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October 4, 2024

VIA ELECTRONIC MAIL

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Re: Floridians Protecting Freedom Advertisement

To Whom It May Concern:

We write as counsel to Floridians Protecting Freedom (the "***Campaign***") in response to a letter ("***Letter***") from the Florida Department of Health ("***Department***") regarding the Campaign's television advertisement entitled "Caroline" (the "***Advertisement***"). First, and most importantly, this Letter raises serious First Amendment concerns – indeed, it reflects an unconstitutional attempt to coerce the station into censoring protected speech. Second, the Advertisement is true – the Letter provides no evidence to the contrary. The Advertisement must continue to air on your station.

This is not simply an instance where your station has received a baseless cease-and-desist letter in the context of a heated political campaign. We are sure the station is more than familiar with such letters, and how to dispose of them. Here, the Department is threatening the station with criminal prosecution if it does not cease running the Advertisement. This is not just an unfounded request, it is unconstitutional state action. The Letter is a textbook example of government coercion that violates the First Amendment.

It is well-established that the First Amendment "forbids a public official to attempt to suppress the protected speech of private persons by threatening that legal sanctions will at [their] urging be imposed unless there is compliance with [their] demands." *Backpage.com, LLC v. Dart*, 807 F.3d 229, 231 (7th Cir. 2015) (collecting cases). Simply put, "a public official who tries to shut down an avenue of expression of ideas and opinions through 'actual or threatened imposition of government power or sanction' is violating the First Amendment." *Id.* (quoting *American Family Association, Inc. v. City & County of San Francisco*, 277 F.3d 1114, 1125 (9th Cir. 2002)); *see also Weaver v. Bonner*, 309 F.3d 1312, 1323 (11th Cir. 2002) (holding that the

issuance of a "cease and desist request" that prohibited a candidate "from engaging in certain speech is an impermissible prior restraint on protected expression").

The Department, indeed, acknowledges that your station "enjoys the right to broadcast political advertisements under the First Amendment of the United States Constitution and Article I, section 4 of the Florida Constitution." The Advertisement is a political advertisement. It is, as explained below, true. The Advertisement consists of Caroline telling viewers about her own medical experience. The Department does not even attempt to explain how Caroline's recount of her own experience is "false." Simply put, the State of Florida cannot bar political advertisements that do not agree with the State's own preferred narratives and characterizations. The State simply cannot use "intimidation and threat of prosecution" and vague insinuations of illegality to deter the distribution of protected speech with which it disagrees. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 63–64 (1963).

The Department cannot criminalize media outlets running political advertisements with which it disagrees. Such advertisements are not a "sanitary nuisance." They do not expose the stations running the advertisements to criminal sanction. Speech criticizing the government in the context of a political campaign is the lifeblood of democracy and lies at the very heart of the First Amendment's protections. The Department's letter is a flagrant abuse of power, and it should be rejected out of hand.

Second, the Advertisement is true. The Letter vaguely outlines the limited instances where abortions are allowed in Florida but fails to provide any evidence showing that Caroline's statements are false. In fact, Caroline's statements are true: "The 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. Florida has now banned abortion even in cases like mine." Caroline was diagnosed with stage four brain cancer when she was 20 weeks pregnant; the diagnosis was terminal.

Under Florida law, abortions may only be performed after six weeks gestation if "[t]wo physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition." Fla. Stat. § 390.0111(1)(a). And, Florida regulations provide very limited guidance regarding the exceptions and the only instances where the Agency for Health Care Administration has provided guidance that abortions are permitted after six-weeks' gestation are when there is an immediate threat to the pregnant person's life: Preterm premature rupture of membranes (PPROM), ectopic pregnancy, and molar pregnancy Fla. Dept. of Health R. 59AER24-2. None of these enumerated exceptions would have applied in Caroline's case.

Moreover, Caroline's diagnosis was terminal. Practically, that means that an abortion would not have saved her life, only extended it. Florida law would not allow an abortion in this instance because the abortion would not have "save[d] the pregnant woman's life," only extended her life. *See* Dr. Tien Declaration.

The Department may or may not honestly believe that its restrictions on reproductive healthcare are sufficient to protect women's health. But that is not the lived experience of pregnant patients

and doctors in states with abortion bans like Florida. Pregnant patients who have cancer generally cannot undergo chemotherapy. And because the cancer is not immediately life threatening, an abortion is not permitted. *See The Court's Big Abortion Decisions Are Out. What Now?*, Tradeoffs (June 28, 2024), https://tradeoffs.org/2024/06/28/supreme-court-abortion-idaho-mifepristone/. This means that the pregnant person will either need to delay or forego treatment, jeopardizing their life, or travel out of state to obtain an abortion. In any event, women and their medical providers face the untenable reality that they do not know if they will face state prosecution or sanction if government officials second guess their actions. *See* Dr. Tien Declaration.

The Department's letter is a flagrant abuse of power and must be rejected. Moreover, there is no genuine dispute as to the accuracy of the statements in this Advertisement. Your decision to accept the Advertisement must remain undisturbed. Please contact us promptly at 202-968-4554 before the Advertisement's schedule on your station changes in any way.

Best Regards,

Ezra Reese
Ben Stafford
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Elias Law Group

Counsel to Floridians Protecting Freedom