

Defendant Northland Television, LLC d/b/a WJFW-NBC (“WJFW”) files this Memorandum in support of its Motion to Dismiss with prejudice this action brought by Plaintiff Donald J. Trump for President, Inc. (the “Trump Campaign Committee” or “Committee”). Under Federal Rule of Civil Procedure 12(b)(6), the Complaint fails to state a claim upon which relief may be granted.

### **INTRODUCTION**

With this lawsuit, the Committee for President Trump’s re-election campaign seeks to punish a small Wisconsin broadcaster for airing the President’s own words about the most alarming public health crisis in a century, the COVID-19 pandemic. This is the fourth defamation lawsuit the Trump Campaign Committee has brought against broadcasters and newspapers in three months,<sup>1</sup> in a clear, concerted effort to chill critical examination of the Administration’s policies. The expression under attack here, a paid political advertisement broadcast by a number of television stations around the country just months before a presidential election, lies at the core of our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). The First Amendment does not tolerate such speech-chilling litigation, and the Court should swiftly dismiss it.

The Complaint asks the Court to ignore both the content and context of this core political speech. The Committee’s sole claim—the allegedly false depiction of the President’s statement, “this is their new hoax”—targets just five of the President’s words in a message that contains 86 of them. The 30-second political advertisement, broadcast by WJFW in Rhinelander, carried the

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<sup>1</sup> The Committee filed suit against *The New York Times* on February 26, 2020, *The Washington Post* on March 2, and CNN on March 6. See Notice of Removal Ex. B, Dkt. 1-3 (Copies of these complaints attached in support of WJFW’s Notice of Removal). See also note 2 *infra*.

explicit label of Super PAC Priorities USA Action’s sponsorship. It contained an audio montage of the President’s own public statements accompanied by the visual image of a graph depicting the sharp rise, from January to March 2020, of the number of Americans who had fallen ill from the coronavirus. The unmistakable gist of the political advertisement, which concludes with the words “America Needs a Leader They Can Trust,” is that while President Trump repeatedly boasted about his “great” response to the crisis, the country grew sicker and sicker.

Under longstanding First Amendment principles and Wisconsin law, Plaintiff fails to state a claim. As a matter of law, the advertisement did not defame the Trump Campaign Committee because it was about President Trump, not the Committee. The advertisement is a non-actionable expression of the political opinion that President Trump downplayed the danger of the virus while the public health threat increased exponentially. The President’s statement “this is their new hoax,” when properly viewed in both the contexts of the entire advertisement and his Administration’s position about the coronavirus outbreak, is not materially false. Finally, the Complaint does not plausibly allege, as the Constitution requires, that WJFW published the political advertisement with “actual malice,” *i.e.*, knowing that it was false or while entertaining serious doubts about its truth.

For each of these independent reasons, the Court should dismiss this action with prejudice.

## **FACTUAL BACKGROUND**

### **A. The Advertisement**

On March 24, 2020, WJFW began airing the political advertisement titled “Exponential Threat,” produced by the Super Political Action Committee (PAC) Priorities USA Action