Alex W. Cannon
Special Counsel
[redacted]

March 12, 2020

VIA FEDEX AND E-MAIL

WLUK-FOX
[redacted]
Attn: Jay Zollar, General Manager
[redacted]

Re: False, Misleading, and Deceptive Priorities USA Action Fund Ad

Dear Mr. Zollar:

On behalf of Donald J. Trump for President, Inc., President Trump's principal campaign committee, this letter notifies you that your station is airing a false, misleading, and deceptive advertisement, entitled "Amy," which was paid for by the Priorities USA Action Fund ("Priorities USA") – a Super PAC formed by Barack Obama loyalists. The ad contains false information when it attacks President Trump for wanting "to eliminate protections for pre-existing conditions" and for saying that his Administration "would gut protections for those with pre-existing conditions." These fake claims have no basis in reality. As shown by the enclosed facts sheet, the truth is President Trump has repeatedly stated and proven his commitment to protecting Americans with pre-existing conditions. Since Priorities USA's ad is deliberately false and misleading, your station has an obligation to cease and desist from airing it immediately to comply with FCC licensing requirements and serve the public interest.

There is not an ounce of truth to the claim that President Trump "wants to eliminate protections for pre-existing conditions." President Trump consistently has made clear that he will "***always protect Americans with preexisting conditions. Always.***" Remarks by President Trump on Prescription Drug Prices (Oct. 25, 2018).[1] Indeed, President Trump has reiterated this position throughout his presidency – including at a televised town hall event last week. *See, e.g.*, Remarks by President Trump at a Fox News Town Hall, Scranton, PA (Mar. 6, 2020) ("Preexisting conditions: 100 percent, we take care of [preexisting conditions]."); Remarks by President Trump at Signing of H.R. 3401 (July 1, 2019) ("If you look at preexisting conditions, the Republicans are going to save preexisting conditions. The Democrats won't be able to do it.");[2] Remarks by President Trump in Roundtable Discussion on the Economy and Tax Reform Burnsville, MN (Apr. 15, 2019) ("[W]e will always be protecting preexisting conditions. Remember that. That's number one. Very, very important.");[3] Remarks by President Trump During a Visit to Lake

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[1] *Available at* https://www.whitehouse.gov/briefings-statements/remarks-president-trump-prescription-drug-prices.

[2] *Available at* https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-3401.

[3] *Available at* https://www.whitehouse.gov/briefings-statements/remarks-president-trump-roundtable-discussion-economy-tax-reform-burnsville-mn.

Okeechobee and Herbert Hoover Dike (Mar. 29, 2019) ("[W]e're going to always take care of preexisting conditions. Just remember that. Always preexisting conditions.");[4] Remarks by President Trump at National Electrical Contractors Association Convention (Oct. 2, 2018) ("And we will always protect Americans with preexisting conditions. That's a major part of what I'm all about.").[5]

President Trump has acted on his promises. In connection with congressional efforts to repeal and replace the disastrous Affordable Care Act, also known as "Obamacare," President Trump made clear that any repeal-and-replace legislation must include protections for Americans with pre-existing conditions. *See, e.g.*, Eric Bradner, *Trump: GOP Health Care Bill 'Guarantees' Coverage For Pre-existing Conditions*, CNN (May 1, 2017) ("'Pre-existing conditions are in the bill. And I mandate it. I said, Has to be.'").[6] In fact, in his speech calling on Congress to repeal and replace Obamacare, President Trump specifically outlined that any new law would have to "ensur[e] people with pre-existing health conditions are guaranteed 'access' to health insurance." Dan Mangan, *Trump and health care: President gives Congress five principles for Obamacare replacement*, CNN (Feb. 28, 2017).[7]

Consistent with his mandate, President Trump and his Administration only have endorsed repeal-and-replace legislation specifically guaranteeing protections for Americans with pre-existing conditions. The Trump Administration, for example, strongly supported a House bill, H.R. 1628, known as the "American Health Care Act," which would have prohibited insurers from denying or not renewing coverage due to a pre-existing condition. *See* Rep. Kevin Brady Fact Sheet, *The American Health Care Act: Pre-Existing Conditions.*[8] In a written statement, the Trump Administration expressed that it supported the bill because, among other things, it would "provide for a stable transition from the onerous requirements of the ACA, while providing peace of mind to Americans with pre-existing conditions."[9] Statement of Administrative Policy, OMB (Mar. 22, 2017).[10] Similarly, the Trump Administration supported a Senate repeal-and-replace bill known as Graham-Cassidy that contained protections for individuals with pre-existing conditions. *See* @realDonaldTrump, Twitter (Sept. 20, 2017, 7:07 PM) ("I would not sign Graham-Cassidy if it did not include coverage of pre-existing conditions. It does! A great Bill. Repeal & Replace.").[11] On the other hand, when a proposed bill (H.R. 986) threatened protections for pre-existing conditions, the Trump Administration issued a strong statement opposing the legislation because it "would not extend any additional protections for people with pre-existing conditions" and "would harm the ability of States to improve coverage for people both with and without pre-existing conditions." *See* Statement of Administration Policy, OMB (May 7, 2019).[12] The Trump Administration's statement in opposition reemphasized that "[t]he President has repeatedly made clear that this Administration will protect people

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[4] *Available at* https://www.whitehouse.gov/briefings-statements/remarks-president-trump-visit-lake-okeechobee-herbert-hoover-dike.

[5] *Available at* https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-electrical-contractors-association-convention.

[6] *Available at* https://www.cnn.com/2017/04/30/politics/trump-health-care-pre-existing-conditions/index.html.

[7] *Available at* https://www.cnbc.com/2017/02/28/trump-health-care-five-principles-for-obamacare-replacement.html.

[8] *Available at* https://kevinbrady.house.gov/uploadedfiles/ahca_preexisting_conditions.pdf.

[9] *Available at* https://www.whitehouse.gov/sites/whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/saphr1628h_20160322.pdf.

[10] *Available at* https://www.whitehouse.gov/sites/whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/saphr1628h_20160322.pdf.

[11] *Available at* https://twitter.com/realdonaldtrump/status/910641701064204288?lang=en.

[12] *Available at* https://www.whitehouse.gov/wp-content/uploads/2019/05/SAP_HR986.pdf.

with preexisting conditions," and "that the President's healthcare vision" includes "improving care for people with pre-existing conditions." *Id.* (emphasis added).

Furthermore, the preservation of protections for pre-existing conditions was specifically included in President Trump's recent 2021 budget proposals. "The Budget includes an allowance for [President Trump's] health reform vision," which the Trump Administration has made explicitly clear "will protect the most vulnerable, especially those with pre-existing conditions." White House Fact Sheet, *Protecting our Nation's Health and Wellness* (Mar. 10, 2020).[13]

The Priorities USA ad's only citation of support for its false claims is to an online article that, despite its misleading headline which the ad repeats, reports on a matter having nothing to do with President Trump's commitment to protecting Americans with pre-existing conditions. The article is about the Administration's decision not to defend a portion of the Affordable Care Act in a lawsuit styled *Texas v. Azar*, which challenges the constitutionality of the law's requirement that individuals purchase health insurance or else be taxed, frequently known as the law's "individual mandate." *See* MaryBeth Musumeci, *Explaining Texas v. U.S.: A Guide To The Case Challenging The ACA*, Kaiser Family Foundation (Mar. 10, 2020).[14] The constitutionality of the individual mandate is a legal question. It has nothing to with the policy and legislative issue of ensuring protections for Americans with pre-existing health conditions on which the President and his Administration have remained consistently devoted. President Trump himself highlighted this key distinction in a public statement about the lawsuit:

> Today's decision in *Texas v. Azar* is a win for all Americans and confirms what I have said all along: that the individual mandate, by far the worst element of Obamacare, is unconstitutional. . . . This decision will not alter the current healthcare system. *My Administration continues to work to provide access to high-quality healthcare at a price you can afford, while strongly protecting those with pre-existing conditions.*

Statement by the President (Dec. 18, 2019) (emphasis added).[15]

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[13] *Available at* https://www.whitehouse.gov/wp-content/uploads/2020/02/FY21-Fact-Sheet-Health.pdf.

[14] *Available at* https://www.kff.org/health-reform/issue-brief/explaining-texas-v-u-s-a-guide-to-the-case-challenging-the-aca.

[15] *Available at* https://www.whitehouse.gov/briefings-statements/statement-by-the-president-31.

This incontrovertible record proves that Priorities USA's advertisement is false, misleading, and deceptive. This is a formal demand that your station refuse to continue airing it, a result that would be consistent with your responsibilities to not air false information. Unlike candidate committees, Priorities USA as a Super PAC does not have a "right to command the use of broadcast facilities." *CBS v. DNC*, 412 U.S. 94, 113 (1973). Your station therefore bears responsibility for the ad's content. *See Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3d Cir. 1950). In addition, your station has a responsibility to "protect the public from false, misleading or deceptive advertising," *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C.2d 623 (1961), and your failure to remove this deceptive ad may be "probative of an underlying abdication of licensee responsibility" that could put your station's license in jeopardy," *Cosmopolitan Broadcasting Corporation v. FCC*, 581 F.2d 917, 927 (1978).

Sincerely,

Alex W. Cannon, Esq.
Special Counsel
Donald J. Trump for President, Inc.

cc: Michael Glassner, Chief Operating Officer, Donald J. Trump for President, Inc.
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