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September 10, 2010

**Re: False Advertisement by “60 Plus Association”**

Dear Station Manager:

We are counsel to the Democratic Congressional Campaign Committee. We write with regard to an advertisement by the 60 Plus Association (“60 Plus”). The text of the advertisement is attached. This advertisement makes false statements about Representative Paul Kanjorski’s position on health care reform and Factcheck.org called these same claims, when made by this organization last year, “bogus” and “false.” For the sake of both FCC licensing requirements and the public interest, your station should immediately refuse to continue to air this advertisement.

The 60 Plus advertisement alleges that Rep. Kanjorski’s support for health insurance reform meant “Seniors could lose their doctors and millions could even lose their current Medicare plans. That will hurt seniors care.” Multiple fact check organizations and the AARP have called this statement false. Factcheck.org has previously evaluated this claim in a 60 Plus ad and wrote, “Actually, seniors should be a less likely group to lose their doctors under the pending overhaul bills. That’s because the bills cancel scheduled cuts in payments to physicians, giving them less incentive to stop seeing Medicare patients.”<sup>1</sup> Rep. Kanjorski voted in favor of both health care reform and to cancel scheduled payment cuts to physicians.<sup>2</sup> In fact, AARP has said that for seniors, health care reform means “keeping the doctor of your choice.”<sup>3</sup>

Additionally, the 60 Plus ad claims that health insurance reform “cut 500 billion from Medicare.” This claim has been called “false,” “wrong” and a “senior scare” by independent non-partisan

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<sup>1</sup> Factcheck.org, “More ‘Senior Scare’”, [8/14/2009](#); Politifact, 9/9/09

<sup>2</sup> HR 3962, 6/24/10

<sup>3</sup> AARP Myths vs. Facts

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fact check organizations.<sup>4</sup> In fact, the health care law specifically bans any cuts in guaranteed Medicare benefits.<sup>5</sup>

The 60 Plus Association has been criticized in the past for advertisements that are a “senior scare,” deliberately designed to mislead senior citizens into believing that they will lose their doctor or face cuts in their guaranteed Medicare benefits.<sup>6</sup>

Unlike federal candidates, independent political organizations do not have a “right to command the use of broadcast facilities.” *See CBS v. DNC*, 412 U.S. 94, 113 (1973). Because you need not air this advertisement, your station bears responsibility for its content when you do grant access. *See Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.), *cert. denied*, 314 U.S. 909 (1950).

Moreover, you have a duty “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). Failure to prevent the airing of “false and misleading advertising” may be “probative of an underlying abdication of licensee responsibility” that can be cause for the loss of a station's license. *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

This advertisement is false, misleading, and deceptive. We ask that you refuse to continue to air this advertisement.

We can be reached at (202) 434-1654 if you have any questions regarding this letter. Please contact us to inform us of your decision. Thank you for your attention to this matter.

Very truly yours,



Brian G. Svoboda  
Andrew H. Werbrock

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<sup>4</sup> Factcheck.org, 9/18/09, 2/24/10, 8/30/10

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

## 60 Plus Ad Against Kanjorski

AUDIO/VIDEO	FACTS
<p>Audio: Washington liberals like Paul Kanjorski have betrayed Pennsylvania seniors. He voted for Nancy Pelosi's big government health care plan that costs a trillion dollars. That raises taxes and cuts 500 billion from Medicare.</p> <p>Citations: H.R. 3580, Roll Call Vote 165, 3/21/10; Associated Press, 5/12/10</p> <p>Associated Press, 3/21/10</p>	<p><b>Factcheck.org: Slowing Overall Spending Does Not Mean Cuts.</b> According to the nonpartisan and highly respected factcheck.org, "as we've said any number of times before, slowing down the growth of overall spending does not necessarily imply cuts in benefit levels or services. We made that point, for example, when the Republican candidate for president, John McCain, proposed to finance his own health care plan through similar reductions in future Medicare growth, and was falsely accused by then-candidate Obama of proposing cuts in benefits." [Factcheck.org, 2/24/10]</p> <p><b>AARP: Health Care Reform Doesn't Allow Any Guaranteed Benefit Cuts.</b> According to AARP, "The law protects any cuts to Medicare's guaranteed benefits, which include doctor, hospital and rehabilitation services. This is true whether you have Original Medicare or a Medicare Advantage plan." [AARP Health Care Reform Facts]</p>
<p>Audio: Seniors could lose their doctors and millions could even lose their current Medicare plans.</p> <p>Citations: CMS Report, April 2010; The Washington Post, 11/15/09</p> <p>Associated Press, 8/25/10</p>	<p><b>This Claim Was Previously Made by 60 Plus and Called False by Independent Fact Check Organizations.</b></p> <p><b>Factcheck.org: Seniors Less Likely to Lose Doctor Under Health Care Reform and Cancelling Payment Cuts.</b> According to factcheck.org, "We left messages with the 60 Plus Association to ask about their back-up for the claim that "[s]eniors may lose their own</p>

doctors,” but we didn’t hear back....Actually, seniors should be a less likely group to lose their doctors under the pending overhaul bills. That’s because the bills cancel scheduled cuts in payments to physicians, giving them less incentive to stop seeing Medicare patients.” Rep. Kanjorski voted for health insurance reform and to cancel scheduled payment cuts to physicians. [Factcheck.org, [9/18/09](#)]

**Politifact: Seniors Will Not Lose Their Doctor.** According to Pulitzer-prize winning Politifact: “In his speech, he said that if you are “already have health insurance through your job, Medicare, Medicaid, or the VA, nothing in this plan will require you or your employer to change the coverage or the doctor you have.” That is true, there is nothing in the plan that proactively forces these kinds of changes, and the bills clearly intend to leave much of the current health care system in place. We rate Obama’s statement True.” [Politifact, [9/9/09](#)]

**Largest Senior Group, AARP: Health Care Reform Specifically Protects Seniors Access to Their Doctor.** According to AARP, “Fact: Health care reform will protect seniors’ access to their doctors and reduce the cost of preventive services so patients stay healthier.” AARP continued, “Bottom Line: For people in Medicare, health care reform is about lowering prescription drug costs for people in the “doughnut hole”, keeping the doctor of your choice, improving the quality of care, and eliminating billions in waste that is causing poor care and medical errors.” [[AARP Myths vs. Facts](#)]

**Largest Group of Doctors: Health Care Reform Protects Patients.** In March 2010, the American Medical Association, the largest

	<p>group of American doctors, announced their support for passage of health insurance reform. According to the AMA, “By extending health coverage to tens of millions of uninsured, improving competition and choice in the insurance marketplace, promoting prevention and wellness, reducing administrative burdens, and promoting clinical comparative effectiveness research, this bill will help patients and the physicians who care for them. There are increased payments for primary care physicians caring for Medicaid patients and bonus payments for physicians in underserved areas.” [American Medical Association, <a href="#">3/21/10</a>]</p>
<p>Audio: Washington is spending money we don't have and can not afford. Paul Kanjorski: You cut our Medicare and this November, you're fired.</p> <p>Citations: Disclaimer</p>	<p><b>This claim is false. Medicare benefits are not cut.</b></p> <p><b>Factcheck.org: Bill Bans Cuts to Medicare Benefits.</b> According to a factcheck.org analysis of a similar television spot in California, “The first charge, that Boxer voted to “cut Medicare \$500 billion,” mirrors the one in the ad against Sestak. As we noted above, that’s wrong. Growth in future spending of the program is being restrained to less than it would be under current law, over 10 years. But seniors’ basic Medicare benefits packages wouldn’t be cut – in fact, the law doesn’t allow it: Section 3601 says: “Nothing in the provisions of, or amendments made by, this Act shall result in a reduction of guaranteed benefits under title XVIII of the Social Security Act” (the part of the U.S. Code that establishes the Medicare program).” [Factcheck.org, <a href="#">8/30/10</a>]</p> <p><b>Factcheck.org: Slowing Overall Spending Does Not Mean Cuts.</b> According to the nonpartisan and highly respected factcheck.org,</p>

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**Factcheck.org on Previous 60 Plus Ads: “False” Effort at “Senior Scare.”** In their evaluation of previous 60 Plus advertizing on health care reform, Factcheck.org found that the ads were “false” and designed to scare seniors. [Factcheck.org, [9/18/09](#)]