November 2, 2026

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

Re: "Fake Polls," News Distortion, Broadcast Hoaxes and the First Amendment

Dear Chairman Carr:

We are scholars of the First Amendment, communications, and technology law, and civil society organizations dedicated to free speech. We write to address your baseless claims that broadcasters might have violated the FCC's news distortion policy and broadcast hoax rule by reporting on opinion polling regarding the upcoming election. You have repeatedly overstated the FCC's authority to chill reporting disfavored by this administration in violation of the First Amendment.

In March, you asserted that "[b]roadcasters … are running hoaxes and news distortions - also known as the fake news"[1] after President Donald Trump complained that *The Wall Street Journal* and *The New York Times* were the "Fake News Media" because of headlines he considered misleading.[2] 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."[3] The next day, President Trump threatened broadcasters with "Charges for TREASON for the dissemination of false information!"[4] Two weeks later, you required ABC to apply years early to renew broadcast licenses it has held since the 1940s.[5] ABC sued to protect its First Amendment rights, supported by Mark Fowler, FCC Chairman under President Ronald Reagan, who declared: "Never in its history has the agency ever acted so corruptly and unlawfully to intrude on broadcasters' First Amendment rights."[6]

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[1] Brendan Carr (@BrendanCarrFCC), X (Mar. 14, 2026, 12:24 ET), https://tinyurl.com/52afmnfa

[2] 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://tinyurl.com/y9ksu9vb ("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.").

[3] Brendan Carr (@BrendanCarrFCC), X (Mar. 14, 2026, 12:24 ET), https://tinyurl.com/52afmnfa

[4] Donald J. Trump (@realDonaldTrump), TRUTH (Mar. 15, 2026, 19:48 ET), https://truthsocial.com/@realDonaldTrump/posts/116235861005528220.

[5] Fed'l Commc'ns Comm'n, DA 26-416 (April 28, 2026).

[6] Brief for Amicus Curiae Supporting Plaintiffs, ABC v. Fed. Commc'ns Comm'n, No. 1:26-cv-2902 (D.D.C. Sept. 17, 2026), https://techfreedom.org/wp-content/uploads/2026/09/Amicus-Brief-ABC-v-FCC-Sep-2026.pdf.

President Trump's attempts to control media reports about him reached a new level of absurdity in late August when he "reported" an NBC journalist "to the FCC for rebuke or punishment" over alleged "purposeful inaccuracy."[7] Kristen Welker, host of Meet the Press, said the President had "mixed results" after having "endorsed a slate of candidates in the primaries," alluding to losses by at least two Congressional candidates and three gubernatorial candidates in their primaries.[8]

Rather than dismissing this preposterous accusation outright, you indicated its merit, saying Trump was "over the target," adding the "FCC may put guidance out soon to remind broadcasters about their obligations with respect to not airing fake polls, particularly if they're done to suppress people heading into the fall."[9] On October 21, after the revelation that Wedgewood Polls fabricated its data, you threatened broadcasters with legal action if they report on "[f]ake Polls … designed to … interfere with the regular functioning of the electoral process and alter the normal patterns of voter turnout and enthusiasm."[10] Your threats are both legally baseless and dangerous.

I. Neither the Broadcast Hoax Rule nor the News Distortion Policy Applies

The broadcast hoax rule cannot possibly apply to polls; it applies only to the knowing "broadcast [of] false information concerning a crime or a catastrophe" that foreseeably causes "substantial public harm."[11] As discussed below, the First Amendment generally protects even false political speech, eliminating the possibility that reporting on such speech "concern[s] a crime." And "catastrophe" is not synonymous with "whatever the FCC thinks might result in any harm" — it is defined by rule as a "disaster or imminent disaster involving violent or sudden event,"[12] which a poll is self-evidently not. Even a *knowing* broadcast of a falsified poll — which nobody has credibly alleged — could not violate this rule.

While the news distortion policy is potentially broader, it applies only to a "deliberate distortion," not "mere inaccuracy or difference of opinion."[13] Such deliberate activity must be established by extrinsic evidence (*i.e.*, beyond the broadcast itself) involving the

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[7] Donald J. Trump (@realDonaldTrump), TRUTH (Aug. 30, 2026, 9:00 AM), https://truthsocial.com/@realDonaldTrump/posts/117184581053116309.

[8] Cheyanne M. Daniels, *Trump calls for NBC's Kristen Welker to face 'rebuke or punishment'*, POLITICO (Aug. 30, 2026), https://www.politico.com/news/2026/08/30/trump-kristen-welker-fcc-punish-01056440.

[9] Ted Hearn, *Carr Warns Broadcasters about Airing Fake Polls, Says New Guidance Could Be on the Way*, BROADBAND BREAKFAST (Sept. 8, 2026), https://broadbandbreakfast.com/carr-warns-broadcasters-about-airing-fake-polls-says-new-guidance-could-be-on-the-way/.

[10] Brendan Carr (@BrendanCarrFCC), X (Oct. 21, 2026, 10:26 AM), https://x.com/BrendanCarrFCC/status/2112913475705934326.

[11] 47 C.F.R. § 73.1217(a).

[12] 47 C.F.R. § 73.1217(c).

[13] Galloway v. Fed. Commc'ns Comm'n, 778 F.2d 16, 20, 150 (D.C. Cir. 1985).

"principals, top management, or news management" of the licensee, as opposed to other employees.[14] The Commission thus bears a heavy burden in showing that a broadcaster lacked good faith. Pointing out a less-than-completely successful record of candidate endorsement cannot possibly qualify. Likewise, no evidence has shown—or even suggested—that any broadcaster's leadership knew that Wedgewood's polls were faked, or engaged in any broader deliberate distortion.

II. Your Threats Unconstitutionally Chill Speech

Baseless as your threats are, broadcasters have reason to fear that the FCC will pursue them anyway given your history of making what Sen. Ted Cruz called "mafioso" threats "right out of *Goodfellas*."[15] As Commissioner Gomez notes, "station groups and local broadcasters across the country have asked my office what topics are now considered too risky to cover, a question that should never need to be asked in a country with a First Amendment. When a federal agency with the power to grant or revoke broadcast licenses starts weighing in on editorial content, the chilling effect reaches far beyond any single station or story."[16] The unsubstantiated assertion that there is "significant surge in entirely Fake Polls," combined with the dire consequences for broadcasters—license revocation according to you and "TREASON" according to the President—will chill broadcasters from reporting on polls that they fear you might consider unreliable, or simply unfavorable. Your pattern of making (and following through on) threats against broadcasters who engage in expression disfavored by the administration not only makes this chill inevitable, but also suggests that it may well be the intended result.

The danger here could not be more severe. The First Amendment's protection is "at its zenith" for such core political speech,[17] and has its "fullest and most urgent application to speech uttered during a campaign for political office."[18] Accordingly, even false speech on matters of public importance is protected, as the Supreme Court has recognized: "some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee."[19]

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[14] *See* Hunger in America, 20 F.C.C.2d 143, 150-51 (1969). In addition, the distortion must apply to a "significant event," rather than minor inaccuracies or incidental aspects of the report. Galloway, 778 F.2d at 20.

[15] Coral Murphy Marcos & Robert Mackey, *Ted Cruz Compares Threats to ABC by FCC Chair to those of Mob Boss*, THE GUARDIAN (Sept. 19, 2025), https://www.theguardian.com/us-news/2025/sep/19/ted-cruz-jimmy-kimmel-abc-fcc-mafia.

[16] Statement of Commissioner Gomez on Media Bureau Summary Dismissal (July 1, 2026), https://docs.fcc.gov/public/attachments/DOC-422758A1.pdf.

[17] Meyer v. Grant, 486 U.S. 414, 425 (1988).

[18] Eu v. S.F. Cnty. Democratic Cent. Comm., 489 U.S. 214, 223 (1989) (quoting Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971)) (internal quotation marks omitted).

[19] United States v. Alvarez, 567 U.S. 709, 719 (2012) (plurality opinion).

A. The First Amendment Protects Election-Related Speech from Government Intrusion

Your assertion that fake polls "interfere with the regular functioning of the electoral process" does not justify your threats. While the Supreme Court *has* recognized a government interest in "preserving the integrity of [the] election *process*,"[20] the Court has understood "process" narrowly to mean protecting voters from deception, confusion, intimidation and fraud related to the act of voting or registering to vote itself, *e.g.*, campaign-free zones around polling places,[21] restrictions on who may appear on the ballot,[22] bans on write-in voting during primary elections,[23] and other reasonable regulations.[24]

Conversely, the Court has consistently struck down regulation of speech concerning the substance of an election.[25] Regulation of "what is said or distributed during an election . . . goes beyond an attempt to control the process to enhance the fairness overall so as to carefully protect the right to vote."[26] Because the right, and civic duty, to evaluate such speech rests with the electorate,[27] government attempts to "enhanc[e] the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism."[28] Notably, courts have recently dismissed lawsuits alleging

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[20] Burson v. Freeman, 504 U.S. 191, 199 (1992).

[21] *Id.*

[22] American Party of Texas v. White, 415 U.S. 767 (1974); Bullock v. Carter, 405 U.S. 134 (1972); Jenness v. Fortson, 403 U.S. 431 (1971).

[23] Burdick v. Takushi, 504 U.S. 428 (1992).

[24] Even when regulations target speech regarding the mechanics of elections, they may still violate the First Amendment. *See* Minnesota Voters Alliance v. Ellison, No. 24-2094 (8th Cir. Oct. 21, 2026) (state could not constitutionally enforce prohibition against transmitting false information regarding voter eligibility to a group opposing the state's interpretation of which convicted felons are eligible to vote).

[25] *See, e.g.*, Susan B. Anthony List v. Driehaus, 814 F.3d 466 (6th Cir. 2016) (law prohibiting false information about candidates made with knowledge or reckless disregard in campaign materials violated the First Amendment); 281 Care Comm. v. Arneson, 766 F.3d 774, 787 (8th Cir. 2014) (law prohibiting knowing or reckless false statements intended to promote or defeat a ballot question); Grimmett v. Freeman, 59 F.4th 689 (4th Cir. 2003) (invalidating North Carolina's criminal election libel statute); Babylon Bee, LLC v. Lopez, 818 F. Supp. 3d 1181 (D. Haw. 2026) (Hawaii election-related deepfake law facially unconstitutional); Kohls v. Bonta, 752 F. Supp. 3d 1187 (E.D. Cal. 2024) (striking down California law prohibiting "materially deceptive" election-related speech); Ex parte Stafford, 667 S.W.3d 517 (Tex. 2023) (holding unconstitutional a law criminalizing knowing statements misattributing the source of a communication relating to a political campaign); Commonwealth v. Lucas, 34 N.E.2d 1242 (Mass. 2015) (invalidating law prohibiting false statements about a candidate designed to impact election results, noting: "the danger of such breadth is that the statute may be manipulated easily into a tool for subverting its own justification, i.e., the fairness and freedom of the electoral process, through the chilling of core political speech."); State v. 119 Vote No! Committee, 135 957 P.2d 691 (Wash. 1998) (law prohibiting false statements of material fact made with actual malice in political advertising facially unconstitutional).

[26] 281 Care Comm., 766 F.3d at 787.

[27] United States v. Alvarez, 567 U.S. 709, 728 (2012).

[28] Anderson v. Celebrezze, 460 U.S. 780, 798 (1983).

that polls which ultimately proved to be inaccurate are legally redressable "fake news," reasoning that polls are necessarily "predictive and inherently uncertain."[29] Your threat against broadcasters falls a country mile into substance, rather than process, territory. The FCC has no legitimate interest in adjudicating which political speech may be disseminated to the public. Any such interest "is patronizing and paternalistic . . . . It assumes the people . . . are too ignorant or disinterested to investigate, learn, and to determine for themselves the truth or falsity in political debate."[30]

B. The FCC Must Not Police Content

You have claimed that you "don't want to be the speech police."[31] If you really meant that, you would accept what the Commission has long said under chairs of both parties: that journalism "necessarily involves selection and editorial judgment," that any government efforts to "authenticate the news" would "cast the chill of omnipresent government censorship over the newsmen's independence,"[32] and that it would be "unwise and probably impossible" for a government agency to judge the "accuracy" of broadcasts.[33]

During the first Trump Administration, Chair Ajit Pai echoed these concerns in rejecting a request to investigate a broadcaster over news distortion allegations: "I can 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."[34] Doing so would require the Commission to "sit as a review body of the 'truth' concerning news events"—a subjective role that is plainly "not appropriate" for a government licensing agency.[35] Accordingly, the Commission has repeatedly stated that it "cannot properly investigate . . . whether an account or analysis of a news commentator is 'biased' or 'true.'"[36] This is even more true of political polls.

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[29] Donnelly v. Des Moines Register & Tribune Co. 829 F. Supp. 3d 682, 697-99 (S.D. Iowa 2025); Trump v. Ann Selzer. No. CVCV069420 (Iowa District Court for Polk County, Sept. 23, 2026) (citing *Donnelly*, 829 F. Supp. 3d 695-97) ("the results of an opinion poll are not an actionable false representation merely because the anticipated results differ from what ultimately occurred"), https://www.fire.org/research-learn/trump-v-selzer-order-granting-motions-dismiss .

[30] 119 Vote No! Committee, 957 P.2d at 698–99.

[31] *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-cnbcs-squawk-on-the-street-today.html.

[32] *Mrs. J.R. Paul*, 26 F.C.C.2d 591, 592 (1969).

[33] *The Selling of the Pentagon*, 30 F.C.C.2d 150, 152-53 (1971).

[34] Letter to the Honorable Maria Cantwell, United States Senate, from Chairman Ajit V. Pai, Federal Communications Commission (April 12, 2018), available at https://docs.fcc.gov/public/attachments/DOC-350372A1.pdf.

[35] *Network Coverage of the Democratic Nat'l Convention*, 16 F.C.C.2d 650, 655 (1969).

[36] *Mrs. J.R. Paul*, 26 F.C.C.2d at 592.

III. What the Commission Should Do

Nearly a year ago, four former Chairs, three former Commissioners and four other senior veterans of the FCC of both parties—mostly Republicans—asked the Commission to rescind the news distortion policy but leave in place the broadcast hoax rule.[37] As they explained, that rule is narrowly tailored to a clearly legitimate government interest—protecting public safety—but there is no legitimate government interest in policing bias or falsity: The Supreme Court has "many times held, in many contexts, that it is no job for government to decide what counts as the right balance of private expression—to 'un-bias' what it thinks biased, rather than to leave such judgments to speakers and their audiences."[38] And the news distortion policy, despite the limits noted above, remains so vague that it is prone to the kind of abuse you have engaged in again and again.

You ignored this petition for nearly eight months. Only when the D.C. Circuit required prompt action[39] did the Media Bureau finally dismiss the petition on procedural grounds, claiming that petitioners had "failed to present their request in a manner that is cognizable under our rules"—while completely ignoring the substance of their petition.

The week before last, *nineteen* former FCC Chairs, Commissioners, and senior leaders—again, of both parties—denounced your "threat against broadcasters over their reporting on political polls" as "yet another truly outrageous attempt to censor and control the information available to Americans as they prepare to vote," and explained that the "FCC has zero authority to dictate editorial decisions."[40] You responded not with legal argument but with a "🥱" (yawn) emoji.[41]

This flippant response is unbecoming of an Officer of the United States and inappropriately dismissive of the law you swore an oath to uphold. Unfortunately, it is also typical: your tenure has consisted primarily of legally unsupported pronouncements and threats with little formal action — perhaps because you are aware of the certain loss you face in court under the First Amendment and Administrative Procedure Act. When these FCC veterans refile their petition, we urge you to put your money where your mouth is—to act

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[37] Pet. for Special Relief, In re Repeal of the News Distortion Pol'y (FCC filed Nov. 13, 2025), https://protectdemocracy.org/wp-content/uploads/2025/11/News-Distortion-Petition-for-Special-Relief.pdf.

[38] Moody v. NetChoice, LLC, 603 U.S. 707, 719 (2024).

[39] Radio Television Digital News Ass'n, No. 26-1099 (D.C. Cir. May 20, 2026), https://storage.courtlistener.com/recap/gov.uscourts.cadc.43090/gov.uscourts.cadc.43090.01208851798.0.pdf.

[40] Press Release, Former FCC Officials Criticize Brendan Carr's Threat Against Broadcasters Reporting on Political Polls (Oct. 21, 2026), https://techfreedom.org/former-fcc-officials-criticize-brendan-carrs-threat-against-broadcasters-reporting-on-political-polls/.

[41] Brendan Carr (@BrendanCarrFCC), X (Oct. 21, 2026, 8:09 PM), https://x.com/BrendanCarrFCC/status/2113060228136874417

on it immediately, if not to grant the petition, then to deny it promptly on the merits so that they may seek judicial review of the constitutionality of the news distortion policy.

By the same token, we urge you to cease regulation through tweet, casual comments to the media, public notices that purport only to offer "guidance" or "reminders"—about what broadcasters are "prohibited" from doing by "the terms of their federal licenses" or how "broadcasters [must] comply with their public interest obligations"—but in fact reshape the law. Using such informal mechanisms to influence protected editorial decisions that the FCC could not lawfully regulate is no less offensive to the First Amendment.

Ultimately, courts will see through this ruse: The "mandatory language of a document alone can be sufficient to render it binding,"[42] and thus require reinterpretations of the law to follow the Administrative Procedure Act. In the short term, issuing such commands informally may seem to offer the Commission the ignoble "advantage" of "immunizing its lawmaking from judicial review."[43] But there is no virtue or constitutional absolution in exploiting how slowly courts move to avoid accountability for threats that chill speech protected by the First Amendment; indeed, this tactic is perhaps even more nefarious. As the Supreme Court has ruled repeatedly, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury"[44]—one courts must address.

There is a simple path forward for the Commission: If you believe there *is* some legal basis for policing reporting on polls, you must commence a rulemaking process to define those obligations—just as the Commission did when it issued the broadcast hoax rule in 1992.[45] Before you became chair, you acknowledged the vagueness inherent in the concept of the "public interest": "we should start a rulemaking to take a look at what that [standard] means."[46] Of course, you have not commenced any such rulemaking.

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[42] General Elec. Co. v. E.P.A., 290 F.3d 377, 383 (D.C. Cir. 2002) (citing Robert A. Anthony, Interpretive Rules, Policy Statements, Guidances, Manuals, and the Like — Should Federal Agencies Use Them to Bind the Public?, 41 DUKE L.J. 1311, 1355 (1992)). The court's examples of documents with "mandatory language" included what regulated parties "must" and "shall" do. *Id*. at 384.

[43] Appalachian Power Co. v. EPA, 208 F.3d 1015, 1020 (D.C. Cir. 2000) ("If an agency acts as if a document issued at headquarters is controlling in the field, if it treats the document in the same manner as it treats a legislative rule, if it bases enforcement actions on the policies or interpretations formulated in the document, if it leads private parties or State permitting authorities to believe that it will declare permits invalid unless they comply with the terms of the document, then the agency's document is for all practical purposes 'binding.'").

[44] Elrod v. Burns, 427 U.S. 347, 373 (1976).

[45] *See* Amendment of Part 73 Regarding Broadcasting Hoaxes, 7 F.C.C.R. 4106 (1992) (Report and Order).

[46] *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-electtrumps-pick-for-fcc-chairman-brendan-carr-speaks-with-cnbcs-squawk-on-the-street-today.html

Only after *completing* such a rulemaking might you have any valid basis for issuing any "guidance" to broadcasters on their obligations regarding polls. Even then, you may not threaten broadcasters in order to chill or modify their protected expression. The First Amendment's prohibition against "relying on the 'threat of invoking legal sanctions and other means of coercion . . . to achieve the suppression' of disfavored speech"[47] applies even when the government has valid grounds for investigating or bringing an action against a speaker, if such pressure aims "to punish or suppress . . . protected expression."[48]

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You took an oath to defend the Constitution. Every time you make a baseless threat of legal action against broadcasters in order to influence their expression, you break that oath—by violating the First Amendment.

Sincerely,

Civil Society Organizations

TechFreedom

American Journalism Historians Association

Center for Democracy & Technology

Demand Progress Action

Electronic Frontier Foundation

Fight for the Future

Freedom of the Press Foundation

Institute for Local Self-Reliance

PEN America

Public Knowledge

Society of Environmental Journalists

Taxpayers Protection Alliance

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[47] National Rifle Association of America v. Vullo, 602 U.S. 175, 189 (2024).

[48] *Id*. at 196 (2024) ("although [the state attorney general] can pursue violations of state insurance law, she cannot do so in order to punish or suppress the NRA's protected expression. So, the contention that the NRA and the insurers violated New York law does not excuse Vullo from allegedly employing coercive threats to stifle gun-promotion advocacy.").

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