

80. Salazar, *supra* note 72.

81. *Id.*; *Sedgwick County Government*, APPLE: APP STORE PREVIEW,

in lobbying for the state to no longer require governments to publish their legal ads in a newspaper.”⁸²

Other “first-class” cities have expressed a similar interest in eliminating the statutory requirement that governments publish their legal ads in a print newspaper, including Lenexa and Hays.⁸³ In 2019, Lenexa, which has approximately 54,000 residents,⁸⁴ sought to exempt itself from Kan. Stat. Ann. § 64-101 because it was having trouble finding a print newspaper that met both the statute’s requirements and the city’s needs.⁸⁵ Because Lenexa’s official city newspaper, *The Johnson County Legal Record*, is a weekly publication circulated on Tuesdays, this timing could not provide reasonable notice to residents about city council meetings, which also occurred on Tuesdays.⁸⁶ Noting that legislators have discussed “moving away from this antiquated model” of publishing notices, Lenexa sought the passage of a charter ordinance that would allow it to exempt itself from the statute.⁸⁷ Passage of the ordinance required “an affirmative vote of two-thirds of the governing body,” followed (somewhat ironically) by notice by publication in the print newspaper for two consecutive weeks.⁸⁸ The ordinance passed, exempting Lenexa from the provisions of Kan. Stat. Ann. § 64-101.⁸⁹

In 2020, Hays, which has approximately 21,000 residents,⁹⁰ also

<https://apps.apple.com/us/app/sedgwick-county-government/id1129482040> [<https://perma.cc/CM2C-8YZQ>] (last visited Apr. 5, 2021). The Sedgwick County smartphone app features a “Legal Notifications” button that app users can utilize to inform themselves of the notices that may affect them. *Id.*

82. Salazar, *supra* note 72.

83. Leah Wankum, *Lenexa Exempting Itself from State Law Requirement for Official City Newspapers*, SHAWNEE MISSION POST (Nov. 25, 2019), <https://shawneemissionpost.com/2019/11/25/lenexa-exempting-itself-from-state-law-requirement-for-official-city-newspapers-84688/> [<https://perma.cc/VT6G-88BP>]; Becky Kiser, *City of Hays Moves Legal Notices Online; Concerns Noted by KPA*, HAYS POST (June 26, 2020, 8:46 AM), <https://hayspost.com/posts/7b1bc533-2bb9-4d44-acd7-90d797be7ab7> [<https://perma.cc/Y8B5-QJ53>].

84. *Lenexa, KS*, CENSUS REP., <https://censusreporter.org/profiles/16000US2039350-lenexa-ks/> [<https://perma.cc/Y7H3-W8NP>] (last visited Apr. 5, 2021) (noting that Lenexa has a population of 54,011 residents).

85. Wankum, *supra* note 83.

86. *Id.*

87. *Id.*

88. *Id.*

89. LENEXA, KAN., CHARTER ORDINANCE NO. 79 (2019), <http://online.encodeplus.com/regs/lenexa-ks/doc-viewer.aspx?tocid=005#secid-6235> [<https://perma.cc/UG2L-LCBM>]. This charter ordinance “exempt[s] the city of Lenexa from the provisions of K.S.A. 64-101 regarding the designation of [an] official city newspaper.” *Id.* The city is able to exempt itself because of “the power vested in it by Article 12, Section 5 of the Kansas Constitution.” *Id.*

90. *Hays, KS*, CENSUS REP., <https://censusreporter.org/profiles/16000US2031100-hays-ks/>

passed a charter ordinance and exempted itself from Kan. Stat. Ann. § 64-101.⁹¹ Now, rather than use its official city newspaper, the *Hays Daily News*, the city will use its online website to disseminate legal and public notices.⁹² The city cited both cost-savings and the potential to inform a wider audience as its primary reasons for making the switch.⁹³ The switch does not come without cost, however, as completely eliminating its print newspaper as the required location for these notices causes it to “lose[] an important revenue stream, thereby damaging its ability to report matters in the public interest.”⁹⁴ The City of Gardner made this loss of revenue argument as well. In 2019, Gardner, which also has approximately 21,000 residents,⁹⁵ changed its official city newspaper from *The Gardner News* to a different weekly print newspaper after noting that this would save the city a significant amount of money.⁹⁶ *The Gardner News*, however, stood to lose “thousands of dollars a year.”⁹⁷ Although the print newspaper industry “has largely held onto the business of printing legal notices even though state lawmakers . . . face proposals to allow local governments to save money by publishing them only online,”⁹⁸ completely eliminating print newspapers as a statutorily required location for disseminating notice would undoubtedly exacerbate the industry’s decline.

2. Requirements for “Second-Class” and “Third-Class” Cities

The statute for “second-class” and “third-class” cities is Kan. Stat. Ann. § 12-1651.⁹⁹ For purposes of this statute, “second-class” cities are those with greater than 2,000 and less than 15,000 residents; and “third-

[<https://perma.cc/FUT2-ZJME>] (last visited Apr. 5, 2021) (noting that Hays has a population of 20,899 residents).

91. Kiser, *supra* note 83. Although this news article states that Hays is a “second-class” city by population, this is inaccurate. “Second-class” cities, as noted in Kan. Stat. Ann. § 14-101, are those with “a population of more than 2,000 and less than 15,000” residents. Because Hays has approximately 21,000 residents, it is a “first-class” city, not a “second-class” city.

92. *Id.*; *Legal Publications*, CITY OF HAYS, <https://www.haysusa.com/730/Legal-Publications> [<https://perma.cc/LAC4-D9MB>] (last visited Apr. 5, 2021) (this is the link for Hays’s online website, where individuals can sign up to receive notifications of the city’s legal and public notices).

93. Kiser, *supra* note 83.

94. *Id.*

95. *Gardner, KS*, CENSUS REP., <https://censusreporter.org/profiles/16000US2025425-gardner-ks/> [<https://perma.cc/Q8BZ-WN9K>] (last visited Apr. 5, 2021) (noting that Gardner has a population of 21,528 residents).

96. John Hanna, *Kansas City’s Move Against Paper Strikes Some as Retaliation*, ASSOCIATED PRESS (Dec. 21, 2019, 11:15 AM), <https://www.news957.com/business/2019/12/21/kansas-citys-move-against-paper-strikes-some-as-retaliation/> [<https://perma.cc/RR8M-35WW>].

97. *Id.*

98. *Id.*

99. KAN. STAT. ANN. § 12-1651 (2001).

class” cities are those with less than 2,000 residents.¹⁰⁰ In those cities, for legal and public notices to have effect, the print newspaper chosen as the official city newspaper must be one that: (1) is “published at least weekly 50 times each year”; (2) is “entered at the post office of publication as second-class mail matter”; (3) has “general paid circulation on a daily, weekly, monthly, or yearly basis in the county”; (4) is not “a trade, religious or fraternal publication”; and (5) has more than fifty percent of the circulation “sold to the subscribers either on a daily, weekly, monthly, or yearly basis.”¹⁰¹

These requirements are similar to those for “first-class” cities and unsurprisingly raise similar “reasonable notice” concerns regarding obscure official city newspapers and the increasing interest among cities in eliminating the statutory requirement of notice by print newspaper. In 2020, McPherson, which has approximately 13,000 residents,¹⁰² passed a charter ordinance and exempted itself from Kan. Stat. Ann. § 12-1651.¹⁰³ Now, rather than use its official city newspaper, the city will use its online website to disseminate legal and public notices.¹⁰⁴ McPherson noted that its official city newspaper had a limited number of publications a week (Wednesday and Sunday) and cited its website as being a location that would allow more timely publications.¹⁰⁵ The city also plans to place these notices on a designated social media page because doing so will help

100. See *id.* § 14-101 (2001) (statute for “second-class” cities); *id.* § 15-101 (2001) (statute for “third-class” cities).

101. *Id.* § 12-1651(b).

102. *McPherson, KS*, CENSUS REP., <https://censusreporter.org/profiles/16000US2043950-mcpherson-ks/> [<https://perma.cc/2CTS-NB5L>] (last visited Apr. 5, 2021) (noting that McPherson has a population of 13,054 residents).

103. Jessie Wagoner, *City Website Now Declared Newspaper of Publication*, MCPHERSON NEWS-LEDGER, <https://www.mcphersonweeklynews.com/city-website-now-declared-newspaper-of-publication/> [<https://perma.cc/6VVN-53NL>] (last visited Apr. 5, 2021); MCPHERSON, KAN., CHARTER ORDINANCE NO. 45 (2020), <https://www.mcpcity.com/DocumentCenter/View/3640/Charter-Ordinance-No-45?bidId=> [<https://perma.cc/6CBC-FZ56>]. This charter ordinance exempts the city of McPherson from the provisions of Kan. Stat. Ann. § 12-1651 regarding the designation of an official city newspaper. *Id.* § 1. The city is able to exempt itself because of “the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas.” *Id.*

104. *McPherson News Center & Legal Postings*, MCPHERSON KANSAS, <https://www.mcpcity.com/714/City-of-McPherson-News> [<https://perma.cc/2BUK-77GM>] (last visited Apr. 5, 2021). This is the link for McPherson’s online website, where individuals can sign up to receive notifications of the city’s legal and public notices.

105. Wagoner, *supra* note 103 (noting that the *McPherson Sentinel* was previously the official publication source for the city before the switch to the online website). Having the website as the official publication source for the city provides timelier notice because “all official legal notices will be published *immediately* . . . on the city website.” *Id.* (emphasis added). See also *Sentinel Announces Frequency Changes*, MCPHERSON SENTINEL (Aug. 27, 2019, 7:00 PM), <https://www.mcphersonsentinel.com/news/20190827/sentinel-announces-frequency-changes> [<https://perma.cc/U8S7-WJCK>] (describing the *McPherson Sentinel*’s “transition from printing five days a week to two days a week,” and noting this would limit publications to Wednesdays and Sundays).

ensure that the notices receive the widest publicity practicable and leave the city's residents better informed.¹⁰⁶ Absent the passage of a charter ordinance and subsequent exemption from the applicable statute, however, online websites cannot *currently* serve as a location for disseminating legal and public notices in Kansas.¹⁰⁷ Kansas's notice by publication laws, as they currently stand, require notice by print newspaper in a designated official city newspaper.¹⁰⁸

D. Kansas's Non-Constitutional Public Policy Goal of Providing the Public with Reasonable Notice of Meetings of Its Administrative and Legislative Bodies

Kansas, through statute, has effectuated a public policy that is deeply normed on the idea that its residents should have meaningful, pre-meeting notice of administrative and legislative action.¹⁰⁹ Although not a function of procedural due process under the Fourteenth Amendment of the Federal Constitution, it is a long-standing statutory commitment embodied thoroughly and fundamentally in Kansas law.¹¹⁰ The Kansas Administrative Procedure Act, for example, is the law governing procedures for state administrative agencies to propose and issue regulations.¹¹¹ It states that these agencies must "give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter."¹¹² The Kansas Open Meetings Act is the law guaranteeing persons the right to observe governmental policy makers, such as local school boards, city councils, county commissioners, and most functions of the state legislature.¹¹³ Though the Act does not require notice of meetings to be published in a newspaper, it still strives to keep Kansans informed and states that notice "shall be furnished to any person requesting [it]."¹¹⁴

106. Wagoner, *supra* note 103.

107. See KAN. STAT. ANN. § 64-101 (2005); KAN. STAT. ANN. § 12-1651 (2001).

108. *Id.* §§ 64-101, 12-1651.

109. See KAN. STAT. ANN. §§ 77-501–77-566 (2019) (Kansas Administrative Procedure Act); KAN. STAT. ANN. §§ 75-4317–75-4320a (2019) (Kansas Open Meetings Act).

110. See *id.* §§ 77-501–77-566, 75-4317–75-4320a.

111. *Id.* §§ 77-501–77-566.

112. *Id.* § 77-516(b).

113. *A Citizen's Guide to Open Government: Kansas Open Meetings Act; Kansas Open Records Act*, KAN. ATT'Y GEN. 1, <https://ag.ks.gov/docs/default-source/publications/a-citizens-guide-to-koma-kora.pdf> [<https://perma.cc/VF9E-V9YS>] (last visited Apr. 5, 2021).

114. KAN. STAT. ANN. § 75-4318(b) (2019); see also James Fisher, Martha Dorsey & Robert Gallimore, *State and Local Government: H-3 Kansas Open Meetings Act*, in KANSAS LEGISLATOR BRIEFING BOOK 2017, KAN. LEGIS. RSCH. DEP'T 10 (2017) <http://www.kslegresearch.org/KLRD-web/Publications/BriefingBook/2017Briefs/H-3-KansasOpenMeetingsAct.pdf> [<https://perma.cc/AGU3-2CBB>].

Keeping Kansans informed is a key aspect of the Act, which recognizes that “a representative government is dependent upon an informed electorate.”¹¹⁵

There is at least a quasi-constitutional dimension to Kansas’s goal of providing the public with reasonable notice of meetings of its legislative bodies in that Article 2 of the Kansas Constitution contains a notice provision.¹¹⁶ This notice provision, contained in Section 8, keeps Kansans informed regarding when the legislature will meet.¹¹⁷ The Kansas Court of Appeals has also discussed the goal of providing the public with reasonable notice in the context of legislative action, stating that “[a]though notice of legislative action is usually not required, . . . when a legislative body sits as an adjudicative body . . . some written notice ought to be given to those entitled to notice, following the principles in *Mullane*.”¹¹⁸

E. Procedural Due Process and the Requirement that Notices of Pending Lawsuits be “Reasonably Certain to Inform Those Affected”

Under the standard established in the 1950 United States Supreme Court case, *Mullane v. Central Hanover Bank & Trust Co.*, notices of pending lawsuits must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”¹¹⁹ Where notice is required, it must be “reasonably certain to inform those affected” in order to comply with procedural due process and be constitutionally sufficient.¹²⁰ To determine what constitutes “reasonable” notice, courts must balance the interest of the state against the individual interest sought to be protected by the Due Process Clause.¹²¹

115. KAN. STAT. ANN. § 75-4317(a) (2019); *see also* Mem’l Hosp. Ass’n v. Knutson, 722 P.2d 1093, 1098 (Kan. 1986) (noting that the goal of the Kansas Open Meetings Act is “to ensure the existence of an informed electorate”); State *ex rel.* Stephan v. Bd. of Cnty. Comm’rs, 770 P.2d 455, 457 (Kan. 1989) (also noting this goal of the Kansas Open Meetings Act).

116. KAN. CONST. art. 2, § 8 (“The legislature shall meet in regular session annually commencing on the second Monday in January, and all sessions shall be held at the state capital.”).

117. *Id.*

118. Lawrence Pres. All., Inc. v. Allen Realty, Inc., 819 P.2d 138, 146–47 (Kan. Ct. App. 1991).

119. 339 U.S. 306, 314 (1950).

120. *Id.* at 315; U.S. CONST. amend. XIV, § 1 (“No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .”).

121. *Mullane*, 339 U.S. at 314.

1. The Mullane Standard

In *Mullane*, the United States Supreme Court considered whether notice by publication in print newspapers complied with procedural due process in a proceeding for the judicial settlement of a common trust fund.¹²² The Court appointed Kenneth Mullane as special guardian and attorney for all the beneficiaries of the trust who had not appeared in response to the notice.¹²³ The only notice given to the beneficiaries was by publication in the official city newspaper, which, complying with the applicable statute, had published the notice once a week for four consecutive weeks.¹²⁴ Mullane argued that this method of notice was not “reasonably certain” to inform the beneficiaries of the pending action and that it therefore violated their procedural due process rights.¹²⁵

Although the Court expressed doubt about print newspapers’ effectiveness as a location for disseminating notice, it held that in this instance the notice complied with procedural due process.¹²⁶ Because Mullane adequately represented the interests of the beneficiaries who had not appeared, the notice given in the newspaper was sufficient under the circumstances.¹²⁷ The Court did state, however, that “[i]t would be idle to pretend that publication alone . . . is a reliable means of acquainting interested parties of the fact that their rights are before the courts.”¹²⁸ “Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper,” and if the resident “makes his home outside the area of the newspaper’s normal circulation the odds that the information will never reach him are large indeed.”¹²⁹

2. Mullane’s Progeny and Their Impact on Kansas Law

Kansas plays a significant role in the United States Supreme Court’s notice by publication jurisprudence because the Court next expressed its distaste for this method of disseminating notice in the 1956 Kansas case, *Walker v. City of Hutchinson*.¹³⁰ There, the City of Hutchinson, Kansas

122. *Id.* at 310.

123. *Id.*

124. *Id.* at 309–10.

125. *Id.* at 311.

126. *Id.* at 317–18.

127. *Id.* at 319.

128. *Id.* at 315.

129. *Id.*

130. 352 U.S. 112, 116 (1956) (“Measured by the principles stated in the *Mullane* case, we think that the notice by publication here falls short of the requirements of due process.”).

sought to condemn part of Lee Walker's property in order to "open, widen, and extend one of the City's streets."¹³¹ Despite the fact that Walker's name was known to the city and was on the official records for the property, the city chose to provide notice of the condemnation proceedings by publication in the official city newspaper.¹³² Although the city, by statute, could give Walker notice of the proceedings either in writing or by publication in the official city newspaper, the Court stated that the city's chosen method of notice fell short of the requirements of procedural due process set out in *Mullane*.¹³³ The Court noted that "[i]t is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property."¹³⁴ As a proposed solution, the Court stated that direct notice, or "[e]ven a letter would have apprised him that his property was about to be taken . . ."¹³⁵ Thus, because the city could have done more to inform Walker, the Court held that its chosen method of disseminating notice violated his procedural due process rights.¹³⁶

Following *Mullane* and *Walker*, there have been a number of Kansas Supreme Court cases expressing similar doubt about print newspapers' ability to serve as an effective location for disseminating notice, including the 1967 case, *Pierce v. Board of County Commissioners of Leavenworth County* and the 2001 case, *Board of County Commissioners of Reno County v. Akins*.¹³⁷ In *Pierce*, the court considered whether notice by publication in print newspapers complied with procedural due process in a tax foreclosure proceeding.¹³⁸ The Pierces, who owned the land sold at the foreclosure proceeding, had no knowledge of the proceeding until after the sale.¹³⁹ Although Leavenworth County had published notice of the proceeding in the city's newspaper, the court held that this method of disseminating notice violated the Pierces' procedural due process rights.¹⁴⁰ Because their mailing address was on file with the county treasurer, notice by publication was not the method most "reasonably certain" to inform the Pierces.¹⁴¹ The court, in adopting the *Mullane* "reasonable notice"

131. *Id.* at 112–13.

132. *Id.* at 113–14, 116.

133. *Id.* at 116.

134. *Id.*

135. *Id.*

136. *Id.*

137. See *Pierce v. Bd. of Cnty. Comm'rs*, 434 P.2d 858 (Kan. 1967); *Bd. of Cnty. Comm'rs v. Akins*, 21 P.3d 535 (Kan. 2001).

138. *Pierce*, 434 P.2d at 866.

139. *Id.* at 864.

140. *Id.* at 866.

141. *Id.* at Syl. ¶ 6, 866 ("Where the names and addresses of adverse parties are known or easily

standard, however, emphasized that it was not implying, “nor has the federal supreme court ever declared,” that notice by publication is a constitutionally insufficient method of notice.¹⁴² Rather, the court emphasized that because the Pierces’ mailing address was available, notice by mail was the method of notice that would have left the Pierces better informed.¹⁴³

In *Akins*, the court again considered whether notice by publication in print newspapers complied with procedural due process in a tax foreclosure proceeding.¹⁴⁴ The owners of the land sold at the foreclosure proceeding had no knowledge of the proceeding until after the sale.¹⁴⁵ Although Reno County had published notice of the proceeding in the city’s newspaper, the court held that this method of disseminating notice violated the landowners’ procedural due process rights.¹⁴⁶ The court, reiterating the assertion it made in *Pierce*, emphasized that “*Mullane* does not stand for the proposition that service by publication deprives a party of their due process rights.”¹⁴⁷ Rather, it stands for the proposition that “[w]here the names and addresses of adverse parties are known or easily ascertainable, notice of pending proceedings by publication service, alone, is not sufficient to satisfy the requirements of due process”¹⁴⁸ Because the county could have found the landowners’ last known address, notice by publication was not the method of notice most reasonably certain to inform them.¹⁴⁹

Thus, *Mullane* and its progeny establish that notice by publication in print newspapers is sufficient in situations where there is not enough information to know who the affected parties are or how to locate them.¹⁵⁰ This often arises in in rem cases and in some species of in personam cases. The classic in rem case involves an attempt to resolve the rights and claims

ascertainable, notice of pending proceedings by publication service, alone, is not sufficient to satisfy the requirements of due process under the 14th Amendment to the federal Constitution or § 2 of the Bill of Rights of the Kansas Constitution.”).

142. *Id.* at 866.

143. *Id.*

144. *Bd. of Cnty. Comm’rs v. Akins*, 21 P.3d 535, 537 (Kan. 2001).

145. *Id.* at 538–39.

146. *Id.* at 542.

147. *Id.* at 540.

148. *Id.* (quoting *Pierce*, 434 P.2d at Syl. ¶ 6) (drawing attention to the Fourteenth Amendment to the Federal Constitution and § 2 of the Bill of Rights of the Kansas Constitution).

149. *Id.* at 541–42.

150. See *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314–15 (1950); *Walker v. City of Hutchinson*, 352 U.S. 112, 115–16 (1956); *Pierce*, 434 P.2d at 864–65; *Akins*, 21 P.3d at 539–40.

to a specific piece of property as against all persons in the world.¹⁵¹ Because of the pragmatics of that, it is necessary to engage in the legal fiction that publication in a print newspaper gives notice to all persons in the world who have an interest in the property.¹⁵² In the classic in personam case, which involves an abandoned spouse who is seeking a divorce, notice by publication in a print newspaper is also sufficient because there is no other way to get notice to the affected party.¹⁵³ Where there is enough information to know who the affected parties are and how to locate them, however, notice by publication is not the method of notice most “reasonably certain” to inform them, and procedural due process requires that they instead receive personal notice or notice by mail.¹⁵⁴ This is because “process which is a mere gesture is not due process.”¹⁵⁵ “The means employed must be such as one desirous of actually informing the [party] might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected”¹⁵⁶

III. ANALYSIS

Kansas’s notice by publication laws, as they currently stand, violate the Fourteenth Amendment’s requirement of procedural due process because placing notices in print newspapers alone is no longer “reasonably certain” to inform affected Kansans. This method of disseminating notice is also unlikely to meet Kansas’s long-standing public policy goal of providing the public with reasonable notice of meetings of its

151. Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 IND. L.J. 747, 764–65 n.104 (2000) (“The classic in rem proceeding adjudicates the rights and claims of all parties to specific property.”).

152. Ellen F. Friedman, Note, *The Constitutionality of Request Notice Provisions in In Rem Tax Foreclosures*, 56 FORDHAM L. REV. 1209, 1219 (1988) (noting that the United States Supreme Court’s “examination of notice requirements for in rem actions has expanded from acceptance of the legal fiction of ‘constructive notice’ by publication to the requirement that notice be reasonably geared to reach interested parties”); Note, *Requirements of Notice in In Rem Proceedings*, 70 HARV. L. REV. 1257, 1260 (1957) [hereinafter *Requirements of Notice in In Rem Proceedings*] (noting that in rem actions “concern the title or status of property within the territorial limits of the state, and judgments are binding on the whole world”).

153. KAN. STAT. ANN. § 60-307(a)(1) (2005 & Supp. 2020) (noting that service by publication may be made “[i]n an action to obtain a divorce . . . if the party with due diligence is unable to serve summons on the defendant”); *Requirements of Notice in In Rem Proceedings*, *supra* note 152, at 1269 (noting that “in divorce actions, the courts now seem to be considering the problem of notice in terms of *Mullane*”).

154. See *Mullane*, 339 U.S. at 315; *Walker*, 352 U.S. at 115; *Pierce*, 434 P.2d at 866; *Akins*, 21 P.3d at 540.

155. *Mullane*, 339 U.S. at 315.

156. *Id.*

administrative and legislative bodies. To better comport with procedural due process and meet this public policy goal, Kansas should update its notice by publication laws to include online newspapers and government websites. Because Kansans are increasingly relying on the internet as their primary source for receiving information,¹⁵⁷ updating the state's notice by publication laws to include these online websites in addition to print newspapers will provide a more sufficient method of notice and leave Kansans better informed.

A. Print Newspapers Alone No Longer Provide Reasonable Notice

If the print newspaper industry in Kansas continues to decline, it will become increasingly challenging for print newspapers to provide reasonable notice, both in the procedural due process context and in the legislative context. In the procedural due process context, as set out in *Mullane* and its progeny,¹⁵⁸ notice of pending lawsuits must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”¹⁵⁹ This raises the question of whether, under the current circumstances facing the print newspaper industry, they still meet this requirement. The industry is currently facing difficult decisions regarding how to withstand Kansas residents' ever-increasing reliance on the internet as their primary source for receiving information. Their reliance on the internet has the potential to stop the presses, and has caused concerns for print newspapers throughout Kansas, from those in its largest cities to its smallest. In these cities, reduced revenue and the resulting decline in print circulation leads to an inevitable question: Do print newspapers alone still provide notice that is “reasonably certain” to inform affected Kansans, or should Kansas supplement its notice by publication laws by including online newspapers and government websites as additional methods of disseminating notice?

To answer this question, it is necessary to examine *Mullane* and its progeny. Under the *Mullane* standard, where notice is required it must be “reasonably certain to inform those affected” in order to comply with procedural due process and be constitutionally sufficient.¹⁶⁰ Although

157. See, e.g., *Pratt Tribune Announcement*, *supra* note 4 (noting that “[t]he decision to change [its] print distribution [was] part of a much broader digital transformation, impacting . . . newspapers across the country” and stating that its digital platforms, including the online version of its newspaper and its social media pages, have been experiencing an increase in visitors).

158. See *Mullane*, 339 U.S. at 315; *Walker*, 352 U.S. at 115; *Pierce*, 434 P.2d at 866; *Akins*, 21 P.3d at 540.

159. *Mullane*, 339 U.S. at 314.

160. *Id.* at 315.

Mullane does not stand for the proposition that notice by publication in print newspapers violates Kansans' procedural due process rights, in light of the declining print newspaper industry this method of disseminating notice may no longer be the most effective option.¹⁶¹ While Kansas's notice by publication laws make no mention of needing anything beyond print newspapers, longstanding precedent suggests that Kansas could provide more effective notice by supplementing notice by publication in print newspapers with additional methods of notice.¹⁶²

This precedent includes the cases of *Walker v. City of Hutchinson*, *Pierce v. Board of County Commissioners of Leavenworth County*, and *Board of County Commissioners of Reno County v. Akins*.¹⁶³ In *Walker*, the United States Supreme Court held that notice by publication in the print newspaper did not provide reasonable notice to a landowner in a condemnation proceeding.¹⁶⁴ The Court, noting that "mere newspaper publication rarely informs a landowner of proceedings against his property," stated that the City of Hutchinson, Kansas should have utilized a more effective method of disseminating notice.¹⁶⁵ As a suggested method for this notice, the Court stated that "[e]ven a letter would have apprised him that his property was about to be taken"¹⁶⁶ In *Pierce*, the Kansas Supreme Court held that notice by publication in the print newspaper did not provide reasonable notice to landowners in a tax foreclosure proceeding.¹⁶⁷ The court noted that because the landowners' mailing address was on file with the county treasurer, notice by publication was not the method most "reasonably certain" to inform the landowners.¹⁶⁸ The mailing address was an available method of notice that, if used, would have left them better informed.¹⁶⁹ In *Akins*, the Kansas Supreme Court again held that notice by publication in the print newspaper did not provide reasonable notice in a tax foreclosure proceeding.¹⁷⁰ The court noted that because the county could have found the landowners' last known address, notice by publication was not the method of notice most reasonably certain to inform them.¹⁷¹ These cases demonstrate the theory behind notice by

161. *Akins*, 21 P.3d at 540.

162. See KAN. STAT. ANN. § 64-101 (2005); KAN. STAT. ANN. § 12-1651 (2001); *Walker*, 352 U.S. at 115; *Pierce*, 434 P.2d at 866; *Akins*, 21 P.3d at 540.

163. *Walker*, 352 U.S. at 115; *Pierce*, 434 P.2d at 866; *Akins*, 21 P.3d at 540.

164. *Walker*, 352 U.S. at 116.

165. *Id.*

166. *Id.*

167. *Pierce*, 434 P.2d at 866.

168. *Id.*

169. *Id.*

170. Bd. of Cnty. Comm'rs v. *Akins*, 21 P.3d 535, 542 (Kan. 2001).

171. *Id.* at 541-42.

publication—that it is sufficient in situations where there is not enough information about the affected parties to give them personal notice or notice by mail.¹⁷² As noted in *Walker*, however, “[i]n too many instances notice by publication is no notice at all.”¹⁷³

The instances in which notice by publication provides “no notice at all” may become more frequent due to the decline of the print newspaper industry in Kansas. Because Kansas’s current notice by publication laws state that the sole location for disseminating notice is in print newspapers, their declining circulation rates could be problematic from a procedural due process standpoint.¹⁷⁴ Simply put, “[i]f you don’t get it, you don’t get it.”¹⁷⁵ This phrase, a long-running advertising tagline for a newspaper company, helps emphasize the idea that if affected parties do not subscribe to the particular print newspaper that published the notice, they will not notice it.¹⁷⁶ Because the “reasonable notice” standard in *Mullane* states that the method of disseminating notice must be “such as one desirous of actually informing the [party] might reasonably adopt to accomplish it,” this suggests that Kansas’s current method of disseminating notice, print newspapers alone, may no longer meet this standard.¹⁷⁷

Methods of notice currently in use throughout Kansas that could help supplement the state’s notice by publication laws include online newspapers and government websites, as well as various social media pages. The *Pratt Tribune*, for example, noted that the online version of its newspaper, which features new stories every day, unlike its weekly print counterpart, has received increased readership.¹⁷⁸ To better inform affected residents, the *Pratt Tribune* also supplements its print newspaper with a Facebook page.¹⁷⁹ This page features daily updates and, notably, “visitors from social media more than doubled” in 2019.¹⁸⁰ As another example, *The Wichita Eagle* now describes itself as “a digital news organization that also prints a paper” and notes that every day “nearly four times as many people read” the online version of its newspaper as read the

172. Alexander, *supra* note 151, at 767; Friedman, *supra* note 152, at 1219–20; *Requirements of Notice in In Rem Proceedings*, *supra* note 152, at 1264–65.

173. *Walker v. City of Hutchinson*, 352 U.S. 112, 117 (1956).

174. See KAN. STAT. ANN. § 64-101 (2005); KAN. STAT. ANN. § 12-1651 (2001).

175. Paul Farhi, *The Washington Post’s New Slogan Turns Out to Be an Old Saying*, WASH. POST (Feb. 24, 2017), https://www.washingtonpost.com/lifestyle/style/the-washington-posts-new-slogan-turns-out-to-be-an-old-saying/2017/02/23/cb199cda-fa02-11e6-be05-1a3817ac21a5_story.html [<https://perma.cc/EEV8-BE5A>] (noting that *The Washington Post* had the “long-running advertising tagline, ‘If you don’t get it, you don’t get it’”).

176. *Id.*

177. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 315 (1950).

178. *Pratt Tribune Announcement*, *supra* note 4.

179. *Id.*

180. *Id.*

printed version.¹⁸¹ The Sedgwick County Commissioners, discussing dissemination of notices, stated that “[i]n the information age of the 21st century, we have lots of ways to get this data out to people,” including publishing the notices online and on the county’s smartphone app.¹⁸² Additionally, the cities of Hays and McPherson both exempted themselves from Kansas’s notice by publication laws and now use their cities’ online government websites to disseminate notices.¹⁸³

Kansans’ ever-increasing reliance on these online websites as their primary source for receiving information bolsters the proposition that online newspapers and government websites could supplement print newspapers and help ensure that they are “reasonably certain” to provide notice to affected Kansans. The “reasonable notice” standard in *Mullane* pushes for the placement of notices on these online websites because if we can engage in the legal fiction that a person receives notice because they subscribe to a print newspaper (which may have a limited geographical reach), we can certainly engage in the legal fiction that a person has access to the internet and could search online to find pertinent notices (because such notices are actually published to the entire world, not just the confines of a particular print newspaper’s circulation). Thus, to better comport with procedural due process, the principles behind *Mullane* suggest that notices should appear in online newspapers and government websites in addition to print newspapers because this will help ensure that the notices are “reasonably certain to inform those affected.”

In the legislative context, Kansas has a non-constitutional public policy goal of providing the public with reasonable notice of meetings of its administrative and legislative bodies. As mentioned previously, Kansas’s current notice by publication laws are concerning because nothing prohibits a city from choosing an obscure newspaper as its official city newspaper.¹⁸⁴ As the definition of “obscure” suggests, such newspapers are less likely to provide reasonable notice to Kansas residents.¹⁸⁵ The residents of Sedgwick County recently experienced this when the Sedgwick County Commissioners moved the City of Wichita’s notices about “mill levies, sales, fund balances and delinquent personal and real estate property taxes” from *The Wichita Eagle* to the more obscure

181. Roehrman, *supra* note 37.

182. Salazar, *supra* note 72; *see also Sedgwick County Government*, *supra* note 81 (previewing the Sedgwick County smartphone app, which features a “Legal Notifications” button that app users can utilize to inform themselves of the notices that may affect them).

183. Kiser, *supra* note 83; Wagoner, *supra* note 103.

184. *See* KAN. STAT. ANN. § 64-101 (2005); KAN. STAT. ANN. § 12-1651 (2001).

185. *Obscure*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/obscure> [<https://perma.cc/3664-W2WV>] (last visited Apr. 6, 2021) (defining “obscure” as “relatively unknown” and “not prominent”).

Derby Informer.¹⁸⁶ This move, though it complies with Kansas's current notice by publication laws, means that significantly less residents are receiving these notices, as *The Wichita Eagle* has a daily, Monday through Saturday, circulation rate of over 30,000 copies, while the *Derby Informer* has a weekly circulation rate of only 1,500 copies.¹⁸⁷ Because the so-called *Informer* informs far less residents, it is challenging to see how it alone can provide reasonable notice. To determine if the *Derby Informer* provides reasonable notice, an analysis of its impact on these residents is necessary. The long and short of it is that these residents' chances of seeing the potentially critical notices that may affect them is considerably less than had the city retained *The Wichita Eagle* as its official city newspaper. Because one of the goals of publishing notices is to ensure that a notice receives the widest publicity practicable, the city's decision to move its notices to an obscure newspaper with a much lower circulation rate raises red flags on the reasonableness of that decision.¹⁸⁸

Choosing an obscure newspaper, however, may become inevitable for other cities in Kansas if the print newspaper industry continues to decline. The industry went from having 202 daily and weekly print newspapers in 2004 to just 174 in 2019.¹⁸⁹ Because 146 of Kansas's 174 remaining print newspapers have weekly circulations, those that serve as official city newspapers provide their residents with a mere one chance a week to see the legal and public notices that may affect them.¹⁹⁰ Additionally, counties with only one newspaper have become more prevalent in Kansas.¹⁹¹ Of its 105 counties, sixty-one counties have only one newspaper, and one county has no newspaper.¹⁹² This raises a practical concern for newspaper companies regarding providing residents with reasonable notice. If the number of newspaper companies in Kansas continues to decrease, those that do remain will find themselves spread thin trying to provide coverage for a vast area. Thus, under the current circumstances facing the print newspaper industry, print newspapers alone no longer provide the public with reasonable notice.

B. Kansas Should Alter its Notice by Publication Laws and Include Online Newspapers and Government Websites in Addition to Print

186. Salazar, *supra* note 72.

187. *Id.*

188. See Rieders, *supra* note 3, at 1010; MARTIN & HANSEN, *supra* note 51, at 57.

189. Abernathy, *The Expanding News Desert: Kansas*, *supra* note 4.

190. *Id.*

191. See *supra* notes 19–20 and accompanying text.

192. See *supra* notes 19–20 and accompanying text.

Newspapers

While Kansas's notice by publication laws make no mention of needing anything beyond print newspapers, longstanding precedent suggests that Kansas could provide more effective notice by supplementing notice by publication in print newspapers with additional methods of notice.¹⁹³ Because notices must be "reasonable," both in the procedural due process context and in the legislative context, it is necessary to analyze these statutes and assess their constitutionality.¹⁹⁴ To assess the constitutionality of these statutes requires an "as-applied challenge." An "as-applied challenge" is a "claim that a law or governmental policy, though constitutional on its face, is unconstitutional as applied . . . [and] that a statute is unconstitutional on the facts of a particular case or in its application to a particular party."¹⁹⁵ The facts surrounding the decline of the print newspaper industry suggest that Kansas's notice by publication laws, Kan. Stat. Ann. § 64-101 and Kan. Stat. Ann. § 12-1651, are unconstitutional "as-applied." Many counties in Kansas have only one newspaper, and strict compliance with Kan. Stat. Ann. § 64-101, for example, requires that notices be "published in the county in which the city publishing the official publication is located."¹⁹⁶ If the county's one newspaper happened to go out of business, its residents would be left uninformed because they would no longer have access to pertinent legal and public notices. Although the statute does provide a safeguard for this by stating that if there is no newspaper published in the county, it "shall be published in Kansas," this is not particularly encouraging regarding whether residents will receive reasonable notice.¹⁹⁷ Even in counties with one newspaper, Kansans may not be receiving reasonable notice.

As Kansas's print newspapers continue to decline, the newspapers that do remain will find themselves spread thin trying to provide coverage for a vast area. Douglas County experienced this when it became a one-

193. See KAN. STAT. ANN. § 64-101 (2005); KAN. STAT. ANN. § 12-1651 (2001).

194. See *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950); *Walker v. City of Hutchinson*, 352 U.S. 112 (1956); *Pierce v. Bd. of Cnty. Comm'rs*, 434 P.2d 858 (Kan. 1967); *Bd. of Cnty. Comm'rs v. Akins*, 21 P.3d 535 (Kan. 2001); KAN. STAT. ANN. §§ 77-501–77-566 (2019) (Kansas Administrative Procedure Act); KAN. STAT. ANN. §§ 75-4317–75-4320a (2019) (Kansas Open Meetings Act).

195. *Challenge*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "as-applied challenge").

196. *Abernathy*, *The Expanding News Desert: Kansas*, *supra* note 4; KAN. STAT. ANN. § 64-101 (2005).

197. KAN. STAT. ANN. § 64-101 (2005).

newspaper county when the *Baldwin City Signal* closed in 2015.¹⁹⁸ The closure left its residents concerned regarding how they would stay informed, especially considering the fact that the city would now have to share one journalist with other communities.¹⁹⁹ Because the journalist had to cover a larger area, the residents noted that there was no way he could provide notice of everything happening in the city.²⁰⁰ The city's news coverage also suffered the consequence of reduced timeliness, with one resident noting that "[n]ow [we] get news about things that will happen after they have already happened."²⁰¹

Reduced timeliness is highly concerning because notice received after the fact is tantamount to no notice at all. There is also a serious loss of timeliness when Kansans have to wait a week to have a notice printed in the newspaper. Print newspapers, particularly those that have a weekly circulation, fall short of achieving the "reasonable notice" requirement. Take, for example, a notice for a hearing printed in a weekly newspaper that contained an error. The city's newspaper, due to its publishing schedule, would not be able to correct the error until the next week. This could cause a significant delay in the proceeding and would waste both time and money. Had this same notice occurred in a daily print newspaper, the city could have at least corrected it the next day. Most ideal, and certainly most timely, however, would be if the city could place the correction in its online newspaper or on a government website. Placing the correction in the city's online newspaper or on a government website is ideal because not only are these online sources updated frequently, they also would allow the city to disseminate the corrected notice at any time of day.²⁰² Doing so would better inform affected Kansans and provide more reasonable notice.

One argument against online newspaper and government websites' ability to provide reasonable notice is that not all Kansans have access to the internet.²⁰³ According to a recent study, approximately 95,000

198. *Baldwin City Signal Ending Publication*, *supra* note 5; Abernathy, *The Expanding News Desert: The Loss of Newspapers*, *supra* note 23 (citing a lack of advertising and subscription revenue as being the reason the *Baldwin City Signal* closed in 2015).

199. Abernathy, *The Expanding News Desert: The Loss of Newspapers*, *supra* note 23.

200. *Id.*

201. *Id.*

202. Rieders, *supra* note 3, at 1034 (noting that online newspapers are "updated frequently").

203. Corinne Boyer, *New Kansas Broadband Map Shows Internet Accessibility, and the Areas Sans Service May Surprise You*, KMUW (Aug. 2, 2019, 10:00 AM), <https://www.kmuw.org/post/new-kansas-broadband-map-shows-internet-accessibility-and-areas-sans-service-may-surprise-you> [<https://perma.cc/7TVU-SMYG>] ("the data shows that more than 95,000 people, or about 3.5% of the state's population, do not have internet access").

Kansans lack such access.²⁰⁴ For reference, Kansas is home to just under three million residents.²⁰⁵ This argument would bear more weight if *Mullane* and its progeny stood for the proposition that the statutorily required location for disseminating notice should be these online websites “instead of” print newspapers. Because these cases stand for the proposition that the statutorily required location for disseminating notice should be online newspapers and government websites “in addition to” print newspapers, however, Kansas residents lacking internet access would still be reasonably informed. Print newspapers would still be available and these residents would also be able to access the internet at public libraries.

Retaining print newspapers as a method of disseminating notice would also benefit the newspaper industry. While it is true that the internet would provide an accessible form of notice,²⁰⁶ if online newspapers and government websites were to replace print newspapers as Kansas’s statutorily required location for disseminating notice, print newspapers would stand to lose a substantial source of their revenue.²⁰⁷ This revenue comes from a variety of sources. Two such entities that must provide notice by publication in print newspapers include townships²⁰⁸ and school boards.²⁰⁹ There are also many cases in which notice by publication may be made, including divorces,²¹⁰ annulments,²¹¹ and name changes.²¹² Still others include probate,²¹³ condemnation proceedings,²¹⁴ and sale at public

204. *Id.*

205. *Quick Facts: Kansas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/KS> [<https://perma.cc/V53G-RY2C>] (last visited Apr. 6, 2021) (the United States Census Bureau listed Kansas as having a population of 2,913,314 residents on July 1, 2019).

206. Jordan S. Ginsberg, Comment, *Class Action Notice: The Internet’s Time Has Come*, 2003 U. CHI. LEGAL F. 739, 770 (2003) (quoting Richard H. Walker, David M. Levine & Adam C. Pritchard, *The New Securities Class Action: Federal Obstacles, State Detours*, 39 ARIZ. L. REV. 641, 654 (1997)) (noting that “[s]potting . . . notice[s] in a newspaper is ‘subject to the happenstance’ of purchasing the newspaper that day” while “notice transmitted via computers remains accessible” for a longer period of time).

207. *See, e.g.*, Hanna, *supra* note 96 (noting that *The Gardner News*, which had been the official city newspaper of Gardner, Kansas for three decades, stood to lose thousands of dollars a year when the city chose a new official city newspaper).

208. *See, e.g.*, KAN. STAT. ANN. § 80-410(b) (2019) (noting that “[t]he treasurer of each township having an annual budget exceeding \$25,000 shall publish . . . in a newspaper of general circulation in the township . . . a summary which shows totals for categories of the receipts, expenditures, and liabilities of such township . . .”).

209. *Id.* § 64-101(c) (2005).

210. *Id.* § 60-307(a)(1) (2005 & Supp. 2020).

211. *Id.*

212. *Id.* § 60-1402(b) (2005).

213. *Id.* § 59-2209 (2005).

214. *Id.* § 26-201 (2000 & Supp. 2020).

auction.²¹⁵ The fees associated with these publications vary and, by statute, “[a] newspaper shall charge and receive for publishing a legal advertisement a rate not exceeding the lowest regular classified advertising rate charged by the newspaper to its commercial customers.”²¹⁶ Without this revenue, print newspapers in Kansas may struggle to survive, especially if the industry’s decline in subscribers and overall readership continues.

The facts surrounding the decline of the print newspaper industry suggest that Kansas’s notice by publication laws, as-applied, violate the Fourteenth Amendment’s requirement of due process because placing notices in print newspapers alone is no longer “reasonably certain” to inform affected Kansans. These facts also suggest that this method of disseminating notice is unlikely to meet Kansas’s long-standing public policy goal of providing the public with reasonable notice of meetings of its administrative and legislative bodies. To better comport with procedural due process and meet this public policy goal, Kansas should update its notice by publication laws to include online newspapers and government websites. Because Kansans are increasingly relying on the internet as their primary source for receiving information,²¹⁷ updating the state’s notice by publication laws to include these online websites in addition to print newspapers will provide a more sufficient method of notice and leave Kansans better informed.

C. The National Trend from State Legislators to Shift to Online Publication

Recent developments in notice by publication laws show a national trend from state legislators to alter the practice of placing notices in print newspapers and shift to online publication. Bills pushing for this reform

215. *Id.* § 59-2243 (2005).

216. *Id.* § 28-137(a) (2000).

217. *See, e.g., Pratt Tribune Announcement, supra* note 4.

have appeared in Kansas,²¹⁸ Connecticut,²¹⁹ Florida,²²⁰ Idaho,²²¹ Illinois,²²² Michigan,²²³ Missouri,²²⁴ New Jersey,²²⁵ North Carolina,²²⁶ West Virginia,²²⁷ and other states.

218. H.B. 2237, 2019–2020 Legis. Sess. (Kan. 2019), http://www.kslegislature.org/li/b2019_20/measures/hb2237/ [<https://perma.cc/27NE-T78Q>] (Kansas bill that would have “allow[ed] cities and counties to publish legal notices on the internet” that died in committee on May 21, 2020); *Public Notice Bill Introduced in Kansas Legislature*, KAN. PRESS ASS’N (Feb. 15, 2019), <https://kspress.com/news/2019/02/15/public-notice-bill-introduced-in-kansas-legislature> [<https://perma.cc/M2U9-U3RB>]; *Public Notice Bill Hearing Cancelled*, KAN. PRESS ASS’N (Mar. 1, 2019), <https://kspress.com/news/2019/03/01/public-notice-bill-hearing-cancelled> [<https://perma.cc/7H73-QMTF>].

219. The Associated Press, *Connecticut Courts Moving Notices from Newspapers to Website*, NORWICH BULL. (Dec. 27, 2019, 6:11 AM), <https://www.norwichbulletin.com/news/20191227/connecticut-courts-moving-notices-from-newspapers-to-website> [<https://perma.cc/2WKA-R6BB>]; Richard Karpel, *Connecticut Courts Move Notices to Government Website*, PUB. NOTICE RES. CTR. (Feb. 4, 2020), <https://www.pnrc.net/2020/02/04/connecticut-courts-move-notices-to-government-website/> [<https://perma.cc/S3V5-H4WY>] (Connecticut’s court system moved its notices from newspapers to the Judicial Branch’s website and noted that “[i]t is expected that this will save a great deal of time and expense, and provide greater accuracy and broader notice than newspaper publication . . .”).

220. Mary Ellen Klas, *Bill Would Repeal Law Requiring Governments to Post Legal Notices in Newspapers*, MIA. HERALD (Feb. 7, 2020, 6:36 AM), <https://www.miamiherald.com/news/politics-government/state-politics/article240057388.html> [<https://perma.cc/VJ9Y-DCCF>]; A.G. Gancarski, Drew Wilson & Jacob Ogles, *House Votes to Nix Legal Notices in Newspapers*, FLA. POL. (Mar. 4, 2020), <https://floridapolitics.com/archives/321671-house-remove-legal-notices> [<https://perma.cc/SUY9-KNXC>] (noting that in Florida, “[t]he House passed legislation . . . that would allow public notices to go on city websites instead of the local paper” and pointing out that “newspapers were central to life decades ago, but that’s no longer the case today”).

221. Nathan Brown, *New Bill Would Change Public Notice Requirements*, POST REG. (Feb. 15, 2019), https://www.postregister.com/news/government/new-bill-would-change-public-notice-requirements/article_70b6d545-4fa4-566a-a4ec-de281bf6ff4f.html [<https://perma.cc/PMD2-S73F>].

222. Opinion, *Published Public Notices Keep People in the Know*, PEORIA J. STAR (Apr. 13, 2019, 6:27 PM), <https://www.pjstar.com/opinion/20190413/editorial-published-public-notices-keep-people-in-know> [<https://perma.cc/ESC9-E2F7>].

223. Richard Karpel, *Michigan Newspapers on High Alert for New Public Notice Bill*, PUB. NOTICE RES. CTR. (Oct. 2, 2019), <https://www.pnrc.net/2019/10/02/michigan-newspapers-on-high-alert-for-new-public-notice-bill/> [<https://perma.cc/XZ5J-82RN>]; Richard Karpel, *Public Notice in Grave Danger in Michigan*, PUB. NOTICE RES. CTR. (Dec. 1, 2020), <https://www.pnrc.net/2020/12/01/public-notice-in-grave-danger-in-michigan/> [<https://perma.cc/6NKJ-ABCG>] (noting that Michigan has been pushing for this reform for twelve years).

224. Travis Zimpfer, *Legislation Would Move Public Notices Online and out of Newspapers*, MO. TIMES (Jan. 16, 2017), <https://themissouritimes.com/legislation-move-public-notices-online-newspapers/> [<https://perma.cc/7YJ9-GFZL>].

225. Maryanne Reed, Opinion, *Fighting to Keep Public Notices in Newspapers*, NIEMAN REPS. (Jan. 3, 2019), <https://niemanreports.org/articles/fighting-to-keep-public-notices-in-newspapers/> [<https://perma.cc/NWZ7-MLYN>].

226. Lauren Horsch, *New NC Law Hits Newspapers, Evades Gov. Cooper’s Veto*, NEWS & OBSERVER (Oct. 6, 2017, 3:37 PM), <https://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article177475011.html> [<https://perma.cc/LL3W-LTBV>].

227. Editorial, *Public Notice: Proposal Limits Access to Important Information*, PARKERSBURG NEWS & SENTINEL (Feb. 18, 2020), <https://www.newsandsentinel.com/opinion/editorials/>

Various courts have also made note of the decline of the print newspaper industry and have cited the need for statutory reform. These include courts in Georgia, California, Ohio, and New York, among others.²²⁸ In *Catoosa County v. Rome News Media, LLC*, the Georgia Court of Appeals noted that “significant advancements in technology have drastically altered the way information is disseminated from news outlets to the public” and stated that it may be time to reform the state’s notice by publication laws in light of these technological advances.²²⁹ In *In re Establishment of Press-Enterprise as a Newspaper of General Circulation*, a California Appeals Court noted that it may be time for the state to reform its notice by publication laws because the “means by which people receive community news has changed greatly from 1923 to 2015, from printed newspapers to online sources.”²³⁰ In *Dispatch Printing Co. v. Recovery Ltd. Partnership*, an Ohio Appeals Court stated that “in our digital age, it is questionable whether providing legal notices in printed media remains an adequate form of notice.”²³¹ The court also asserted that “the American public has become much more particular as to where it receives its news” and stated that “[s]ocial media, whether in blogs, Facebook or Twitter, has pushed aside the more traditional news sources like the mainstream local and national print newspapers.”²³² In *In re Probate Proceeding of the Will of Gladys Maynard*, the Surrogate’s Court of New York noted that “publication of . . . legal notices in print

2020/02/public-notice-proposal-limits-access-to-important-information/ [https://perma.cc/QLY9-FKEQ]; Barry Smith, *Missouri Papers Take the Offensive; Unusual Notice Bills Introduced in Idaho and West Virginia*, PUB. NOTICE RES. CTR. (Mar. 5, 2019), <https://www.pnrc.net/2019/03/05/missouri-papers-take-the-offensive-unusual-notice-bills-introduced-in-idaho-and-west-virginia/> [https://perma.cc/M679-RHJV] (noting that “West Virginia Senate Bill 623 would establish a four-year process during which the transition from notice in printed newspapers to notice on newspaper websites would take place” and that it “would require qualified newspapers to have an online version of their publication by July 2021”).

228. See, e.g., *Catoosa Cnty. v. Rome News Media, LLC*, 825 S.E.2d 507, 515 (Ga. Ct. App. 2019); *In re Establishment of Press-Enter. as a Newspaper of Gen. Circulation*, 186 Cal. Rptr. 3d 768, 780 n.4 (Cal. Ct. App. 2015); *Dispatch Printing Co. v. Recovery Ltd.*, 31 N.E.3d 190, 195 (Ohio Ct. App. 2015); *In re Last Will of Maynard*, No. 2010-361715, 2013 WL 6184036, at *2 n.1 (Sur. Ct. N.Y. Oct. 31, 2013); *In re E.R.*, 385 S.W.3d 552, 560–61 (Tex. 2012) (There, the Texas Supreme Court addressed the reasonableness of notice by publication and asserted that it was already “constitutionally suspect in 1950” (the year of the *Mullane* decision) and that it “is even more vulnerable today, given the precipitous decline in newspaper readership”); *Salt Lake City Corp. v. Jordan River Restoration Network*, 299 P.3d 990, 1016–17 (Utah 2012) (There, the Utah Supreme Court addressed the reasonableness of notice by publication provided to the public in a print newspaper and online and noted that “[t]he Legislature’s decision to publish notice in both traditional print and digital media formats represents a forward thinking choice that maximizes the availability of legal notice to citizens”).

229. 825 S.E.2d at 515.

230. 186 Cal. Rptr. 3d at 780 n.4.

231. 31 N.E.3d at 195.

232. *Id.*

newspapers may soon be replaced with publication in on-line newspapers and other digital forums.”²³³

Despite the national trend from state legislators and the increasing endorsements from courts across the country to alter states’ notice by publication laws, Kansas’s most recent bill pushing for this reform was unsuccessful.²³⁴ House Bill No. 2237, introduced on February 12, 2019, would have amended Kansas’s notice by publication laws to allow government websites meeting various requirements to become the statutorily required location for legal and public notices.²³⁵ This would have been “instead of,” rather than “in addition to” print newspapers due to the use of the word “or” in these sections.²³⁶ The proposed amendments to the introductory sections of Kan. Stat. Ann. § 64-101 and § 12-1651 would have read as follows:

64-101. (a) The governing body of each city of the first class shall designate by resolution a newspaper *or website* to be the official ~~city newspaper~~ *publication source for the city*. Once designated, the newspaper *or website* shall be the official ~~city newspaper~~ *publication source for the city* until such time as the governing body designates a different newspaper *or website*.

12-1651. (a) The governing body of each city of the second and third class shall designate by resolution a newspaper *or website* to be the official ~~city newspaper~~ *publication source for the city*. Once designated, the newspaper *or website* shall be the official ~~city newspaper~~ *publication source for the city* until such time as the governing body designates a different newspaper *or website*.²³⁷

Under the proposed amendments, if a city wanted to use a website to disseminate its notices, it would have had to designate it as the “official publication source for the city.”²³⁸ The proposed amendments state that, to become the official publication source, it must be a website that:

- (1) Is the official website for the board or entity or has been selected by the board or entity to be the official publication source for such board or entity;
- (2) is not password protected;
- (3) is accessible to members of the general public;
- (4) does not have any fee associated with or charged for accessing the website; and

233. 2013 WL 6184036, at *2 n.1.

234. *See supra* note 218.

235. *See supra* note 218.

236. H.B. 2237, 2019–2020 Legis. Sess. (Kan. 2019).

237. *Id.* (alterations in original).

238. *Id.*

(5) is a specific webpage that is titled ‘Legal Publications’ and is accessible from the homepage of the city, county or school website.²³⁹

When publications were to occur on the designated websites, the amendments required that they “remain on the website for at least 90 days.”²⁴⁰ Although similar bills appeared in both 2015 and 2017, marking Kansas’s lingering interest in this reform, House Bill No. 2237 died on May 21, 2020.²⁴¹

Although Kansas was unsuccessful in this attempt to amend its notice by publication laws, it should keep pushing for this reform. It should, however, readdress its approach in order to better protect Kansans’ procedural due process rights and to better align with its non-constitutional public policy goal of providing the public with reasonable notice of meetings of its legislative bodies. As noted previously, to provide effective notice, both in the procedural due process context and in the legislative context, the chosen method of dissemination must be reasonably certain to inform affected Kansans.²⁴² Because House Bill No. 2237 proposed a somewhat polarizing print newspapers *or* government websites approach, it would not have provided the most effective method of disseminating notice. The use of the word “or” indicated that cities would have had to choose between disseminating their legal and public notices in print newspapers or on government websites. Additionally, under the requirements for websites, online newspapers would not have been able to serve as the “official publication source for the city” because there are fees associated with accessing their websites. Notably, one aspect of the proposal that did provide increased protection of Kansans’ procedural due process rights and that better met the state’s public policy goal was the proposal’s requirement that legal and public notices remain on the city’s designated website for at least ninety days. Ninety days is

239. *Id.*

240. *Id.*

241. See *supra* note 218; Tim Carpenter, *Legal Notices May Move to Internet*, SALINA J. (Mar. 17, 2015, 2:00 AM), <https://www.salina.com/article/20150317/News/303179924> [<https://perma.cc/ZK94-FXQA>] (discussing the 2015 bill); Bryan Lowry, *Kansas Legislative Agenda Heavy with Transparency Bills*, WICHITA EAGLE (Mar. 15, 2015, 8:34 AM), <https://www.kansas.com/news/local/article14446004.html> [<https://perma.cc/9SHB-JWTE>] (discussing the 2015 bill); H.B. 2247, 2017–2018 Legis. Sess. (Kan. 2017), http://www.kslegislature.org/li_2018/b2017_18/measures/HB2247/ [<https://perma.cc/NH3W-6D2C>] (Kansas bill that would have “authoriz[ed] use of internet websites for legal publications” that died on May 4, 2018); H.B. 2237, 2015–2016 Legis. Sess. (Kan. 2015), http://www.kslegislature.org/li_2016/b2015_16/measures/hb2237/ [<https://perma.cc/E52P-P4AT>] (Kansas bill “pertaining to using the internet for official publications; amending K.S.A. 12-1651 and 64-101” that died on June 1, 2016).

242. See *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314–15 (1950); *Legislative Procedure in Kansas*, *supra* note 7.

considerably longer than most Kansans probably keep a print newspaper before throwing it out or recycling it.

When Kansas next proposes an amendment to its notice by publication laws, it should adopt an “in addition to” rather than an “instead of” approach. By altering Kansas’s notice by publication laws to include online newspapers and government websites in addition to print newspapers, more Kansans will have the opportunity to receive notice. Because a goal of publishing notices is to ensure that they receive the widest publicity practicable, an “in addition to” approach would achieve this goal more effectively than an “instead of” approach.²⁴³ This approach would also be more likely to result in a successful attempt to amend Kansas’s notice by publication laws because there would be less pushback from the newspaper industry. Because House Bill No. 2237’s approach would have allowed cities to choose between print newspapers and government websites, it is challenging to imagine a situation where a city would not choose the free option, government websites. The newspaper industry, already experiencing a steady decline in subscribers and overall readership, would have stood to lose a significant source of revenue had the proposed bill passed. Thus, Kansas should update its notice by publication laws to include online newspapers and government websites in addition to print newspapers. Doing so will place legal and public notices where the public will notice them and better ensure that these statutes meet the state’s public policy goal and no longer violate Kansans’ procedural due process rights. Because Kansans are increasingly relying on the internet as their primary source for receiving information, updating the state’s notice by publication laws to include these online websites in addition to print newspapers will provide a more effective method of disseminating notice.

IV. CONCLUSION

Kansas’s notice by publication laws, as they currently stand, violate the Fourteenth Amendment’s requirement of procedural due process because placing notices in print newspapers is no longer “reasonably

243. See Rieders, *supra* note 3, at 1010–11 (advocating for an “in addition to” approach where online newspapers would be used alongside print newspapers for dissemination of legal and public notices). “Given the preeminence of the Internet, it seems paradoxical—and inimical to the public interest—for notices to appear in print newspapers without also being published online.” *Id.* See also MARTIN & HANSEN, *supra* note 51, at 57 (noting that “[i]t should not be assumed . . . that . . . electronic products will eventually completely *replace* print newspapers. It is possible, though, that the new digital news products will generate enough subscribership to become important *complements* to print newspapers for the designation as the legal publication for the posting of public notices.”) (emphasis added).

certain” to inform Kansans of pending lawsuits that may affect them. This method of disseminating notice is also unlikely to meet Kansas’s long-standing public policy goal of providing the public with reasonable notice of meetings of its administrative and legislative bodies. To better comport with procedural due process and meet this public policy goal, Kansas should update its notice by publication laws to include online newspapers and government websites in addition to print newspapers. Doing so will provide a more effective method of notice and leave Kansans better informed.