

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of	)	
	)	
Early License Renewal Applications of	)	MB Docket No. 26-131
Disney's ABC Stations	)	
	)	

**COMMENTS OF AMERICAN CIVIL LIBERTIES UNION, FUTURE OF FREE
SPEECH, KNIGHT FIRST AMENDMENT INSTITUTE, AND NATIONAL COALITION
AGAINST CENSORSHIP**

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² Federal Communications Commission Order DA 26-416, In the Matter of The Walt Disney Company et al. (Apr. 28, 2026), <https://docs.fcc.gov/public/attachments/DA-26-416A1.pdf>.

government's ongoing pressure campaign targeting not just ABC, but all disfavored broadcasters.

A. The Timing of this Order Indicates it is Retaliatory

The timing of the FCC's call for early license renewal provides strong evidence that the FCC's action was retaliatory. On April 23, 2026, Jimmy Kimmel joked about the President and his wife on his show *Jimmy Kimmel Live!*.³ In response, Melania Trump posted to X that "Kimmel shouldn't have the opportunity to enter our homes each evening to spread hate... Enough is enough. It is time for ABC to take a stand."⁴ The same day, President Trump wrote on Truth Social "Jimmy Kimmel should be immediately fired by Disney and ABC."⁵ He followed up a few days later to add "it better be soon!!!"⁶ Less than 24 hours after the President and First Lady's initial remarks, the FCC issued an order requiring Disney "to file license renewals for all of their licensed TV stations within 30 days" although the station's licenses were otherwise not due for renewal until at least 2028.⁷ The timing of the order would raise suspicions of retaliation on its own, but in context of other recent retaliatory action against ABC, there is little doubt about the FCC's true goals.

B. The FCC Has a Recent History of Threats and Retaliation Against ABC

This order is not the first time that the FCC has appeared to retaliate against ABC because of what its on-air talent had to say. Last year, after Jimmy Kimmel made a joke about Charlie Kirk's murder, Chairman Carr famously threatened ABC to fire Jimmy Kimmel or else face regulatory action. Carr said "look, we can do this the easy way or the hard way... these companies can find ways to ... take action on Kimmel or, you know, there's going to be additional work for the FCC ahead."⁸ He added "it's past time that a lot of these licensed broadcasters themselves push back on Comcast and Disney and say, 'Listen, we are going to preempt, we're not going to run Kimmel anymore until you straighten this out because we, licensed broadcasters are running into the possibility of fines or license revocation from the FCC if we continue to run content that ends up being a pattern of news distortion.'" ABC responded to

³ Alexis Tereszczuk, *Fact Check: Jimmy Kimmel Did Not Make 'Expectant Widow' Joke About Melania Trump After WHCD Attempted Shooting*, YAHOO ENT. (Apr. 27, 2026, at 10:56 EDT), <https://www.yahoo.com/entertainment/tv/articles/fact-check-jimmy-kimmel-did-025629926.html>.

⁴ Melania Trump (@FLOTUS), X (Apr. 27, 2026 at 14:19 ET), <https://x.com/FLOTUS/status/2048769128513585618>.

⁵ Donald J. Trump (@realDonaldTrump), Truth Social (Apr. 27, 2026 at 13:26 ET), <https://truthsocial.com/@realDonaldTrump/posts/116477838570626860>.

⁶ Donald J. Trump (@realDonaldTrump), Truth Social (Apr. 30, 2026 at 09:25 AM), <https://truthsocial.com/@realDonaldTrump/posts/116493880308071365>.

⁷ Lillian Rizzo & Laya Neelakandan, *Disney's ABC Files Early Broadcast Licenses Renewal. FCC Chair Vows to 'Follow the Facts'*, CNBC (May 28, 2026 at 17:04 EDT), <https://www.cnbc.com/2026/05/28/disney-fcc-broadcast-licenses-renewal.html>; Federal Communications Commission Order DA 26-416, In the Matter of The Walt Disney Company et al. (Apr. 28, 2026), <https://docs.fcc.gov/public/attachments/DA-26-416A1.pdf>.

⁸ David Folkenflik, *Jimmy Kimmel's Suspension Shows Power of FCC's Brendan Carr*, NPR (Sept. 19, 2025 at 13:27 ET), <https://www.npr.org/2025/09/19/nx-s1-5546764/fcc-brendan-carr-kimmel-trump-free-speech>.

⁹ Daniel Dale, *Fact Check: Vance, Rewriting Last Week's History, Claims FCC Chair Just Made a 'Joke' About Kimmel*, CNN (Sep. 25, 2025 at 12:11 ET), <https://www.cnn.com/2025/09/25/politics/fact-check-vance-fcc-kimmel>.

Carr's threat by briefly taking Kimmel off the air, until significant public backlash led ABC to reverse course.¹⁰

The FCC also brought a seemingly retaliatory investigation against ABC's *The View* - a show which the Trump administration has frequently criticized for its co-hosts' remarks.¹¹ In January 2026, the FCC issued a threatening notice that daytime and late-night talk shows are not necessarily "bona fide news programs" entitled to an exemption from the equal time rule.¹² The FCC said that daytime and late-night talk shows are particularly unlikely to be entitled to an exemption from the equal time rule if the program is "motivated by partisan purposes."¹³ The notice ran counter to multiple decisions, in place for decades, that shows like *The View* were entitled to the bona fide news interview exemption under Section 315(a)(2).¹⁴ Nevertheless, shortly after the FCC issued its threatening notice, the FCC launched an investigation into whether *The View* violated the equal time rule when it interviewed a Texas Democratic Senatorial candidate.¹⁵ When discussing the investigation, Chairman Carr could not conceal his disdain with *The View*'s perceived partisanship, noting that the show faces an "uphill climb" in proving that it is entitled to the exemption because of "the lineup of guests that have typically been on."¹⁶

C. Trump's FCC Has Investigated Other Broadcasters Whom the President Dislikes

Unfortunately, the FCC's threats and retaliation against disfavored media do not end with ABC. The FCC launched investigations into NPR and PBS¹⁷ – broadcasters that President Trump

¹⁰ Press Release, ACLU, Over 400 Artists Join with the ACLU to Support Free Speech After Jimmy Kimmel Suspension (Sep. 22, 2025), <https://www.aclu.org/press-releases/over-400-artists-join-with-the-aclu-to-support-free-speech-after-jimmy-kimmel-suspension>.

¹¹ Joey Nolfi, *White House Rips The View Cohosts as 'Trump-Deranged Wackos' Over Reaction to Jeffrey Epstein Files (Exclusive)*, ENT. WEEKLY (Nov. 20, 2025 at 09:32 ET), <https://ew.com/white-house-responds-the-view-jeffrey-epstein-files-11853293> (a White House spokesperson called *The View* cohosts "Trump-derranged wackos" after their discussion of the Epstein files); Carly Thomas, *White House Calls 'The View's' Joy Behar an "Irrelevant Loser" After She Says Trump's "Jealous of Obama"*, The Hollywood Reporter (July 23, 2025), <https://www.hollywoodreporter.com/tv/tv-news/trump-white-house-calls-the-view-joy-behar-irrelevant-loser-1236327548/> (A Trump spokesperson called cohost Joy Behar "an irrelevant loser suffering from a severe case of Trump Derangement Syndrome" after she responded to Trump's call to investigate Barack Obama).

¹² *FCC's Media Bureau Provides Guidance on Political Equal Opportunities Requirement for Broadcast Television Stations*, Public Notice, DA 26-68, (Jan. 21, 2026), <https://docs.fcc.gov/public/attachments/DA-26-68A1.pdf>

¹³ *Id.*

¹⁴ 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).

¹⁵ Meg Kinnard, *FCC is Investigating ABC's 'The View' Over 'Equal Time' Rule, Chairman Says*, PBS NEWS (Feb. 19, 2025 at 13:42 EDT), <https://www.pbs.org/newshour/politics/fcc-is-investigating-abcs-the-view-over-equal-time-rule-chairman-says>.

¹⁶ Madison Colombo, *FCC Chair Warns 'The View' Faces 'Uphill Climb' in Equal-Time Probe*, FOX BUS. (Feb. 27, 2026 at 11:06 EST), <https://www.foxbusiness.com/media/fcc-chair-warns-the-view-faces-uphill-climb-equal-time-probe>.

¹⁷ Letter from Brendan Carr, Chairman, Fed. Comm'n's Comm'n, to Katherine Maher, President and Chief Exec. Officer, Nat'l Pub. Radio, and Paula Kerger, President and Chief Exec. Officer, PBS (Jan. 29, 2025) (available at <https://static01.nyt.com/newsgraphics/documenttools/340343f285781674/6da3eb69-full.pdf>).

called “MONSTERS”¹⁸ and which he sought to defund through Executive Order for being “biased.”¹⁹ President Trump’s vendetta against NPR and PBS was so obvious that a judge striking down the executive order found that “it is difficult to conceive of clearer evidence that a government action is targeted at viewpoints that the President does not like and seeks to squelch.”²⁰ The same can almost certainly be said for the FCC’s baseless investigation into them.

The FCC also reopened a probe into CBS over *60 Minutes*’ editing of an interview with then Vice President Kamala Harris, seemingly at the behest of President Trump.²¹ President Trump has frequently criticized this episode, referring to it as “fake, corrupt, anti-Trump propaganda.”²² The President filed a lawsuit against CBS over their editing of the interview.²³ He also indicated that he wanted the FCC to take regulatory action against CBS, posting that “hopefully, the Federal Communications Commission...will impose the maximum fines and punishment.”²⁴ He added “CBS is out of control, at levels never seen before, and they should pay a big price for this.”²⁵ There is a clear pattern in the FCC’s recent enforcement actions; the FCC’s power is directed, explicitly and solely, by the President’s hostility to certain media content rather than any evidence of broadcaster malfeasance.

D. Threatening Broadcast Licences is the Administration’s Threat Du Jour

President Trump and Chairman Carr seem to have made a habit of threatening broadcast licenses anytime they disagree with something that a broadcaster airs. President Trump has repeatedly, going back nearly a decade, threatened the licenses of broadcasters whose coverage he did not like. In 2017 and 2018, he tweeted in support of revoking NBC’s affiliate licenses.²⁶ He also reportedly “asked advisers and lawyers in early 2019 about what the Federal Communications Commission, the court system, and—most confusingly to some Trump lieutenants—the Department of Justice could do to probe or mitigate *SNL*, Jimmy Kimmel, and other late-night comedy mischief-makers.”²⁷ In 2024, before he took office the second time,

¹⁸ Donald J. Trump (@realDonaldTrump), Truth Social (Apr. 01, 2025 at 16:17 ET), <https://truthsocial.com/@realDonaldTrump/posts/114264549657133828>.

¹⁹ Exec. Order No. 14290, 90 Fed. Reg. 19415 (May 1, 2025).

²⁰ David Folkenflik & Scott Neuman, *Federal Judge Finds Trump Violated Free Speech by Ordering NPR Defunded*, NPR (Mar. 31, 2026 at 16:01 ET), <https://www.npr.org/2026/03/31/nx-s1-5768399/npr-pbs-trump-federal-funding>.

²¹ *FCC Establishes MB Docket No. 25-73 and Comment Cycle for News Distortion Complaint Involving CBS Broadcasting Inc., Licensee of WCBS, New York*, Public Notice, DA 25-73, (Feb. 5, 2025), <https://docs.fcc.gov/public/attachments/DA-25-107A1.pdf>.

²² Donald J. Trump (@realDonaldTrump), Truth Social (May 7, 2025 at 09:37 ET), <https://truthsocial.com/@realDonaldTrump/posts/114466820318104255>.

²³ Jamie Burch, *Trump Files \$10B Lawsuit in Amarillo Against CBS Over ‘60 Minutes’ Interview with Harris*, ABC 7 NEWS (Oct. 31, 2024 at 22:48 ET), <https://abc7amarillo.com/news/local/former-president-donald-trump-files-lawsuit-against-cbs-in-amarillo-federal-court>.

²⁴ Donald J. Trump (@realDonaldTrump), Truth Social (Apr 13, 2025 at 21:13 ET), <https://truthsocial.com/@realDonaldTrump/posts/114333660655935996>.

²⁵ *Id.*

²⁶ Letter from Edward J. Markey and Ron Wyden, U.S. Senators, to Jessica Rosenworcel, Chairwoman, Fed. Comm’n’s Comm’n (Sept. 13, 2024) (available at <https://www.markey.senate.gov/imo/media/doc/abc.pdf>).

²⁷ Asawan Suebsaeng, *Trump Wanted his Justice Department to Stop ‘SNL’ From Teasing Him*, THE DAILY BEAST (June 22, 2021),

President Trump again broached the subject of revoking ABC affiliate licenses, telling *Fox and Friends* that the ABC-hosted debate between him and Vice President Harris was “rigged,” adding, “I mean, to be honest, they’re a news organization. They have to be licensed to do it. They ought to take away their license for the way they did that.”²⁸ He reiterated this threat in December 2024 on Truth Social, posting “If Network NEWSCASTS, and their Late Night Shows, are almost 100% Negative to President Donald J. Trump, MAGA, and the Republican Party, shouldn’t their very valuable Broadcast Licenses be terminated? I say, YES!”²⁹

The threats to broadcast licenses continued once Trump took office for the second time. In September 2025, President Trump lamented “I read someplace that the networks were 97% against me, 97% negative... If they’re 97% against, they give me only bad publicity...I would think maybe their license should be taken away, that would be up to Brendan Carr.”³⁰

Leading up to his confirmation as Chair of the FCC, Chairman Carr also made numerous statements threatening regulatory action against media outlets whose coverage he considered to be biased against conservatives. To name two examples, in November of 2024, Carr posted on social media that “broadcast licenses are not sacred cows” and that media companies would be “held accountable” by the FCC should they fail to operate in the public interest.³¹ The next month, he sent a letter to the president of Disney accusing the company of “contribut[ing] to th[e] erosion in public trust” in media, and warning that the FCC would be “monitoring the outcome” of its negotiations with its local broadcast affiliates.³²

By 2026, the threats to broadcast licenses took on more heft when the FCC issued a ‘reminder’ that broadcasters are not entitled to broadcast licenses and must meet the public interest standard.³³ The FCC’s ‘reminder’ ended with a clear threat against those who broadcast content that angers the President -- “the Commission will not hesitate to exercise its statutory authority to ensure that broadcasters either fulfill their public interest obligation or provide the privilege of being a broadcast licensee to someone that will fulfill that duty.”³⁴

E. This Early Renewal Proceeding is Nearly Unprecedented

<https://www.thedailybeast.com/trump-wanted-his-justice-department-to-stop-snl-from-teasing-him/>.

²⁸ Interview: *Donald Trump Calls Into Fox and Friends for an Interview After the Debate - September 11, 2024*, ROLL CALL (Sept. 11, 2024),

<https://rollcall.com/factbase/trump/transcript/donald-trump-interview-fox-friends-telephone-interview-september-11-2024/>.

²⁹ President Donald Trump (@realDonaldTrump), Truth Social (Dec. 24, 2025, at 12:36 AM ET), <https://truthsocial.com/@realDonaldTrump/posts/115772922954148853>.

³⁰ Catherine Stoddard, *Trump Suggests that Broadcasters who Cover Him Negatively Should Lose Their Licenses*, LIVE NOW FOX (Sept 18, 2025 at 17:55 EDT), <https://www.livenowfox.com/news/trump-suggests-broadcasters-who-cover-him-negatively-should-lose-licenses>.

³¹ Brendan Carr (@BrendanCarrFCC), X (Nov. 24, 2024, at 12:18 AM ET), <https://x.com/BrendanCarrFCC/status/1860478092721959090>.

³² Letter from Brendan Carr, Chairman, Fed. Comm’n’s Comm’n., to Robert A. Iger, Chief Exec. Officer of the Walt Disney Company, re: Disney/ABC’s Ongoing Negotiations with Local Broadcast TV Stations (Dec. 21, 2024), <https://www.fcc.gov/sites/default/files/Carr-Letter-to-Disney-12212024.pdf>.

³³ *FCC Reminds Broadcasters of Their Public Interest Obligations*, Public Notice, DA 26-530 at 6 (May 28, 2026), <https://docs.fcc.gov/public/attachments/DA-26-530A1.pdf>.

³⁴ *Id.*

The FCC's extraordinary use of its authority to call in these broadcast licenses for early renewal provides yet more evidence that the FCC is retaliating against ABC for its speech. Broadcast licenses are typically renewed every eight years, and it is implied within the law that there is a "legitimate renewal expectanc[y]." ³⁵ In fact, from the FCC's inception through 2011, the FCC has only denied four renewal applications on the grounds that a licensee failed to meet its public interest obligation. ³⁶

Demanding that a broadcaster renew their license early is nearly unprecedented, and can only happen for "compelling reasons." ³⁷ However, there do not appear to be any compelling reasons to require these ABC stations to renew their licenses early. One of, if not the last time the FCC required a broadcaster to renew its license early was in 1972. ³⁸ In that case, *In the Matter of Leflore Broadcasting*, the broadcaster initially proposed that it would cater to its local population by primarily playing rhythm and blues, before later notifying the FCC that it would instead play country music. ³⁹ The FCC ordered Leflore to renew its license early to determine if it misrepresented information in its previous renewal application and subsequent written statements. ⁴⁰ The FCC, however, has not so much as implied that these ABC stations have misrepresented their broadcasting in previous license applications or renewals, and retaliating against disfavored speech is certainly not a "compelling" reason.

III. THIS EARLY LICENSE RENEWAL ALLOWS THE FCC TO ABUSE THE PUBLIC INTEREST STANDARD

The early license renewal process allows the FCC to easily punish ABC when they step out of line by allowing the FCC to evaluate ABC's compliance with the public interest. The FCC's public notice explicitly states that "calling the licenses in now for early renewal also provides the FCC the opportunity to determine whether the ABC Stations have been operating in the public interest, as required by their FCC licenses." ⁴¹ The opportunity to evaluate ABC against the public interest standard seems like the real reason the FCC has required these stations to renew their broadcast licenses early.

Chairman Carr has made clear that he believes that the FCC can use its public interest standard to attack broadcasters based on their viewpoint, stating "the public interest means you can't be running a narrow, partisan circus and still meeting your public interest obligations." ⁴² He

³⁵ *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 805 (1978) (alteration in original) (quoting *Greater Bos. Television Corp. v. FCC*, 444 F.2d 841, 854 (D.C. Cir. 1970)).

³⁶ Steven Waldman, *THE INFORMATION NEEDS OF COMMUNITIES: THE CHANGING MEDIA LANDSCAPE IN A BROADBAND AGE* 25, (Federal Communications Commission, July 2011), <https://www.fcc.gov/sites/default/files/the-information-needs-of-communities-report-july-2011.pdf>.

³⁷ *Sioux Empire Broadcasting Co.*, 9 F.C.C.2d 683, 684 (1967).

³⁸ *See In the Matter of Leflore Broad. Co., Inc., Licensee of Station Wswg(Am), Greenwood, Miss. Requests for Comm'n Action*, 36 F.C.C.2d 101, 104 (1972).

³⁹ *See Id.*

⁴⁰ *See Id.*

⁴¹ *FCC's Media Bureau Establishes Pleading Cycle and Ex Parte Procedures for The Early Renewal Applications of the Walt Disney Company's ABC Licenses*, Public Notice, DA 26-541 (May 29, 2026), <https://docs.fcc.gov/public/attachments/DA-26-541A1.pdf>.

⁴² Louis Jacobson & Samantha Putterman, *After Jimmy Kimmel's Show Was Suspended, a Key Question Is: Does the FCC Have the Power to Regulate Speech?*, PBS (Sept. 19, 2025),

re-emphasized his interpretation (albeit in an evasive way) during a Congressional hearing. When Representative Mullin asked Chairman Carr if he'd commit to not "politically pressure or punish broadcasters for their editorial decisions," Carr responded simply "the FCC is going to enforce the public interest standard... and you know, that is the actions we are going to take."⁴³

More recently, Chairman Carr indicated that a broadcaster's refusal to air something the President says could also be a violation of the public interest standard. In reference to ABC's refusal to air one of the President's speeches on elections, Carr told reporters the refusal would likely come up as part of the license review because "when you have the president of the United States standing inside the White House delivering an important speech, I think that's something that broadcasters should be carrying... [and] there have been lots of concerns raised... about whether broadcasters and their decisions there comply with the public interest."⁴⁴ Indeed, Chairman Carr has been clear that he will use the public interest standard as the basis for revoking the broadcast licenses of those who utter disfavored speech.

IV. THE FCC CANNOT CENSOR BROADCASTERS

The FCC's actions target broadcasting content in a manner that violates the First Amendment. At the very core of the First Amendment's protections is the right to watch, read, and access information and entertainment free from government censorship. As the Supreme Court has recognized, the government does not get to decide "what shall be orthodox in politics, nationalism, religion, or other matters of opinion."⁴⁵

Nor can the government regulate a broadcasters' editorial discretion. Punishment based on the government's distaste for the content that a broadcaster airs, or refuses to air, violates the First Amendment.⁴⁶ The Supreme Court has reiterated throughout its free press jurisprudence that "any such a compulsion to publish that which "reason" tells them should not be published" is unconstitutional."⁴⁷ This ban on compelled speech is precisely why "the FCC's oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations...."⁴⁸

In fact, the Communications Act of 1934 explicitly states that Congress does not grant the FCC "the power of censorship," and it prohibits the FCC from promulgating regulations or conditions that "interfere with the right of free speech."⁴⁹ Congress's choice to include this explicit prohibition demonstrates that when it established the FCC, it "pointedly refrained from

<https://www.pbs.org/newshour/politics/after-jimmy-kimmels-show-was-suspended-a-key-question-is-does-the-fcc-have-the-power-to-regulate-speech>.

⁴³ *Oversight of the Federal Communications Commission: Hearing Before the Subcomm. on Comm'n and Tech., Comm. on Energy and Com., Comm.*, 119th Cong. 169 (Jan. 14, 2026) (Brendan Carr answer to Rep. Kevin Mullin).

⁴⁴ Ted Johnson, *After Trump Threat, FCC Chairman Says ABC's Decision Not to Carry POTUS Speech Likely To Be Raised In Early Review of Broadcast Licenses*, DEADLINE (July 22, 2026), <https://deadline.com/2026/07/fcc-trump-speech-abc-broadcast-licenses-1237000457/>.

⁴⁵ *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

⁴⁶ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

⁴⁷ *Miami Herald Pub'lg Co. v. Tornillo*, 418 U.S. 241, 256 (1974) (citation omitted); see *Moody v. Netchoice, LLC*, 603 U.S. 707, 741–42 (2024); *Hurley v. Irish Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995).

⁴⁸ *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 650 (1994).

⁴⁹ 47 U.S.C. § 326.

divesting broadcasters of their control over the selection of voices.”⁵⁰ Like the FCC’s other recent threats, this action is an underhanded means of seeking that very divestment.

Given that the Supreme Court and Congress have prohibited the FCC from interfering with the right of free speech, it follows that the FCC cannot engage in discretionary decision making to pick and choose licensees based on taste or favorability of news coverage.⁵¹ The FCC itself has acknowledged that although Congress vested in the agency the duty to “determine whether the total program service of broadcasters is reasonably responsive to the interests and needs of the public they serve, it may not condition the grant, denial, or revocation of a broadcast license upon its own subjective determination of what is or is not a good program.”⁵² Yet that is precisely what the FCC seeks to do in this proceeding, and it must stop.

V. THE FCC HAS ENGAGED IN UNCONSTITUTIONAL JAWBONING

The government cannot do “indirectly what [it] is barred from doing directly.”⁵³ The FCC’s Order requiring early renewal of Disney affiliates’ licenses is a textbook case of unconstitutional jawboning—an act of government pressure directed at an intermediary to censor or distort the constitutionally protected speech of a third party. The Supreme Court has made clear that the First Amendment prohibits the government from using threats of regulatory scrutiny or sanctions as a way to punish or suppress speech. By demanding that Disney submit to early license renewal review, the FCC is abusing its regulatory authority to suppress the speech of Disney and ABC because the current administration does not like the views expressed by one of ABC’s late-night comedians. This abuse of regulatory power violates the First Amendment.

A. The First Amendment Bars the Government From Using Its Regulatory Power to Coerce Speech

For over sixty years, the Supreme Court has recognized that the First Amendment prevents the government from using threats to coerce the suppression of private parties’ speech.⁵⁴ In *Bantam Books v. Sullivan*, the Court held that the First Amendment bars the government from coercing private speech intermediaries into suppressing speech it disfavors. Although the government may use its own speech to persuade private actors into embracing its views, government speech or conduct that crosses the line into coercion of the speech of private actors violates the First Amendment.⁵⁵

The Court recently reaffirmed this decades-long precedent in its unanimous decision in *National Rifle Association v. Vullo*. In that case, the NRA argued that Maria Vullo—then head of

⁵⁰ *CBS v. Democratic Nat’l Committee*, 412 U.S. 94, 116 (1973).

⁵¹ *See League of Women Voters of Cal.*, 468 U.S. at 378 (1984) (“[A]lthough the Government’s interest in ensuring balanced coverage of public issues is plainly both important and substantial, we have, at the same time, made clear that broadcasters are engaged in a vital and independent form of communicative activity. As a result, the First Amendment must inform and give shape to the manner in which Congress exercises its regulatory power in this area.”).

⁵² Report and Statement of Policy Res: Commission en banc Programing Inquiry, 44 FCC 2303, 2307-08 (1960).

⁵³ *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 190 (2024).

⁵⁴ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963).

⁵⁵ *Id.*

New York’s Department of Financial Services—violated the First Amendment by pressuring banks and insurance companies to cut ties with the gun-rights group based on its political advocacy. Specifically, the NRA alleged that Vullo coerced one of the NRA’s insurance companies by promising leniency in enforcing New York’s insurance laws against the company’s “array of technical regulatory infractions.... so long as [the company] ceased providing insurance to gun groups, especially the NRA.”⁵⁶ Vullo claimed that the offer was not coercion, but rather “typical of the give-and-take that occurs in plea negotiations.”⁵⁷

The Court sided with the NRA, holding that, while Vullo was free to criticize the NRA, she had impermissibly used the power of the state to coerce suppression of the organization’s advocacy.⁵⁸ Recognizing that the line between legitimate persuasion and illegitimate coercion is not always an easy one to draw, the Court in *Vullo* emphasized that courts must look at the context of the government’s action. Relevant factors in this inquiry include the government actor’s word choice and tone, how the recipients have understood the communication, the presence or absence of regulatory authority over the intermediary, and whether the government explicitly or implicitly referred to adverse consequences for noncompliance.⁵⁹ Crucially, none of these factors are themselves dispositive and the list is not, and cannot be, definitive. Rather, as the Court noted in *Vullo*, the tests are “useful, though nonexhaustive” and “just helpful guideposts in answering the question whether an official seeks to persuade or, instead, to coerce.”⁶⁰

B. The Government’s Actions Meet the *Vullo* Factors Showing Unconstitutional Coercion

Applying the multifactor and contextual approach of the Court in *Vullo*, it is clear that the Order rises to the level of unconstitutional coercion. As discussed above, an examination of the actions and statements by Chairman Carr and President Trump leading up to the Order demonstrate that the agency’s genuine motivation is to pressure Disney to censor viewpoints that Chairman Carr, and the president, do not like.

There are cases where the line between persuasion and coercion is complex and the competing First Amendment rights of government officials and private actors deserve thoughtful consideration. This is not one of those cases. As noted above, this is likely the first time in more than 50 years that the FCC has required licensees to apply for early renewal. It is also the first time it has ever done so across a company’s entire owned and operated portfolio. This extraordinary proceeding was instigated following numerous statements by Chairman Carr and President Trump threatening to revoke Disney’s licenses as punishment for broadcasting Jimmy Kimmel’s show. Through this unprecedented action, the FCC has definitively crossed the line between persuasion and coercion.

⁵⁶ *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 175 (2024) (internal citations omitted).

⁵⁷ Brief for Respondent at 27, *Nat’l Rifle Ass’n of Am. v. Vullo*, No. 22-842 (U.S. Feb. 20, 2024).

⁵⁸ *Nat’l Rifle Ass’n of Am. v. Vullo* at 197.

⁵⁹ Brief of the Knight First Amendment Institute at Columbia University as Amicus Curiae in Support of Neither Party at 18-19, *Murthy v. Missouri*, No. 23-411 (U.S. Dec. 2023) (internal citations omitted).

⁶⁰ *Nat’l Rifle Ass’n of Am. v. Vullo* at 191.

Again, whatever the stated pretext of this action, it is not possible for any reasonable observer to separate it from the government's ongoing pressure campaign targeting the company. Indeed, in taking this action, the FCC has gone significantly further than Maria Vullo's efforts to suppress the speech of the NRA. While Vullo pressured third-party intermediaries with the threat of potential future action, the FCC here has actually executed a coercive action directly against the intermediary. Under the standard established by *Bantam Books* and *Vullo*, indirect threats are enough to establish unconstitutional jawboning. The FCC has gone far beyond that line.

The extraordinary authority entrusted to the FCC over broadcast companies gives it enormous responsibility and a unique ability to abuse its powers for suppressing constitutionally protected speech. In *Vullo*, Justice Sotomayor, writing for the unanimous Court, noted that "[g]enerally speaking, the greater and more direct the government official's authority, the less likely a person will feel free to disregard a directive from the official."⁶¹ Government authority does not get much greater or more direct than the FCC's power over television stations, the entire legal operation of which depends on FCC licenses. When the chairman of a government entity with complete power over the stations' very existence wields that power to jawbone disfavored speakers, it cuts against the very core of what the First Amendment protects. If the government can keep disfavored media off the air, it can deprive the entire American public of a free media landscape – a landscape that is an essential pillar of not just our Constitution, but also our liberty and democracy.

The unprecedented demands the FCC is placing on Disney in this case, following a years-long campaign by the president and the Chairman to threaten actions of exactly this sort against disfavored networks, represent one of the most clear-cut cases of jawboning in memory. The First Amendment itself, and the body of Supreme Court decisions underlying it, exist to prevent actions precisely like this from being taken by government officials. Neither Chairman Carr, nor the FCC, nor any other government official is permitted to violate the First Amendment indirectly by means of coercive actions any more than they are permitted to violate it directly.⁶²

VI. THE FCC'S ACTIONS WILL HAVE A CHILLING EFFECT ON OTHER BROADCASTERS

The FCC's censorship campaign will not just impact ABC – it will also pressure other broadcasters into censoring themselves. A speaker who knows that official displeasure carries official consequences will "steer far wider of the unlawful zone."⁶³ Broadcasters will feel this pressure from the FCC more acutely than any other speaker because their ability to operate depends entirely on a broadcast license. As the D.C. Circuit court has noted, the mere prospect of agency scrutiny pushes licensees toward compliance, because no company willingly invites its regulator's audit.⁶⁴

We have already seen broadcasters censor themselves for fear of becoming part of the FCC's retaliation campaign against disfavored speech. Within days of Chairman Carr's

⁶¹ *Nat'l Rifle Ass'n of Am. v. Vullo* at 191 (internal citations omitted).

⁶² *Id.*

⁶³ *Speiser v. Randall*, 357 U.S. 513, 526 (1958).

⁶⁴ *MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13, 19 (D.C. Cir. 2001).

September 2025 statements, stations owned by Nexstar and Sinclair, preempted *Jimmy Kimmel Live!*.⁶⁵ Separately owned companies, accused of no wrongdoing, pulled the program from stations across the country before the network itself suspended it.⁶⁶ Likewise, former CBS News reporter Dan Rather indicated that CBS has overhauled *60 minutes* to align with the President, stating “For anyone who watches the next season of 60 minutes this fall, understand this: It is not the 60 Minutes we have all come to trust and respect. It will be a diminished, Trump-approved version.”⁶⁷

The FCC cannot continue its retaliation and chilling campaign. Millions of Americans get their news from broadcast television.⁶⁸ The FCC’s use of regulatory hurdles against ABC provides an incentive to those broadcasters to self-censor content in order to placate the President and the FCC – and that incentive raises grave concerns for our free speech and democracy.

VII. CONCLUSION

The abuse of power that the FCC has inflicted on Disney and its affiliate stations through this action is blatantly unconstitutional. In context, any reasonable person can see that the FCC’s true motive for requiring these stations to renew their licenses early is to retaliate against and chill disfavored speech.

If this Order were to proceed successfully, this administration and future administrations will be emboldened to pressure networks into censoring reporters, critics, pundits, and comedians simply because the president disapproves of their speech. That outcome—the manipulation of public discourse to favor those in power—goes against the very heart of the First Amendment and poses an existential threat to our democracy. People have the right to criticize their government, and the government should not be allowed to abuse its power to influence which views or voices are allowed in public discourse. The FCC must immediately drop this proceeding, and commit to protecting the First Amendment moving forward.

⁶⁵ Ted Johnson & Dade Hayes, *Nexstar And Sinclair, Two Largest Station Groups, Wield Influence In ABC Decision To Pull Jimmy Kimmel In Light Of His Charlie Kirk Comments*, YAHOO NEWS: DEADLINE (Sep. 17, 2025 at 18:23 EDT), <https://deadline.com/2025/09/nexstar-jimmy-kimmel-charlie-kirk-1236547382/>; Selome Hailu, *‘Jimmy Kimmel Live!’ Replaced With Charlie Kirk Tribute on Sinclair’s ABC Stations; Company Demands Kimmel Apologize and Donate to Kirk’s Family and Turning Point USA*, VARIETY (Sep. 17, 2025 at 19:06 PT), <https://variety.com/2025/tv/news/jimmy-kimmel-live-replaced-charlie-kirk-tribute-sinclair-apology-1236522789/>.

⁶⁶ Brian Stelter, Elizabeth Wagmeister, Elizabeth & Liam Reilly, *ABC Yanks Jimmy Kimmel’s Show ‘Indefinitely’ After Remarks About Charlie Kirk*, CNN (Sep. 17, 2025 at 05:21 ET), <https://www.cnn.com/2025/09/17/media/jimmy-kimmel-charlie-kirk-trump-fcc-brendan-carr>.

⁶⁷ Owen Mason-Hill, *CBS Legend Eviscerates New “Trump-Approved” ‘60 Minutes’*, The Daily Beast (June 5, 2026 at 13:30 EDT), <https://www.thedailybeast.com/obsessed/cbs-legend-eviscerates-new-trump-approved-60-minutes/>.

⁶⁸ Jacob Liedke & Luxuan Wang, *When Americans Say They Get News from TV, What Do They Mean?* PEW RESEARCH CENTER (Nov. 20, 2025), <https://www.pewresearch.org/short-reads/2025/11/20/when-americans-say-they-get-news-from-tv-what-do-they-mean/>.