



**Submitted electronically before the
FEDERAL COMMUNICATIONS COMMISSION**

RE: In the Matter of

**Media Bureau Seeks Comment on
Petition by Disney's ABC Asking the
FCC to Declare that The View
Qualifies as a Bona Fide News
Interview Program and Thus Is
Exempt from the Statutory Equal
Opportunities Requirements**

MB Docket No. 26-124

**COMMENTS OF THE FUTURE OF FREE SPEECH, AMERICAN CIVIL LIBERTIES
UNION, CENTER FOR DEMOCRACY AND TECHNOLOGY, AND NATIONAL
COALITION AGAINST CENSORSHIP**

June 18, 2026



In the Matter of Media Bureau Seeks Comment on Petition by Disney's ABC Asking the FCC to Declare that The View Qualifies as a Bona Fide News Interview Program and Thus Is Exempt from the Statutory Equal Opportunities Requirements

The Future of Free Speech is an independent, nonpartisan think tank located at Vanderbilt University. We work to reaffirm freedom of expression as the bedrock of free and thriving societies through actionable research, empowering tools, and principled advocacy. The Future of Free Speech seeks to create a world where everyone's right to freedom of expression is protected by law and reinforced by a culture that tolerates diverse viewpoints.

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit organization that since 1920 has sought to protect the civil liberties and civil rights of all Americans. The ACLU is one of the nation's preeminent defenders of the First Amendment and the value of free speech.

The Center for Democracy & Technology ("CDT") is a non-profit public interest organization. For more than thirty years, CDT has advocated before legislatures, regulatory agencies, and courts in support of protecting First Amendment rights regardless of the communications medium.

The National Coalition Against Censorship (NCAC) is an alliance of more than sixty national non-profit literary, artistic, religious, educational, professional, labor, and civil liberties groups. Founded in 1974, NCAC's purpose is to promote freedom of thought, inquiry, and expression and to oppose all forms of censorship.

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We, the undersigned groups, write in response to the Federal Communications Commission's (FCC) request for comment as to whether The View qualifies as a bona fide news interview program that is exempt from the equal time rule. We believe that this proceeding violates the constitutional rights of all our nation's broadcasters, as well as the public who relies upon them for their access to news and information.

This proceeding has four constitutional defects. First, the Commission is unsettling its own guidance without fair notice. Its 2002 ruling that The View qualifies for bona fide news interview exemption has stood undisturbed for 24 years. With this Notice, the Commission has generated uncertainty — not only for The View but for numerous



programs that would consider hosting candidate interviews – that will inevitably chill political coverage as we approach the 2026 midterm elections.

Second, the bona fide news exemption is what has allowed the equal time statute to operate within constitutional bounds for six decades. Stripped of the exemption, a single candidate interview would obligate every station airing the program to offer comparable time to every legally qualified opponent. Broadcasters facing that exposure will not book more candidates; they will book none.

Third, the Notice asks the Commission to decide for itself whether the program's booking decisions reflect genuine newsworthiness or partisan intent. The Commission has refused to ask this question of any program for 40 years, because the government cannot constitutionally be the arbiter of what counts as news.

Fourth, the circumstances surrounding this proceeding – public criticism of the program's viewpoints by the officials regulating it, the issuing of orders without precedent in the Commission's history, and scrutiny trained on a single program – satisfy every factor of the government coercion analysis in *National Rifle Association v. Vullo*.

I. The Proceeding Departs from a Settled Guidance Without Fair Notice

The threshold problem with this proceeding is that it violates the constitutional guarantee of due process. Due process requires that a regulated party be able to identify, with ascertainable certainty, the standards with which the agency expects it to conform, and the Commission may not penalize conduct undertaken in good faith reliance on its own guidance.¹

In 2002, the Media Bureau ruled without qualification that *The View* qualifies for the bona fide news interview exemption under Section 315(a)(2).² That ruling has remained in effect for 24 years. The Commission has also stated that licensees airing programs that meet the statutory exemption need not seek any formal declaration at all.³ Nevertheless, shortly before requiring *The View* to file a petition for declaratory ruling,

¹ *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253-54 (2012); see *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473 (D.C. Cir. 2008).

² Letter from Robert Baker, Chief, Off. of Pol. Programming, Pol'y & Rules Div., Mass Media Bureau, FCC, to Am. Broad. Co., Inc. (Mar. 1, 2002).

³ See *Request of Infinity Broadcasting Operations Inc. for Declaratory Ruling*, 18 FCC Rcd. 18603, 18604 (MB 2003) (“[W]e emphasize that licensees airing programs that meet the statutory news exemption, as clarified in our case law, need not seek formal declaration from the Commission that such programs qualify as news exempt programming under Section 315(a).”).



the FCC issued a vague threat to all daytime and late night talk shows, noting that they may, or may not, qualify for the bona fide news exemption, and the only way to know is to ask the FCC – a process that can take months or years.⁴ When an agency reverses a settled position in a manner that affects speech, the constitutional concern is amplified because uncertainty about where the line sits chills protected expression and invites arbitrary enforcement.⁵ An agency that wishes broadcasters to guess about the continuing validity of its rulings has already achieved a regulatory effect on speech before taking any formal action.

II. Constitutional Avoidance Requires a Robust Reading of the Bona Fide News Exemption

The equal time rule compels broadcasters to carry speech they would not otherwise carry and deters them from carrying speech they would. The Supreme Court has repeatedly held that private speakers have the right to choose the content of their own messages, that one who chooses to speak may decide what not to say, and that the government may not interfere with private editorial choices in order to advance its own conception of balanced public discourse.⁶ Whatever the continuing force of *Red Lion Broadcasting Co. v. FCC* in its own context, members of the Court have observed that the tension between a compelled access regime and this body of compelled speech doctrine is substantial.⁷

If the exemption does not apply, then a single candidate interview on *The View* obligates every station airing the program to provide comparable time and placement to every legally qualified opponent in that race. In a contest like California's open gubernatorial primary, that means accommodating dozens of candidates, regardless of newsworthiness – an obligation no broadcaster can absorb. Faced with that exposure, broadcasters will not book more candidates; they will choose to book none. The statute would produce exactly the silence Congress sought to prevent when it was amended in 1959. The same logic applies to every talk program on broadcast television, which is why the question here is not about one show. If this proceeding moves forward, ultimately it is the American public that will suffer. They have a First Amendment right to information, and an important source of that information will be silenced.

⁴ FCC's Media Bureau Provides Guidance on Political Equal Opportunities Requirement for Broadcast Television Stations, Public Notice, DA 26-68, <https://docs.fcc.gov/public/attachments/DA-26-68A1.pdf>

⁵ See *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253-55 (2012); *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

⁶ *Moody v. NetChoice, LLC*, 603 U.S. 707, 742 (2024); *Hurley v. Irish Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995); *Mia. Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 248, 258 (1974).

⁷ *Red Lion Broad. Co. v. FCC*, 395 U.S. 367 (1969); see *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 530, 533 (2009) (Thomas, J., concurring); *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 376 n.11 (1984).



The Commission cannot resolve the constitutional status of Section 315(a) in this proceeding. What it must do is apply constitutional avoidance. Where a statute is susceptible to an interpretation that raises grave constitutional questions and one that does not, the agency administering it must adopt the latter.⁸ Congress added the bona fide news exemption in 1959 for precisely this purpose: to preserve broadcasters' good faith news judgment and prevent the equal opportunities rule from chilling political coverage.⁹ The exemption is what has allowed Section 315(a) to operate within constitutional bounds for six decades.¹⁰ Read robustly, as the Commission has for forty years, and the statute holds. Narrow it, and the statute lands squarely in territory the First Amendment forbids. Avoidance compels granting the Petition.

III. The Inquiry Makes the Government the Arbiter of Newsworthiness, Which the First Amendment Forbids

The Notice asks whether the decisions on *The View's* format and participants are “based on newsworthiness or on an attempt to oppose or support particular candidates.”¹¹ This question requires a government agency to evaluate the content of speech and the motivations of speakers. The government has no power to restrict expression because of its message, its ideas, its subject matter, or its content,¹² and no official may prescribe what shall be orthodox in politics or other matters of opinion.¹³ The Commission's own precedent reflects these limits, and it does so comprehensively. Over the last 40 years, the Commission has tested programs against three structural criteria: regular scheduling, broadcaster control, and good faith newsworthiness judgments, and against nothing else.¹⁴ Every objection that might be raised against *The View* has already been raised against some other program and rejected.

⁸ See *United States v. Hansen*, 599 U.S. 762, 781 (2023); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009); *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988).

⁹ See, e.g., 105 Cong. Rec. 14446 (1959) (statement of Sen. McNamara) (the amendments leave “the control of news coverage of politics in the hands of the broadcasters”); see also *Request by Multimedia Entertainment, Inc. for Declaratory Ruling*, Memorandum Opinion and Order, 56 Rad. Reg. 2d 143, 144 (1984).

¹⁰ See *Chisholm v. FCC*, 538 F.2d 349, 352, 366 (D.C. Cir. 1976) (Congress adopted the bona fide news exemptions to preserve broadcaster discretion and avoid chilling political coverage); cf. *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 381-83 (1984) (subjecting restrictions on broadcasters' editorial speech to heightened scrutiny).

¹¹ FCC's Media Bureau Seeks Comment on Petition by Disney's ABC, Public Notice, DA 26-517, MB Docket No. 26-124, at para. 7 (May 22, 2026).

¹² *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994). *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

¹³ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

¹⁴ See *Request by Multimedia Entertainment, Inc. for Declaratory Ruling*, Memorandum Opinion and Order, 56 Rad. Reg. 2d 143, 146 to 48 (1984) (applying the three-part test); see also *Request of ABC, Inc. for Declaratory Ruling*, 15 FCC Rcd 1355, 1358 (MMB 1999) (restating the same criteria); *Hearst Television Inc., Declaratory Ruling*, 31 FCC Rcd 7191, 7192 to 93 (MB 2016); *Request of Multimedia Entertainment, Inc. for Declaratory Ruling*, 6 FCC Rcd 1798 (MMB 1991).



Unconventional or sensational format? The Jerry Springer Show and The Howard Stern Show qualified.¹⁵ A host with an avowed political identity? The news interview segments of The 700 Club qualified, on a network founded by a former presidential candidate, and so did call-in programs hosted by a sitting governor and a sitting United States senator, men who were not merely partisan but were themselves officeholders facing future elections.¹⁶ Satirical treatment of politics? Politically Incorrect with Bill Maher qualified.¹⁷

In none of these cases did the Commission inquire into the viewpoints expressed, count appearances by party, or ask whether the hosts' politics were acceptable. It asked whether the structural criteria were met and deferred to the broadcaster's good-faith judgment on that question. What unites these programs is not format or decorum but function: each is a place where a substantial audience encounters newsmakers and current events. That is what Congress meant to protect, and it does not depend on whether a program resembles a traditional newscast.

That is the trap this proceeding has built for itself. Because the existing test contains no viewpoint element, a denial here cannot be reached by applying the test. It can be reached only by adding a new criterion that the Commission has never articulated: whether the program's perceived political tilt is acceptable to the agency. The First Amendment forbids that criterion outright, and 40 years of the Commission's own decisions confirm that it has always understood as much.¹⁸

Voices from Senator Ted Cruz to commentator Ben Shapiro have warned that these tools will be turned on conservative speakers when the political winds shift.¹⁹ The harm to the constitutional architecture outlasts any administration: a structure that protects everyone only so long as it does not preferentially protect any one viewpoint.

¹⁵ *Request of Multimedia Entertainment, Inc. for Declaratory Ruling*, 9 FCC Rcd. 2811 (MMB 1994); *Request of Infinity Broadcasting Operations Inc. for Declaratory Ruling*, 18 FCC Rcd. 18603 (MB 2003); *Request of ABC, Inc. for Declaratory Ruling*, 15 FCC Rcd. 1355 (MMB 1999).

¹⁶ *Request of Nebraska Broadcasters Association for Declaratory Ruling*, 21 FCC Rcd. 10742 (MB 2006); *Petition of The Christian Broadcasting Network for Declaratory Ruling*, 23 FCC Rcd. 7165 (MB 2008).

¹⁷ *Request of ABC, Inc. for Declaratory Ruling*, 15 FCC Rcd. 1355, 1358 (MMB 1999).

¹⁸ *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994). *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

¹⁹ Alexandra Koch, Cruz warns conservatives 'will regret' FCC censorship push against ABC, other media outlets, Fox News (Sept. 19, 2025) <https://www.foxnews.com/politics/cruz-warns-conservatives-will-regret-fcc-censorship-push-against-abc-other-media-outlets>; Ben Shapiro, Glad Kimmel's Gone But Don't Overreach, The Daily Wire (Sept. 18, 2025), <https://www.dailywire.com/news/glad-kimmels-gone-but-dont-overreach>.



Finally, when the Commission was previously asked to sit in judgment of broadcasters' editorial choices (under its section 309 public interest authority and its rules prohibiting broadcast hoaxes), its refusal was unequivocal.²⁰ In 2020, it denied a petition asking it to investigate broadcasters for airing presidential statements about COVID-19 that the petitioner deemed false.²¹ The Media Bureau and the General Counsel did not waver; they underlined that the Commission “does not—and cannot and will not—act as a self-appointed, free-roving arbiter of truth in journalism.”²² The Commission declined to “second-guess broadcasters,” and it warned that government pressure on coverage would “chill news coverage” precisely when the public most needed information.²³

IV. The Proceeding Is Coercion of a Private Speaker Under *Vullo*

In *NRA v. Vullo*,²⁴ and earlier in *Bantam Books, Inc. v. Sullivan*,²⁵ the Supreme Court held that “[g]overnment officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors.”²⁶ *Vullo* identified four factors relevant to the coercion inquiry: (1) the official's authority over the regulated party, (2) the nature of the communications, and whether they are reasonably perceived as threats rather than persuasion, (3) whether the communications occurred through formal regulatory channels, and (4) whether the regulated party responded to the pressure.²⁷

All those factors show coercion here:

(1) The Commission's authority over the regulated party is direct and existential. ABC's stations operate only under Commission licenses – making the station's perceived risk, and desire to acquiesce feel essential. In fact, the Media Bureau has already ordered all of ABC's licensees to file renewal applications years ahead of schedule, citing the asserted inadequacy of the company's responses in an unrelated investigation into its diversity practices.²⁸

²⁰ Letter from Michelle M. Carey, Chief, Media Bureau, and Thomas M. Johnson, Jr., General Counsel, FCC, to Free Press, DA 20-385, at 2 (Apr. 6, 2020).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *NRA of Am. v. Vullo*, 602 U.S. 175, 189-91 (2024).

²⁵ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 66-67 (1963).

²⁶ *NRA of Am. v. Vullo*, 602 U.S. 175, 189-91 (2024).

²⁷ *NRA of Am. v. Vullo*, 602 U.S. 175, 189-91 (2024).

²⁸ See *NRA of Am. v. Vullo*, 602 U.S. 175, 190-91 (2024); *The Walt Disney Company, American Broadcasting Company, et al.*, Order, DA 26-416 (MB rel. Apr. 28, 2026).



(2) The communications are reasonably perceived as threats rather than persuasion.²⁹ The Commission's chairman publicly stated that The View faces an "uphill climb" in defending its exempt status, presaging the outcome of a proceeding that had not yet begun.³⁰ Senior White House officials have repeatedly and negatively singled out the program and its co-hosts for the viewpoints expressed on it.³¹

(3) The pressure is being applied through the most formal regulatory channels available: a Letter of Inquiry, a Supplemental Letter of Inquiry, an order compelling the filing of this Petition in contradiction of the Commission's own statement that no such filing is required, an order compelling early license renewals, and now a formal comment docket.³² In January 2026, the Media Bureau issued a Public Notice declaring it had seen no evidence that any current daytime or late-night talk show qualifies for the exemption, warning that a program motivated by partisan purposes' would not qualify, and encouraging such programs to seek formal declaratory rulings.³³ The Commission did not mince words – it told broadcasters to assume no regulatory certainty, or else.

(4) The proceeding is structured to elicit a response from the regulated party, and it has already produced one: a licensee ordered to petition its regulator for permission to continue exercising editorial judgment it has exercised lawfully for 24 years. Under *Bantam Books* and *Vullo*, the constitutional violation lies in the regulator's use of leverage against protected speech, whether or not the speaker ultimately yields.³⁴

²⁹ *NRA of Am. v. Vullo*, 602 U.S. 175, 189-91 (2024).

³⁰ Madison Columbo, FCC chair warns 'The View' faces 'uphill climb' in equal time probe, Fox Business February 27, 2026, <https://www.foxbusiness.com/media/fcc-chair-warns-the-view-faces-uphill-climb-equal-time-probe>.

³¹ Lindsay Kornick, White House warns 'The View' could be canceled next after Joy Behar's anti-Trump rant, Fox News, July 23, 2025 <https://www.foxnews.com/media/white-house-warns-the-view-canceled-next-after-joy-behars-anti-trump-rant>; Joey Nolfi, *White House rips The View* cohosts as 'Trump-deranged wackos' over reaction to Jeffrey Epstein files, Entertainment Weekly (Nov. 20, 2025), <https://ew.com/white-house-responds-the-view-jeffrey-epstein-files-11853293>.

³² *NRA of Am. v. Vullo*, 602 U.S. 175, 189-91 (2024); Letter from Erin Boone, Acting Chief, Media Bureau, FCC, to KTRK Television Inc. (Feb. 11, 2026); Letter from Erin Boone, Chief, Media Bureau, FCC, to KTRK Television, Inc., at 3 (Mar. 26, 2026); Infinity Declaratory Ruling, 18 FCC Rcd 18603, 18604 (MB 2003); The Walt Disney Company, American Broadcasting Company, et al., Order, DA 26-416 (MB Apr. 28, 2026); FCC's Media Bureau Seeks Comment on Petition by Disney's ABC, Public Notice, DA 26-517, MB Docket No. 26-124 (May 22, 2026).

³³ *FCC's Media Bureau Provides Guidance on Political Equal Opportunities Requirement for Broadcast Television Stations*, Public Notice, DA 26-68, 2026 WL 208684 (MB Jan. 21, 2026).

³⁴ See *NRA of Am. v. Vullo*, 602 U.S. 175, 190-91 (2024); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).



V. Conclusion

For more than 40 years, the Commission has held that broadcasters' good faith news judgments deserve deference and that the bona fide news exemption must be read in light of Congress's purpose to expand political news coverage. In this proceeding, the Commission apparently asks to abandon that settled position with respect to a single program that government officials have publicly criticized for its viewpoints.

The First Amendment forbids that course at every step: in the inquiry itself, in the standard it implies, and in the coercive circumstances surrounding it. The Commission should grant the Petition and affirm that The View qualifies for the bona fide news interview exemption under Section 315(a)(2). The regulatory tools forged against today's disfavored speakers will be wielded against tomorrow's. The First Amendment answer is the only permanent one: the government stays out of the business of deciding which voices the public hears.

Respectfully submitted,

The Future of Free Speech
American Civil Liberties Union
The Center for Democracy & Technology
National Coalition Against Censorship