

March 20, 2026

The Honorable Brendan Carr
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Dear Chairman Carr:

We are scholars of the First Amendment, communications, and technology law, veterans of the Federal Communications Commission, and civil society organizations dedicated to free speech. We write concerning your abuse of the “public interest” standard¹ as a weapon against viewpoints you and President Donald Trump do not like. You assert that “[b]roadcasters ... are running hoaxes and news distortions - also known as the fake news”² in a retweet of a President Donald Trump’s complaint that *The Wall Street Journal* and *The New York Times* were the “Fake News Media” because of headlines he alleged were misleading.³ You threatened that broadcasters who engaged in similar reporting would “lose their licenses” if they do not “correct course before their license renewals come up.”⁴ The next day, the President threatened broadcasters and programmers with “Charges for TREASON for the dissemination of false information!”⁵

You proclaimed that “[b]roadcasters must operate in the public interest, and they will lose their licenses if they do not.”⁶ But the Communications Act authorizes license revocation only in narrow circumstances,⁷ and the Commission has never revoked, or declined to renew, a license solely for news distortion.⁸ “The Commission has always taken the view

¹ 47 U.S.C. §§ 307(a), 309(a), 310(d) (FCC to administer licenses in the “public convenience, interest, or necessity”).

² Brendan Carr (@BrendanCarrFCC), X (Mar. 14, 2026, 12:24 ET), <https://x.com/BrendanCarrFCC/status/2032855414233047172>.

³ Donald J. Trump (@realDonaldTrump), TRUTH (Mar. 14, 2026, 09:35 ET), <https://truthsocial.com/@realDonaldTrump/posts/116227789768118115> (alleging that headlines were “misleading” because the planes were not “‘struck’ or ‘destroyed.’”). Compare with Lara Seligman & Shelby Holliday, *Five Air Force Refueling Planes Hit in Iranian Strike on Saudi Arabia*, WALL S.J. (Mar. 14, 2026), <https://www.wsj.com/livecoverage/us-israel-iran-war-news-2026/card/five-air-force-refueling-planes-hit-in-iranian-strike-on-saudi-arabia-wHYFMW2YG3p0rwh3HaGU> (“Five U.S. Air Force refueling planes were struck and damaged on the ground at Prince Sultan air base in Saudi Arabia, according to two U.S. officials.”).

⁴ Carr, *supra* note 2.

⁵ Donald J. Trump (@realDonaldTrump), TRUTH (Mar. 15, 2026, 19:48 ET), <https://truthsocial.com/@realDonaldTrump/posts/116235861005528220>.

⁶ Carr, *supra* note 2.

⁷ Section 312(a) authorizes license revocation only “for willful or repeated violation of” of FCC rules or provisions of the Communications Act. 47 U.S.C. § 312(a)(4).

⁸ The Commission found broadcasters liable for news distortion in just eight cases between 1969 and 2019, and these cases typically included conduct that would now be covered by the much narrower broadcast hoax

that licensees should enjoy a renewal expectancy,” absent violation of specific rules, and “the 1996 Telecommunications Act ... mandated a renewal expectancy.”⁹ Courts have recognized that a finding of liability of a rule violation “has its own coercive impact” even when “the Commission has not as yet initiated a license revocation proceeding,”¹⁰ that even “the possibility of nonrenewal, however remote, might chill uninhibited, robust and wide-open speech,”¹¹ and that “the Commission, of course, may not penalize exercise of First Amendment rights.”¹²

If, as you now claim, the “law is clear,” you would not have needed to suggest in 2024, that “we should start a rulemaking to take a look at what [the public interest standard] means.”¹³ In fact, the “public interest” standard becomes less clear each time you invoke it. Five things, however, *are* clear here.

First, your threats are unlawful jawboning.¹⁴ They rest on no statutory authority and no legitimate government interest. The Communications Act explicitly denies the Commission any “power of censorship” or power to “interfere with the right of free speech.”¹⁵ The Supreme Court has repeatedly held that “freedom of speech prohibits the government from telling people what they must say.”¹⁶ “[E]rroneous statement is inevitable in free debate, and [] it must be protected if the freedoms of expression are to have the ‘breathing space’

rule discussed *infra* at note 28 and associated text. Chad Raphael, *The FCC’s Broadcast News Distortion Rules: Regulation by Drooping Eyelid*, 6 COMM’N L. & POL’Y 485, 501 (2001).

⁹ THOMAS G. KRATTENMAKER, TELECOMMUNICATIONS LAW AND POLICY 114 (1998),

<https://archive.org/details/telecommunicatio00krat/page/114/mode/2up>. See also Thomas G.

Krattenmaker, *The Telecommunications Act of 1996*, 29 CONN. L. REV. 123, 129-31 (1996) (“in practice, licensees who do not flout the FCC or its rules always get their licenses renewed”). Section 309(k), added in 1996, provides that “the Commission shall grant” license renewal applications absent “serious violations” or sufficient other rule violations to show “a pattern of abuse,” provided the station has “the station has served the public interest, convenience, and necessity.” 47 U.S.C. § 309(k).

¹⁰ *Meredith Corp. v. Fed. Commc’ns Comm’n*, 809 F.2d 863, 873 (D.C. Cir. 1987).

¹¹ *Citizens Communications Center v. Fed. Commc’ns Comm’n*, 447 F.2d 1201, 1214 (D.C. Cir. 1971).

¹² *Id.*

¹³ *FCC Commissioner & President-Elect Trump’s Pick for FCC Chairman Brendan Carr Speaks with CNBC’s “Squawk on the Street” Today*, CNBC (Dec. 6, 2024), <https://www.cnbc.com/2024/12/06/cnbc-transcript-exclusive-fcc-commissioner-president-elect-trumps-pick-for-fcc-chairman-brendan-carr-speaks-with-cnbc-squawk-on-the-street-today.html>.

¹⁴ *National Rifle Association of America v. Vullo*, 144 S.Ct. 1316, 1328 (2024) (“a government official cannot do indirectly what she is barred from doing directly: A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf.”). See also Derek E Bambauer, *Against Jawboning*, 100 MINN. L. REV. 51, 57 (2015), <https://scholarship.law.umn.edu/mlr/182/> (defining jawboning as “informal pressure by a government actor on a private entity ... that operates at the limit of, or outside, that actor’s authority.”).

¹⁵ 47 U.S.C. § 326.

¹⁶ *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006) (citing *Virginia Bd. of Ed. v. Barnette*, 319 U.S.624, 642 (1943)).

that they ‘need . . . to survive.’”¹⁷ Thus, there is no “general exception to the First Amendment for false statements.”¹⁸ In *Moody v. Netchoice* (2024), the Supreme Court rejected government efforts “to decide what counts as the right balance of private expression—to ‘un-bias’ what it thinks is biased.”¹⁹ “On the spectrum of dangers to free expression,” *Moody* said, “there are few greater than allowing the government to change the speech of private actors in order to achieve its own conception of speech nirvana.”²⁰

The *Moody* Court said nothing to suggest that this danger was any less great regarding broadcasters; indeed, it is much greater, given how much leverage the Commission exerts over broadcasters. As one scholar has suggested, the Commission can exercise “regulation by the lifted eyebrow” and hang a “Sword of Damocles” over each broadcaster’s head: “If the sword does not often fall, neither is it ever lifted and the *in terrorem* effect of the sword’s presence enables the commission to exercise far-reaching powers of control over the licensee’s operations.”²¹

Second, your vague conception of “fake news,” “news distortion” and the “public interest” also violates the First Amendment because it “fails to provide a person of ordinary intelligence fair notice of what is prohibited,” and “is so standardless that it authorizes or encourages seriously discriminatory enforcement”²²—exactly what you are now doing.²³ In *FCC v. Fox Television Stations* (2012), the Court found the Commission’s amorphous and inconsistent policy regarding “indecent” in broadcasting to be unconstitutionally vague as applied to the plaintiffs’ broadcasts.²⁴ There, as here, “precision and guidance are necessary

¹⁷ *New York Times Co. v. Sullivan*, 376 U.S. 254, 271-2 (1964). *See also* *Citizens United v. FEC*, 558 U.S. 310, 329 (2010); *Federal Election Comm’n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 468–469 (2007); *NAACP v. Button*, 371 U.S. 415, 433 (1963).

¹⁸ *See also* *United States v. Alvarez*, 567 U.S. 709, 718 (2012) (plurality opinion) (“Absent from those few categories where the law allows content-based regulation of speech is any general exception to the First Amendment for false statements.”).

¹⁹ 603 U.S. 707, 719 (2024).

²⁰ *Id.* at 741-42.

²¹ Glen O. Robinson, *The FCC and the First Amendment: Observations on 40 Years of Radio and Television Regulation*, 52 MINN. L. REV. 67, 119 (1967), <https://doi.org/10.24926/265535.2291>. The Commission has a long history of trying to “encourage, cajole, or even coerce broadcasters to present better programming ‘in the public interest,’” as in 1967. *Id.* at 68. But such jawboning was overwhelmingly about improving the educational quality of children’s programming, not reshaping political speech. Glen O. Robinson, *The Electronic First Amendment*, 47 DUKE L.J. 899, 923 (1998) (finding few “concrete examples of attempted influence” beyond children’s programming), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1027&context=dlj>.

²² *Fed. Comm’n v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

²³ *See, e.g.*, Public Notice, FCC Establishes MB Docket No. 25-73 and Comment Cycle for News Distortion Complaint Involving CBS Broadcasting Inc., Licensee of WCBS, New York, NY, 40 F.C.C. Rcd. 1132 (2025) (reopening news distortion complaints against broadcasters that had allegedly harmed President Trump’s interests while leaving undisturbed the dismissal of the Fox petition alleging distortion in Trump’s favor). *Cf. infra* note 53 and associated text. *See also infra* note 67 and associated text (selective application of the equal opportunities rule).

²⁴ *Fox*, 567 U.S. 239, 254.

so that those enforcing the law do not act in an arbitrary or discriminatory way” and “rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.”²⁵ This must be the goal of the rulemaking you have proposed to define the “public interest”—or to update the equal opportunities rule.

Third, the reporting President Trump complains about is editorializing protected by the First Amendment;²⁶ it is not remotely subject to the FCC’s rule against broadcast hoaxes. The rule against hoaxes explicitly does *not* aim to correct bias or balance speech, and is much clearer than the “news distortion” policy or “the public interest” standard: It applies only when a broadcaster knows that it is broadcasting false information “concerning a crime or a catastrophe,” “[i]t is foreseeable that broadcast of the information will cause substantial public harm,” and this “does in fact directly cause” such harm.²⁷ The FCC has applied this rule only rarely,²⁸ typically in cases involving the “staging” or outright fabrication of news events (*e.g.*, kidnappings);²⁹ it has thereby avoided interfering with editorial judgments protected by the First Amendment.³⁰

Fourth, your unsupported claim that unnamed broadcasters are engaged in unspecified “hoaxes,” combined with your invocation of the news distortion policy is plainly unconstitutional: it aims to do something the Supreme Court has forbidden—correcting bias or balancing speech—while its vagueness makes good-faith compliance impossible and invites arbitrary enforcement. Last year, former Chairs, Commissioners and other veterans of the FCC of both parties (mostly Republicans) asked you to renounce that policy but leave in place the broadcast hoax rule.³¹ You simply ignored their petition.

Finally, your conception of how the First Amendment applies to broadcasting is, in fact, quite unclear. You declare that it is “Constitutional law 101” that “No one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license

²⁵ *Id.* at 253-54.

²⁶ *Turner Broadcasting System, Inc. v. Fed. Commc’ns Comm’n*, 512 U.S. 622, 653 (1994) (“The First Amendment protects the editorial independence of the press.”).

²⁷ It is also, of course, an actually codified rule: 47 C.F.R. § 73.1217.

²⁸ The Commission issued findings of liability in just eight cases between 1969 and 2019—including only one between 1985 and 2019. Joel Timmer, *Potential FCC Actions Against “Fake News”: The News Distortion Policy and the Broadcast Hoax Rule*, 24 COMM’N L. & POL’Y 1, 20 (2019).

²⁹ See Chad Raphael, *The FCC’s Broadcast News Distortion Rules: Regulation by Drooping Eyelid*, 6 COMM’N L. & POL’Y 485, 501 (2001); *Walton Broadcasting, Inc. (KIKX)*, 78 F.C.C.2d 880, 955-68 (1976).

³⁰ For a non-broadcast analogue, see *Rodriguez-Cotto v. Pieluisi-Urrutia*, 668 F. Supp. 3d 87 (D.P.R. 2023), in which the district court struck down on First Amendment grounds Puerto Rico’s law making it a crime to spread rumors or raise false alarms during emergency and disasters.

³¹ Pet. for Special Relief, In re Repeal of the News Distortion Pol’y (F.C.C. filed Nov. 13, 2025), <https://protectdemocracy.org/wp-content/uploads/2025/11/News-Distortion-Petition-for-Special-Relief.pdf>.

because ‘the public interest’ requires it ‘is not a denial of free speech.’”³² But that principle has never meant that FCC licensees have no First Amendment rights or that the First Amendment does not constrain how the Commission assesses the “public interest.” Restrictions on licensees’ speech, especially viewpoint-based limitations, are still subject to First Amendment scrutiny even if, in some circumstances, that scrutiny differs somewhat from that applied to non-broadcast media.

Your citations in support of your position are inapposite. *NBC v. United States* (1943) upheld essentially economic regulation governing business relationships between stations and networks, not re-shaping broadcasters’ *speech*.³³

Red Lion v. FCC (1969) upheld the FCC’s Fairness Doctrine because the Supreme Court did not apply the First Amendment to broadcasters in the same way as other media: While “the First Amendment is [not] irrelevant to public broadcasting,” because broadcasters hold a license to scarce radio spectrum, “it is the right of the viewers and listeners, not the right of the broadcasters which is paramount.”³⁴ But as the Court subsequently made clear in *FCC v. League of Women Voters* (1984), the fact that the FCC may require broadcasters to host opposing views so as to expose the public to more speech and diverse perspectives does not give regulators the right to *censor* speech or restrict what views and perspectives a broadcaster may air.³⁵ To the contrary, “if the public’s interest in receiving a balanced presentation of views is to be fully served, we must necessarily rely in large part upon the editorial initiative and judgment of the broadcasters who bear the public trust.”³⁶

The FCC repealed the Fairness Doctrine partly because it found that compelling broadcasters to present multiple views on controversial and important issues achieved precisely the opposite of what the doctrine intended—and the opposite of why *Red Lion* upheld it as serving the purposes of the First Amendment.³⁷ Even if one construed your comments as demanding that broadcasters provide multiple perspectives rather than choosing a single editorial point of view (arguably in keeping with *Red Lion*), this would constitute an abrupt reversal of well-settled FCC law. Reversing an Order and precedent established by the full Commission without acknowledgement—let alone explanation—is

³² Brendan Carr (@BrendanCarrFCC), X (Mar. 14, 2026, 18:03 ET), <https://x.com/BrendanCarrFCC/status/2032940622206640504>.

³³ 319 U.S.227.

³⁴ 395 U.S. 367, 379-380.

³⁵ *FCC v. League of Women’s Voters*, 468 U.S. 364, 377-380 (1984).

³⁶ *Id.* at 378.

³⁷ See *Syracuse Peace Council*, 2 F.C.C. Rcd. 5043, 5051 (1987); *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989) (affirming repeal of the Fairness Doctrine on public interest grounds and avoiding constitutional question).

not simply arbitrary and capricious, but also beyond the power of either the Media Bureau or the Chair.

In making threats and issuing informal guidance under these three concepts, you have sought to circumvent judicial review by avoiding any official action that could be reviewable in court.³⁸ But we are confident that courts would find ample reason to distinguish *Red Lion*³⁹ and to block your threats if presented with the question. “Government officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors.”⁴⁰

In *Murthy v. Missouri* (2024), there was inadequate evidence to establish standing to sue over alleged jawboning: “platforms had independent incentives to moderate content and often exercised their own judgment,” and the Court found at most only “tenuous” evidence of improper pressure from the government, and no evidence of “continued pressure” from the government.⁴¹ Here, there is ample and growing evidence that broadcasters and programmers are self-censoring because of unprecedented and relentless pressure from the Commission and attacks by the President—now including “TREASON” prosecutions,⁴² *which carry the death penalty*.⁴³ Commissioner Anna Gomez has “heard from broadcasters who are telling their reporters to be careful about the way the[y] cover this administration.”⁴⁴

Chairman Ajit Pai, your Republican predecessor, could “hardly think of an action more chilling of free speech than the federal government investigating a broadcast station because of disagreement with its news coverage or promotion of that coverage.”⁴⁵ You have

³⁸ A “final agency action” is necessary for judicial review under the Administrative Procedure Act. 5 U.S.C. § 704.

³⁹ *Red Lion* said the Court would “reconsider the constitutional implications” of specific broadcasting regulations “if experience with [their] administration ... indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage [of public issues].” 395 U.S. 367, 393. Today, the Court would frame such analysis in terms of chilling effects, as *Pacifica v. FCC* (1978) did: “The danger dismissed so summarily in *Red Lion* was that broadcasters would respond to the vagueness of the regulations by refusing to present programs dealing with important social and political controversies” because these concerns were based on “hypothetical application” of the FCC’s Fairness Doctrine “to situations not before the Court.” *Fed. Comm’n v. Pacifica Foundation*, 438 U.S. 726, 743 (1978).

⁴⁰ *National Rifle Association of America v. Vullo*, 602 U.S. 175 (2024). *See also* *Bantam Books, Inc v. Sullivan*, 372 U.S. 58 (1963).

⁴¹ *Murthy v. Missouri*, 144 S.Ct. 1972, 1988-89, 1995 (2024).

⁴² Trump, *supra* note 5.

⁴³ 18 U.S.C. § 2381.

⁴⁴ Oliver Darcy, *Alone at the FCC*, STATUS (July 13, 2025), <https://www.status.news/p/fcccommissioner-anna-gomez-free-speech>.

⁴⁵ Letter from Ajit V. Pai, Chairman, FCC, to the Honorable Maria Cantwell, Senator, United States Senate (April 12, 2018), <https://docs.fcc.gov/public/attachments/DOC-350372A1.pdf>.

launched a flurry of such investigations.⁴⁶ CBS has been the target of an ongoing news distortion investigation into “60 Minutes”; last year, a longtime executive producer of the show resigned because he said he was no longer able “[t]o make independent decisions based on what was right for 60 Minutes, right for the audience.”⁴⁷

The National Association of Broadcasters has warned that the news distortion policy generally “incentivize[s] stations to avoid controversial and partisan issues and present only ‘bland, inoffensive’ material, contrary to the public interest.”⁴⁸ You threatened ABC with allegations of news distortion over late-night host Jimmy Kimmel’s jokes about the motives of Charlie Kirk’s alleged killer. “We can do this the easy way or the hard way,” you said.⁴⁹ Hours later, ABC suspended Kimmel indefinitely. Sen. Ted Cruz (R-TX) understood that this a “mafioso” tactic “right out of ‘Goodfellas,’” essentially: “‘nice bar you have here, it’d be a shame if something happened to it.”⁵⁰ The Commission has used similar tactics to punish television talk show hosts for interviewing political candidates.⁵¹ In the face of such tactics, broadcasters have been only too willing to make major editorial changes in order to gain FCC approval for their mergers or acquisitions.⁵²

When, under the prior Chair, the Commission was asked to investigate a news distortion complaints concerning CBS’s editing of an election-season interview with then-presidential candidate Kamala Harris and against ABC regarding moderation of a presidential debate, the staff dismissed these complaints and made clear that any other disposition would violate the First Amendment and Communications Act’s prohibition on censorship.⁵³ Now,

⁴⁶ See, e.g., Public Notice, FCC Establishes MB Docket No. 25-73 and Comment Cycle for News Distortion Complaint Involving CBS Broadcasting Inc., Licensee of WCBS, New York, NY, 40 F.C.C. Rcd. 1132 (2025); Brendan Carr (@BrendanCarrFCC), X (Apr. 16, 2025, 6:58 PM), <https://x.com/BrendanCarrFCC/status/1912641900558893377>; George Winslow, *Group Files FCC Complaint Against ABC, NBC and CBS for “News Distortion,”* TV TECH (Apr. 22, 2025), <https://www.tvtechnology.com/news/group-files-fcc-complaint-against-abc-nbc-and-cbs-for-news-distortion>.

⁴⁷ Niha Masih & Sarah Ellison, *‘60 Minutes’ Producer Bill Owens Resigns*, WASH. POST (Apr. 23, 2025), <https://www.washingtonpost.com/style/2025/04/23/60-minutes-producer-bill-owensresigns>.

⁴⁸ Comments of the National Association of Broadcasters, Docket 25-73, at 13 (March 7, 2025), <https://www.fcc.gov/ecfs/document/10307109522139/1>.

⁴⁹ Mandalit del Barco, *ABC pulls Jimmy Kimmel off air after comments made about the Charlie Kirk killing*, NPR (Sept. 18, 2025), <https://www.npr.org/2025/09/19/nx-s1-5546764/fcc-brendan-carr-kimmel-trump-free-speech>.

⁵⁰ Verdict with Ted Cruz, *Jimmy Kimmel Fired*, YOUTUBE (Sept. 19, 2025), <http://bit.ly/3Kt9mEr>.

⁵¹ The Late Show with Stephen Colbert, *Why CBS Didn’t Broadcast Stephen Colbert’s Interview With James Talarico*, YOUTUBE (Feb. 16, 2026), <https://youtu.be/oh7DPSP65JA?si=XDLq5ZH17yIfgPTo&t=95>.

⁵² For example, when the FCC approved Skydance’s acquisition of Paramount, you touted Skydance’s “written commitments to ensure that the new company’s programming embodies a diversity of viewpoints from across the political and ideological spectrum” and to “adopt measures that can root out the bias that has undermined trust in the national news media.” Federal Communications Commission, *FCC Approves Skydance’s Acquisition of Paramount CBS* (July 24, 2025), <https://www.fcc.gov/document/fcc-approves-skydances-acquisition-paramount-cbs>.

⁵³ Letter to Daniel R. Suhr (WCBS), (January 16, 2025), <https://docs.fcc.gov/public/attachments/DOC-408899A1.pdf>; Letter to Daniel R. Suhr (WPVI), (January 16, 2025) (dismissing complaint against CBS),

the Commission is advancing a nakedly political agenda: “When a political candidate is able to win a landslide election victory ... in the face of hoaxes and distortions,” you said, presumably referring to President Trump and the 2024 election, “there is something very wrong. It means the public has lost faith and confidence in the media. And we can’t allow that to happen.”⁵⁴

President Ronald Reagan knew better: “The obvious intent of the First Amendment was to promote vigorous public debate and a diversity of viewpoints in the public forum as a whole, not in any particular medium, let alone in any particular journalistic outlet,” he said while vetoing legislation to re-impose the Fairness Doctrine.⁵⁵ *Moody* confirmed this reading as a matter of law.⁵⁶

If, as you claim, you “don’t want to be the speech police,”⁵⁷ it is you, not broadcasters, who must “correct course,” as you put it.⁵⁸ Start by recognizing that the First Amendment bars the FCC from un-biasing or balancing the media. Don’t wait. Do so immediately. Put it in writing. Do what the Commission did in 1985: “repudiate[] the notion that it [is] proper for a governmental authority to intervene actively in the marketplace of ideas.”⁵⁹

The Commission has before it a Petition to repeal or codify the news distortion doctrine.⁶⁰ Granting this petition would eliminate the use of this tool as an unconstitutional cudgel for control that relies on vagueness and prosecutorial discretion. Alternatively, formally rejecting the Petition would at least allow a court to review the constitutionality of the doctrine as you seek to apply it.⁶¹ Do not leave the petition in limbo; choose one of these options.

Likewise, initiate the rulemaking you have suggested to clarify the “public interest” standard. The Commission must clearly explain the rule’s constitutional basis and provide

<https://docs.fcc.gov/public/attachments/DOC-408880A1.pdf> (dismissing complaint against ABC). If the Commission could be faulted for anything here, it was waiting too long to dismiss these complaints.

⁵⁴ Carr, *supra* note 2.

⁵⁵ President Ronald Reagan, Message to the Senate Returning Without Approval the Fairness in Broadcasting Bill, Ronald Reagan Presidential Library & Museum (June 19, 1987), <https://www.reaganlibrary.gov/archives/speech/message-senate-returning-without-approval-fairnessbroadcasting-bill>.

⁵⁶ See *supra* notes 19-20 and associated text (discussion of *Moody*).

⁵⁷ Carr CNBC Transcript, *supra* note 13.

⁵⁸ Carr, *supra* note 2.

⁵⁹ *Syracuse Peace Council*, 2 F.C.C. Rcd. 5043, 5051 (1987) (citing Inquiry Into Section 73.1910 of the Commission’s Rules and Regulations Concerning Alternatives to the General Fairness Doctrine Obligations of Broadcast Licensees in Gen. Docket No. 84-282, 102 FCC 2d 145, 224-25 (1985)).

⁶⁰ See Petition for Special Relief, *supra* note 31.

⁶¹ 5 U.S.C. § 704.

the certainty required by *Fox*. Such a rule should be issued promptly—ideally before this November’s mid-term elections—to allow judicial review.

Meanwhile, the Commission should, as former Commissioner Glen O. Robinson suggested in 1998, “exercise its powers in a more formal way, by means of approved public procedures and not through lifted eyebrows or jawboning.”⁶² This would ensure that courts, not the Commission, decide how to apply the First Amendment to broadcasting.⁶³ This would require you to cease making casual threats against broadcasters and programmers on social media, in comments to the media, in warning letters, and in informal guidance.

You must also withdraw pending threats. Specifically, the Commission should rescind the Public Notice recently issued by the Media Bureau that “encourages” television broadcasters, cable operators,⁶⁴ and programmers to consult with the Commission before interviewing political candidates⁶⁵—exactly what the Commission said was *not* necessary in 2003.⁶⁶ The Notice is presumptively unconstitutional because it does not apply to radio broadcasters, radio shows or cable programmers.⁶⁷ If the Bureau determines that a television programmer does not qualify for the “*bona fide* news interview” exemption to the FCC’s equal opportunities rule, it would have to make equal airtime available to all rival candidates upon request.⁶⁸ There is no timeline for the Bureau to make such a determination, and no clear standard—only, as you put it, whether they are “fake news.”⁶⁹

⁶² Robinson, *supra* note 21, 47 DUKE L.J. at 923.

⁶³ *Marbury v. Madison*, 5 U.S. 137, 138 (1803) (“It is emphatically the province and duty of the Judicial Department to say what the law is.”).

⁶⁴ The equal opportunities rule applies not only to broadcasters but also to cable operators. 47 U.S.C. § 315(c)(1).

⁶⁵ Media Bureau, Public Notice, *FCC’s Media Bureau Provides Guidance on Political Equal Opportunities Requirement for Broadcast Television Stations*, DA 26-68 (Jan 21, 2026), <https://docs.fcc.gov/public/attachments/DA-26-68A1.pdf>.

⁶⁶ Request of Infinity Broadcasting Operations, Inc., 18 FCC Rcd 18603 (MB 2003) (“Howard Stern”) (those “airing programs that meet the statutory news exemption ... need not seek formal declaration from the Commission” about their journalistic bona fides before interviewing political candidates).

⁶⁷ John Hendel, *Talk radio isn’t a target of FCC’s ‘equal time’ notice*, Brendan Carr says, POLITICO (Jan. 29, 2026), <https://www.politico.com/news/2026/01/29/talk-radio-isnt-a-target-of-fccs-equal-time-memo-brendan-carr-says-00755660>. *Reed v. Town of Gilbert*, 576 U.S. 155, 170 (2015) (“laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference.”) (citing *Turner Broadcasting System, Inc. v. Fed. Comm’n Comm’n*, 512 U.S. 622, 658 (1994)); *see also Citizens United v. Federal Election Comm’n*, 558 U.S.310, 340 (2010) (“[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content.”). Cable programmers are, of course, subject to the equal opportunity rules. 47 U.S.C. § 315(c). That the Media Bureau’s Notice omits this, and attributes equal opportunity to the public interest standard, raises serious questions as to the neutrality of the policy.

⁶⁸ 47 U.S.C. § 315(a).

⁶⁹ Hendel, *supra* note 67 (“If you’re fake news, you’re not going to qualify as the bona fide news exception.”).

This Notice invites the kind of arbitrary enforcement at issue in *Fox*. Whether broadcasters seek pre-clearance or not, their speech will be significantly chilled, as in *Fox*—here, their willingness to interview political candidates, especially for weekly shows with limited airtime. Before the FCC ends the deference it has extended to broadcasters and programmers since 1984,⁷⁰ it must provide clear standards, and it can best develop those through notice-and-comment rulemaking. Recall that “Congress’ fundamental purpose in enacting [Section 315(a)’s]exemptions was to encourage increased news coverage of political campaigns and to give broadcasters the discretion to exercise their good faith news judgment in deciding which candidates to cover and in what formats.”⁷¹

You yourself put it best in 2019: “The FCC does not have a roving mandate to police speech in the name of the ‘public interest.’”⁷² Likewise, there is “one fixed star in our constitutional constellation,” as the Supreme Court declared in 1943, when America had never been more at threat: “that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”⁷³

Sincerely,

Civil Society Organizations

TechFreedom

Free Press

American Civil Liberties Union

Freedom of the Press Foundation

Association of Health Care Journalists

Institute for Free Speech

Center for Democracy & Technology

Institute for Local Self-Reliance

Common Cause

Knight First Amendment Institute at
Columbia University

The Copia Institute

Media Access Project

Defending Rights & Dissent

Media and Democracy Project

Electronic Frontier Foundation

National Association of Black Journalists

Fight for the Future

⁷⁰ Multimedia Entertainment, Inc., 56 RR 2d 143, 146 (1984) (“*Phil Donahue*”) (1984) (“Congressional intent is to defer substantially to the good faith news judgments of broadcast licensees.”).

⁷¹ Request of ABC, Inc., 15 FCC Rcd 1355, *4 (MMB 1999) (“Politically Incorrect”).

⁷² Brendan Carr (@BrendanCarrFCC), X (Feb. 14, 2019, 10:05 AM), <https://x.com/BrendanCarrFCC/status/1096062915201953795>.

⁷³ West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943) (Jackson, J.).

National Coalition Against Censorship

Public Knowledge

PEN America

Society of Professional Journalists

Former FCC Officials (*Affiliation for Identification Only*)

Jerald Fritz

Former Chief of Staff to FCC Chairman
Mark Fowler (1981-1987)

Kevin Werbach

Professor of Legal Studies and Business
Ethics
Wharton School, University of
Pennsylvania
Former Counsel for New Technology
Policy (1994-1998)

Peter Hyun

Former Enforcement Bureau Official
(2023-2025)

Gigi Sohn

Former Counselor to FCC Chairman Tom
Wheeler (2013-2016)

First Amendment Scholars & Experts (*Affiliation for Identification Only*)

Enrique Armijo

Professor of Law
Elon University

Clay Calvert

Nonresident Senior Fellow
American Enterprise Institute

Israel Balderas

Assistant Professor
Elon University

Alan K. Chen

Thompson G. Marsh Law Alumni
Professor
University of Denver Sturm College of
Law

Jane Bambauer

Eminent Scholar and Professor of Law
University of Florida

Nancy Costello

Professor/Director, First Amendment
Law Clinic
Michigan State University College of Law

Mark Bartholomew

Professor of Law
University at Buffalo School of Law

Frank Deale

Professor of Law
CUNY School of Law

Peter Brandon Bayer

Associate Professor Emeritus
William S. Boyd School of Law, UNLV

Robert Drechsel

Professor Emeritus
University of Wisconsin–Madison

Eric B. Easton

Professor Emeritus
University of Baltimore School of Law

Eric M. Freedman

Siggi B. Wilzig Distinguished Professor of
Constitutional Rights Emeritus
Maurice A. Deane School of Law at
Hofstra University

Andrew Geronimo

Director, Dr. Frank Stanton First
Amendment Clinic
Case Western Reserve University School
of Law

Eric Goldman

Associate Dean for Research and
Professor
Santa Clara University School of Law

Ellen P. Goodman

Distinguished Professor and Jonathan D.
Blake Scholar
Rutgers Law School

Paul Gowder

Frederic P. Vose Professor of Law
Northwestern University Pritzker School
of Law

Roy Gutterman

Professor/Director
Tully Center for Free Speech

Jonathan Hafetz

Professor of Law
Seton Hall University School of Law

G.S. Hans

Clinical Professor of Law
Cornell Law School

Thomas Healy

Board of Visitors Distinguished Professor
of Law
Seton Hall University School of Law

Charles H. Kennedy

Principal, The Kennedy Privacy Law Firm

Jane E. Kirtley

Silha Professor of Media Ethics & Law
University of Minnesota

Heidi Kitrosser

William W. Gurley Professor of Law
Northwestern University, Pritzker School
of Law

Mark A. Lemley

Professor of Law
Stanford Law School

Gregg P. Leslie

Director, First Amendment Clinic
Arizona State University Sandra Day
O'Connor College of Law

Gregory P. Magarian

Thomas and Karole Green Professor of
Law
Washington University School of Law

Irina D. Manta

Professor of Law and Founding Director
of the Center for Intellectual Property
Law
Maurice A. Deane School of Law at
Hofstra University

Kathryn Montalbano

Assistant Professor of Media Law and Ethics
University of Kentucky

A. Douglas Melamed

Visiting Fellow
Stanford Law School

Art Neill

Clinical Professor
California Western School of Law, New Media Rights Program

Clare Norins

Clinical Associate Professor
University of Georgia School of Law

Radhe Patel

Stanton Fellow
University of Illinois First Amendment Clinic

Jef Pearlman

Clinical Professor of Law
Executive Director, BU/MIT Student Innovations Law Clinic
Boston University School of Law

Rick Peltz-Steele

Chancellor Professor
University of Massachusetts School of Law

Aaron Perzanowski

Thomas W. Lacchia Professor of Law
University of Michigan

Robert D. Richards

Curley Professor Emeritus of First Amendment Studies
Penn State University

Evan Ringel

Assistant Professor of Media Law
Appalachian State University

Eric Robinson

Reid H. Montgomery Freedom of Information Chair and Associate Professor
University of South Carolina

Nadine Strossen

John Marshall Harlan II Professor of Law Emerita
New York Law School

Christopher Terry

Associate Professor of Media Law
University of Minnesota

Rebecca Tushnet

Frank Stanton Professor of the First Amendment
Harvard Law School

Erik Ugland

Associate Professor
Marquette University

Alexander Volokh

Professor
Emory Law School

Jonathan Weinberg

Distinguished Professor
Wayne State University Law School

Kyu Ho Youm

Jonathan Marshall First Amendment Chair Emeritus
University of Oregon

Media, Journalism & Other Scholars (*Affiliation for Identification Only*)

Genelle Belmas, PhD

Associate Professor
University of Kansas

Caitlin Carlson

Professor, Department of Communication
and Media
Seattle University

Kathleen Bartzen Culver

Director, School of Journalism and Mass
Communication; Professor; James E.
Burgess Chair in Journalism Ethics;
Director, Center for Journalism Ethics
University of Wisconsin–Madison

Victoria Smith Ekstrand

Professor, Hussman School of Journalism
and Media
University of North Carolina at Chapel Hill

Dan Kozlowski

Associate Professor
Saint Louis University

Tony Palmeri

Professor of Communication Studies
University of Wisconsin–Oshkosh

Kristen A. Patrow

Assistant Professor of Journalism
Butler University

Victor Pickard

C. Edwin Baker Professor of Media Policy
and Political Economy
University of Pennsylvania

Meredith L. Pruden

Assistant Professor
Kennesaw State University

Derigan Silver

Professor and Director of Freedom of
Expression Initiatives
University of Denver

Morgan Weiland

Moorman-Simon Interdisciplinary Career
Development Assistant Professor of
Communication Law, Boston University
College of Communication, by courtesy,
Boston University School of Law