



250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

October 4, 2024

VIA ELECTRONIC MAIL

Alan Chatman & Mike Jones
WCJB-TV
6220 NW 43rd Street
Gainesville FL 32653
alan.chatman@wcjb.com
mike.jones@graymedia.com

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,

A handwritten signature in blue ink, appearing to be 'Ezra Reese', written in a cursive style.

Ezra Reese
Ben Stafford
Emma Olson Sharkey
Elias Law Group

Counsel to Floridians Protecting Freedom

Dr. Tien Declaration

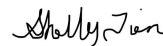
Declaration of Shelly Hsiao-Ying Tien, M.D., M.P.H.

I, Shelly Hsiao-Ying Tien, M.D., M.P.H., am over the age of 18, am competent, and make this declaration based on my personal knowledge, unless otherwise noted.

1. I am a board-certified physician in obstetrics and gynecology, and maternal-fetal medicine. I currently practice at Planned Parenthood of South, East and North Florida (“PPSENF”) and Genesis Maternal-Fetal Medicine in Tucson, Arizona. I also serve as a contract physician for Trust Women Wichita, Kansas.
2. I provide the following opinions as an expert in obstetrics and gynecology and maternal-fetal medicine, including the provision of abortions. The opinions herein are based on my knowledge and experience in these areas, including my training, clinical experience, teaching, ongoing review of the relevant medical literature, and attendance at and participation in relevant conferences. A copy of my curriculum vitae is attached as **Exhibit A**.
3. I also base this declaration on my experience with the unworkable exceptions in Florida’s extreme abortion ban and my understanding of Caroline’s circumstances as set out herein.
4. I submit this declaration to respond to the Department of Health’s letter dated October 3, 2024 (“DOH letter”) regarding the television ad “Caroline” which is currently airing in Florida. The DOH Letter is attached hereto as **Exhibit B**.
5. It is my understanding that in March of 2022, Caroline was diagnosed with a brain tumor. At the time, she was about 17 weeks pregnant with her second child. When she was about 20 weeks pregnant, she underwent surgery to investigate the brain tumor and was diagnosed with stage four terminal brain cancer.
6. Under Florida’s extreme abortion ban, patients in factual circumstances similar to those set out above who need an abortion must find a doctor who will perform the abortion and two doctors must certify in writing that the termination of 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. s. 390.0111(1).
7. Caroline needed medical interventions in order to treat the brain cancer to prolong her life. The treatment would have harmed and likely killed the fetus—therefore, she needed an abortion in order to treat the cancer.

8. Under Florida’s current law, I would not have provided this abortion because it could be viewed as a crime to terminate Caroline’s pregnancy because the termination was not required to “save the pregnant woman’s life.” While the termination was medically necessary because the cancer was terminal, the abortion would not have saved the patient’s life and therefore could be illegal under Florida law.
9. These are the types of cases that doctors face every day – patients who need care but the doctors hands are tied by this unworkable law. The exceptions provided under Florida law are not real for many, many women who need medically necessary abortions. In my opinion, you cannot legislate medical complexity and you cannot legislate individualized evidenced based clinical decision making.
10. The Department of Health’s actions in trying to silence patients’ and doctors’ experiences – and the extreme abortion ban itself – are dangerous for doctors and their patients. The Department has provided only the most minimal of guidance on the exceptions, which guidance is woefully inadequate and medically nonsensical, leaving doctors to interpret the laws themselves—and if we get it wrong, we can face disciplinary action and criminal charges. Doctors are navigating providing medical care in a truly threatening environment where the consequence of inaccurate interpretation of the law means disciplinary and criminal action – and this environment effectively prevents physicians from providing the standard of care out of fear of prosecution.

Executed on October 4, 2024, in 10/04/2024



Shelly Hsiao-Ying Tien, M.D., M.P.H.

Exhibit A

Shelly Hsiao-Ying Tien, M.D./M.P.H.
shtien@gmail.com
312-810-3833

Genesis Maternal-Fetal Medicine, Tucson, Arizona

04/2022 – current, physician

Planned Parenthood – South, East and North Florida

03/2021 – current, physician

Trust Women, Oklahoma and Kansas

02/2021 – 05/2024, physician

Planned Parenthood – Southeast, Alabama

12/2021 – 5/2022, physician

NorthShore University Health System/University of Chicago

07/2015 – 12/2020, physician

Fellowship, Maternal-Fetal Medicine

University of Minnesota, Minneapolis

07/2012 – 06/2015

Residency, Obstetrics and Gynecology

Advocate Illinois Masonic Medical Center, Chicago, Illinois

07/2008 – 06/2012

Medical Education

Tufts University School of Medicine, Boston, Massachusetts

08/2003 - 05/2008

M.D./M.P.H.

Education

Undergraduate - University of Illinois, Champaign/Urbana

Biology

08/1999 - 06/2003

B.S.

Board certification

Maternal-Fetal Medicine 2018

Obstetrics and Gynecology 2013

Memberships

Society for Maternal-Fetal Medicine

2012 – current

American College of Obstetricians and Gynecologists
2008 – current
Society of Family Planning
2022 – current

Medical Expert Witness cases

Gainesville Woman Care, LLC, et al., vs. State of Florida, et al., in the 24 hour Mandated Delay

- January 2022 - Medical expert witness on behalf of the ACLU.

Planned Parenthood of Southwest and Central Florida, et al., vs. State of Florida, et al., in the 15 week abortion ban

- June 2022 - Medical expert witness and plaintiff on behalf of the ACLU and PPFA.

Committees

Northshore University Health System Obstetric Practice Committee - Chair, 2016 – 2020

- Educational committee that creates physician guidelines and nursing protocols for obstetric care for Evanston and Highland Park hospitals.

Northshore University Health System Epic Physician builder, 2018 – 2020

- Developed and implemented obstetric clinical workflows for our Epic electronic medical record system.

Illinois Perinatal Quality Collaborative (ILPQC) - Clinical lead for the Immediate Postpartum Long-Acting Reversible Contraception initiative, 2018 – 2020

- Implementation of immediate postpartum LARCs for patients at Evanston and Highland Park hospitals.
- Provision of educational support for other birthing hospitals in the state.

Maternal-Fetal Medicine Clinical Competency Committee, 2018 - 2020

- Biannual meeting and evaluation of educational progress for maternal-fetal medicine fellows.

Volunteer Experience

Medical Students for Choice (MSFC), Massachusetts, 09/2003-04/2008

Student coordinator

- Facilitated multiple lectures and workshops on reproductive education and contraception.
- Organized the 2005 regional student conference for MSFC.

Cross Cultural Solutions, Ghana, 06/2003-07/2003

Medical Volunteer

- Volunteered through the organization Cross Cultural Solutions.
- Provided immunizations to children, assisted in the local health center pharmacy, and taught women's health education in the maternity ward.

Provena Mental Health, Illinois, 04/2001-05/2002

Suicide Hotline Volunteer

- Volunteer counselor on the suicide hotline.
- Provided mental health interventions to clients in crisis, and general health resources and information for family members and support persons.

Rape Crisis Services, Illinois, 05/2000-05/2003

Medical Advocate and Hotline Volunteer

- Hotline volunteer providing counseling, support and resources to survivors of sexual violence.
- Medical advocate for patients – provided education and support during the emergency room visits for patients who presented after an assault.

Publications

Tien SH, Crabtree JN, Gray HL, Peterson EJ. Immunologic response to vaccine challenge in pregnant PTPN22 R620W carriers and non-carriers. *PLoS One*. 2017 Jul 19;12(7):e0181338.

Tien S and Yamamura Y. Cervical ectopic pregnancy: persistence despite a serologically negative β -hCG. *J Reprod Med* 2015;60(5-6):257-60.

Tien S, Villines D, Parilla B. Gestational Weight Gain in Obese Patients and Adverse Pregnancy Events. *Health* 2014;6:1420-1428.

Grimes K, Schulz M, Cohen S, Mullin B, Lehar S, Tien S. Pursuing Cost-Effectiveness in Mental Health Service Delivery for Youth with Complex Needs. *J Ment Health Policy Econ* 2011;14:73-86.

Publications, non-peer reviewed

Rugino A, Tien SH. Strip of the Month: Complete Heart Block Masquerading as a Reactive Nonstress Test. NeoReviews November 2018, Volume 19/Issue 11.

Rodriguez-Kovacs J, Tien SH, Plunkett BA. Selective Serotonin Reuptake Inhibitor Use in Pregnancy: Repercussions on the Oblivious Passenger. NeoReviews March 2018, Volume 19/Issue 3.

Cockrum RH, Tien SH. Strip of the Month: August 2016. NeoReviews August 2016, Volume 17/Issue 8.

Schneider P, Tien SH. Strip of the Month: February 2016. NeoReviews February 2016, Volume 17/Issue 2.

Presentations

Tien S, Crabtree J, Gray H, Peterson E. (2015, February). "Immunologic response to vaccine challenge in PTPN22 gene variants in pregnancy." Poster presentation at: the Society for Maternal-Fetal Medicine, San Diego, CA.

Tien S, Aguilera M. (2014, October). "Monochorionic Monoamniotic Twin Gestation: A review of antenatal management at three tertiary care centers." Poster presentation at: Central Association of Obstetricians and Gynecologists, Albuquerque, NM.

Tien S, Gray H, Jacobs K, Giacobbe L, Wagner W, Aguilera M. (2013, October). "A review of ten years' experience with placenta accreta at a single tertiary care center." Poster presentation at: Central Association of Obstetricians and Gynecologists, Napa Valley, CA.

Tien S, Gray H, Jacobs K, Giacobbe L, Swartout J, Aguilera M. (2013, October). "Spinal anesthesia converted to general anesthesia for cesarean hysterectomy is associated with improved neonatal Apgar scores versus general anesthesia alone." Poster presentation at: Central Association of Obstetricians and Gynecologists, Napa Valley, CA.

Tien S, Casserly K, Rauk P. (2013, April). "A right atrial thrombus in the setting of puerperal coagulopathy." Poster presentation at: Society for Obstetric Anesthesia and Perinatology, San Juan, Puerto Rico.

Tien S, Gray H, Jacobs K, Giacobbe L, Swartout J, Aguilera M. (2013, April). "Maternal obesity associated with clinically increased blood loss and postoperative hospital stay in patients undergoing peripartum hysterectomy." Poster presentation at: Society for Obstetric Anesthesia and Perinatology, San Juan, Puerto Rico.

Tien S, August C, Fernandez C, Dini M. (2012, October). "Metastatic colon cancer presenting as an adnexal mass." Poster presentation at: the Advocate Research Forum, Advocate Illinois Masonic Medical Center, Chicago, IL.

Tien S, Villines D, Parilla B. (2012, October). "Gestational Weight Gain in Obese Patients and Adverse Pregnancy Events." Oral presentation at: Central Association of Obstetricians and Gynecologists, Chicago, IL.

Tien S, Popper F. (2009, October). "A Retrospective Review of Misoprostol Efficacy for the Treatment of Early Pregnancy Failure." Poster presentation at: Central Association of Obstetricians and Gynecologists, Maui, HI.

Grimes K, Mullin B, Lehar S, Schulz M, Creeden M, Tien S. (2008, February). "Strength in Numbers: Using Concurrent Measurement to Guide Quality." Poster presentation at: Research and Training Center for Children's Mental Health, Tampa, FL.



Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.

Ron DeSantis
Governor

Joseph A. Ladapo, MD, PhD
State Surgeon General

Vision: To be the **Healthiest State** in the Nation

October 3, 2024

Alan Chatman & Mike Jones
WCJB-TV
6220 NW 43rd Street
Gainesville FL 32653
alan.chatman@wcjb.com
mike.jones@graymedia.com

Dear Mr. Chatman & Mr. Jones:

The Florida Department of Health has been notified that your company is disseminating a political advertisement claiming that current Florida law does not allow physicians to perform abortions necessary to preserve the lives and health of pregnant women.¹

This claim is categorically false. Florida's Heartbeat Protection Act does not prohibit abortion if a physician determines the gestational age of the fetus is less than 6 weeks. § 390.0111(1), Fla. Stat. After 6 weeks, an abortion may be performed 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." § 390.0111(1)(a), Fla. Stat. The two-physician requirement is waived in the case of an emergency medical procedure. § 390.0111(1)(b), Fla. Stat. And while physicians must exercise professional skill, care, and diligence to preserve the life and health of a fetus in the third trimester, "if preserving the life and health of the fetus conflicts with preserving the life and health of the pregnant woman, the physician must consider preserving the woman's life and health the overriding and superior concern." § 390.0111(4), Fla. Stat.

The advertisement is not only false; it is dangerous. Women faced with pregnancy complications posing a serious risk of death or substantial and irreversible physical impairment may and should seek medical treatment in Florida. However, if they are led to believe that such treatment is unavailable under Florida law, such women could foreseeably travel out of state to seek emergency medical care, seek emergency medical care from unlicensed providers in Florida, or not seek emergency medical care at all. Such actions would threaten or impair the health and lives of these women.

Under section 386.01, Florida Statutes, "the commission of any act, by an individual, municipality, organization, or corporation . . . by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired" constitutes a "sanitary nuisance." The Department of Health,

¹ The advertisement is displayed on the home page of the Amendment sponsor's website under the title "Caroline." See <https://floridiansprotectingfreedom.com/>. The woman featured in the advertisement states: "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."





upon determining the existence of such nuisance, must notify the person or persons committing the nuisance “to remove or cause to be removed the same within 24 hours.” § 386.03(1), Fla. Stat. If the nuisance is not removed within the time prescribed, the Department is authorized to institute legal proceedings under section 381.0012, Florida Statutes, to obtain an injunction. § 386.03(2)(c), Fla. Stat. The Department is further authorized to “[i]nstitute criminal proceedings in the county court in the jurisdiction of which the condition exists against all persons failing to comply with notices to correct sanitary nuisance conditions.” § 386.03(2)(b), Fla. Stat. Creating, keeping, or maintaining a nuisance injurious to health is a second-degree misdemeanor. § 386.051, Fla. Stat.

While your company 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, that right 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.

/s/ John Wilson
John Wilson
General Counsel
Florida Department of Health