



October 10, 2024

John Wilson
General Counsel
Florida Department of Health
4052 Bald Cypress Way
Tallahassee, Florida 32399

Sent via U.S. Mail and Electronic Mail (health@flhealth.gov)

Dear Mr. Wilson:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech, is concerned by the Florida Department of Health’s attempt to coerce TV stations to stop airing a political ad advocating abortion rights. The ad is core political speech protected by the First Amendment, regardless of whether the Department thinks it includes false information. Under our constitutional framework, counterspeech—not censorship—is the remedy for speech believed to be false. FIRE therefore calls on the Department to immediately rescind its demands that media outlets censor protected political speech.

Our concerns arise out of identical letters the Department sent on October 3, 2024, to at least two Florida TV stations, WCJB-TV and WFLA-TV, concerning their broadcast of a political ad produced by the political committee Floridians Protecting Freedom (FPF).¹ In the ad, a woman diagnosed with brain cancer while pregnant says her doctors “knew if I did not end my pregnancy, I would lose my baby, I would lose my life, and my daughter would lose her mom.”² She adds, “Florida has now banned abortion, even in cases like mine,” then promotes Amendment 4, a ballot initiative that if passed would amend the Florida Constitution to limit state restrictions on abortion.

The Department’s letters assert that the ad falsely claims Florida’s Heartbeat Protection Act “does not allow physicians to perform abortions necessary to preserve the lives and health of pregnant women” and may mislead “[w]omen faced with pregnancy complications posing a serious risk of death or substantial and irreversible physical impairment” into believing

¹ Letter from John Wilson, Gen. Counsel, Fla. Dep’t of Health, to Alan Chatman and Mike Jones, WCJB-TV, Oct. 3, 2024 (on file with author); Letter from John Wilson, Gen. Counsel, Fla. Dep’t of Health, to Mark Higgins, WFLA-TV, Oct. 3, 2024 (together, the “Wilson Letters”) (on file with author).

² Yes on 4 Florida, “Caroline”, YOUTUBE, https://www.youtube.com/watch?v=7jJiEE_AkPA.

“medical treatment” is unavailable under Florida law.³ The letters then warn that disseminating the ad constitutes a “sanitary nuisance” under Florida law, subject to mandatory removal within 24 hours of receiving notice from the Department, because it could “threaten or impair the health and lives of these women.”⁴ Failure to timely remove the nuisance, the letters warn, may result in the Department commencing both civil and criminal legal proceedings.⁵ The letters conclude by purporting to instruct the stations that their First Amendment right to broadcast political ads “does not include free rein to disseminate false advertisements which, if believed, would likely have a detrimental effect on the lives and health of pregnant women in Florida.”⁶

The Department’s characterization of the First Amendment is incorrect. FPF’s political ad, which advocates a position on a significant issue of public concern, “occupies the core of the protection afforded by the First Amendment.”⁷ The Department’s belief that the ad misrepresents the Heartbeat Protection Act—a claim FPF disputes⁸—does not strip FPF’s speech of constitutional protection. The Department therefore lacks authority to “coerce a private party to punish or suppress” that speech on its behalf.⁹

The First Amendment protects speech unless it falls in one of a “few historic and traditional categories,” such as incitement, obscenity, defamation, or true threats.¹⁰ Even assuming FPF’s ad is false or misleading, there is no “general exception” to the First Amendment for “false statements,” which “comports with the common understanding that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation.”¹¹ The state’s belief that the ad’s allegedly false speech “would likely have a detrimental effect on the lives and health of pregnant women” does not legitimize censorship, as the First Amendment does not require speech to survive the government’s “ad hoc balancing of relative social costs and benefits” to receive protection.¹² Florida’s sanitary nuisance law cannot constitutionally overcome—and the Department therefore must interpret and enforce it consistent with—the First Amendment.¹³

³ Willson Letters, *supra* note 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346 (1995).

⁸ Letter from Ezra Reese et al., Elias Law Group, Counsel to FPF, to Alan Chatman and Mike Jones, WCJB-TV, Oct. 4, 2024 (on file with author).

⁹ *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 190 (2024).

¹⁰ *United States v. Alvarez*, 567 U.S. 709, 717 (2012) (cleaned up).

¹¹ *Id.* at 718; *see also New York Times Co. v. Sullivan*, 376 U.S. 254, 271–72 (1964) (recognizing that “erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the breathing space that they need to survive”).

¹² *Alvarez*, 567 U.S. at 717.

¹³ The Department’s claim that a political ad could be a “sanitary nuisance” is extremely dubious, in any event, as nothing in the statute targets speech. It is limited to physical conditions like “[u]ntreated or improperly treated human waste, garbage, offal, dead animals, or dangerous waste materials from

As the Supreme Court has recognized: “The remedy for speech that is false is speech that is true. This is the ordinary course in a free society.”¹⁴ The Department can express disagreement with the message of FPF’s ad. It can inform the public it believes the ad contains inaccurate information. And it can promote media literacy. What it may not do is try to shut down debate on public issues using the threat of fines and imprisonment.

FIRE calls on the Department to rescind its demands that WCJB-TV and WFLA-TV—and any other media outlet—stop airing or disseminating FPF’s political advertisement.

We respectfully request a response by October 24, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Terr", written in a cursive style.

Aaron Terr
Director of Public Advocacy

manufacturing processes,” “air pollutants, gases, and noisome odors,” “[i]mproperly built or maintained septic tanks, water closets, or privies,” and “[u]nclean or filthy places where animals are slaughtered.” Fla. Stat. § 386.041(1). FIRE has found no court decision applying the law to speech.

¹⁴ *Alvarez*, 567 U.S. at 727.