

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544**

In the Matter of)	
)	MB Docket No. 25-73
News Distortion Complaint Involving)	
CBS Broadcasting Inc., licensee of WCBS,)	
New York, NY)	
Preserving the First Amendment)	
)	GN Docket No. 25-11
)	

COMMENTS OF THE CENTER FOR DEMOCRACY & TECHNOLOGY

Samir Jain, Vice President
Kate Ruane, Director
Becca Branum, Deputy Director

for

Center for Democracy & Technology
1401 K Street, NW
Suite 200
Washington, DC 20005

March 7, 2025

Table of Contents

I. Introduction	1
II. CBS's Exercise of Editorial Discretion Does Not Constitute News Distortion.....	2
III. This Proceeding Undermines Broadcasters' First Amendment Rights By Seeking to Weaponize Their Public Interest Obligations	5
A. This Proceeding Exceeds Even the Outer Limits of the FCC's Public Interest Authority.....	5
B. Opening This Proceeding Was an Improper and Unconstitutional Exercise of FCC Authority	9
V. Conclusion	11

I. Introduction

The Center for Democracy & Technology (CDT) respectfully submits these comments in response to the Federal Communications Commission’s (FCC) request for comments regarding a previously properly dismissed complaint against CBS Broadcasting Inc. for alleged news distortion related to its 60 Minutes news program.¹ CDT is a nonprofit 501(c)(3) organization fighting to advance civil rights and civil liberties in the digital age for all. Crucial to CDT’s work is a staunch commitment to free expression and support for journalists’ speech unburdened by government pressure and censorship, while also acknowledging the urgent need to address false and misleading information polluting our information ecosystem. We appreciate the opportunity to submit these comments.

This proceeding is not about news distortion. The publication of the full transcript and unedited video of the interview at issue lays that fact bare.² CDT is concerned that the FCC’s reinstatement of this complaint is part of a systematic effort to extract favorable news coverage of the current Administration and negative coverage of its political opponents from broadcast journalists, contravening the First Amendment and exceeding the FCC’s authority over broadcast licensees.

In these comments, we will first examine the FCC’s prohibition on news distortion and briefly explain why it is clear that the news distortion standard has not been met in this case. We go on to outline broadcasters’ First Amendment rights and the limited scope of the FCC’s authority to regulate broadcasters’ public interest obligations in light of the constitution’s free speech protections—and explain that the FCC’s authority does not extend to regulating the viewpoints espoused by broadcasters or the issues they must cover. In addition to lacking the authority to directly regulate CBS’s conduct in this case, the FCC’s efforts to pressure broadcasters into providing more favorable news coverage by threatening their licenses constitutes unconstitutional jawboning, as outlined in the Supreme Court’s recent case *NRA v. Vullo*. Finally, we describe how this proceeding appears to be part of a broader campaign to intimidate broadcasters that engage in speech the government does not like by conducting investigations into their constitutionally-protected editorial decisionmaking.

The FCC’s recent attempts to coerce broadcasters into delivering approved messages and its campaign to undermine broadcasters’ editorial discretion are antithetical to the First Amendment. They also ultimately harm broadcast viewers and listeners who expect broadcasters to exercise their independent judgment in the content of their programming. The FCC must abandon this unconstitutional campaign

¹ FCC, Public Notice, *FCC Includes Additional Video Material In Its Request for Comment on News Distortion Complaint Involving CBS Broadcasting Inc., Licensee of WCBS, New York, NY* (Feb. 7, 2025), <https://docs.fcc.gov/public/attachments/DA-25-113A1.pdf>.

² Sara Swann, *Trump claim ‘60 minutes’ replaced Harris’ interview is wrong*, Politifact (Feb. 6, 2025), <https://www.politifact.com/factchecks/2025/feb/07/donald-trump/trump-claimed-60-minutes-replaced-harris-interview/>.

immediately and recommit to its principled defense of broadcasters' First Amendment rights. Otherwise, the future of independent broadcast journalism will be at risk.

II. CBS's Exercise of Editorial Discretion Does Not Constitute News Distortion

On January 16, 2025, then-FCC Chairwoman Rosenworcel appropriately dismissed four complaints against ABC, CBS, NBC, and Fox affiliates that sought “to weaponize the licensing authority of the FCC in a way that is fundamentally at odds with the First Amendment.”³ The complaints varied, both in substance and in source. Three of the complaints originated from the Center for American Rights, alleging violations of FCC rules that the complainants allege accrued to the benefit of Presidential Candidate Kamala Harris.⁴ The remaining complaint was filed by Media and Democracy Project and other individual petitioners against a Fox affiliate alleging that Fox “intentionally manipulated its audience” in violation of the public interest in relation to its coverage of false allegations by President Trump and his allies regarding Dominion Voting Systems.⁵ One day after Commissioner Carr was designated Chair by President Trump, the FCC reinstated three of these four complaints — against only those stations who were alleged to have violated FCC policy for the benefit of President Trump’s opponent in the 2024 presidential race.⁶ While the substance of each of these complaints differs, the reinstatement of only the complaints against coverage that complainants allege was too beneficial to President Trump’s rival suggests that the perceived political viewpoint of the broadcast — rather than any underlying obligations of the licensee — is the animating purpose behind the investigation.⁷

³ Statement of Chairwoman Jessica Rosenworcel, Re: Preserving the First Amendment, GN Docket No. 25-11 (January 16, 2025) Letters involving WPVI-TV and WCBS and Orders involving WNBC and WTXF-TV, at: <https://docs.fcc.gov/public/attachments/DOC-408913A1.pdf>.

⁴ Complaint of Center for American Rights Against WNBC (filed Nov. 4, 2024), at: <https://drive.google.com/file/d/1P2eQRqp-UlkOiuYcsZYdMYi4Va3L2pwl/view>; Complaint of Center for American Rights Against WPVI-TV (filed Sept. 24, 2024), at: https://drive.google.com/file/d/1hjHObYh_CVwRcpZLGc1aHrozUbpBcBhT/view; Complaint of Center for American Rights Against WCBS (filed Oct. 16, 2024), at: <https://drive.google.com/file/d/1kBqZo-10xBLE0Y1dhvBpzZnvcRUvH0H4/view>.

⁵ The Media and Democracy Project, Milo Vassallo, John McGinty, Peter Lems, Chenjerai Kumanyika, and Bill Hartman, Petition to Deny, LMS File No. 0000213362 (filed July 3, 2023), at https://www.mediaanddemocracyproject.org/files/ugd/f9547d_d59f128ca09d4106b82930d09c12c94f.pdf.

⁶ In the Matter of Equal Opportunities Complaint Involving NBC Telemundo License, LLC, licensee of WNBC, New York, NY (adopted January 22, 2025) at: <https://docs.fcc.gov/public/attachments/DA-25-83A1.pdf>; In the Matter of News Distortion Complaint Involving WPVI Television (Philadelphia), LLC, licensee of WPVITV, Philadelphia, PA (adopted January 22, 2025), at: <https://docs.fcc.gov/public/attachments/DA-25-84A1.pdf>; In the Matter of News Distortion Complaint Involving CBS Broadcasting Inc., licensee of WCBS, New York, NY (adopted January 22, 2025), at: <https://docs.fcc.gov/public/attachments/DA-25-85A1.pdf>.

⁷ See, J. Brodtkin, *Trump wants CBS license revoked; FCC chair explains that isn't going to happen*, Ars Technica (Oct. 10, 2024), <https://arstechnica.com/tech-policy/2024/10/fcc-chair-slams-trumps-call-to-revoke-cbs-and-abc-broadcast-licenses/>; Editorial Board, *Trump, CBS, and 'News Distortion'*, Wall St. J. (Feb. 9, 2025),

Even aside from the partisan bias of the FCC’s reinstatement of the complaint against CBS, the complaint should fail on its merits. While not precisely defined in FCC regulations, since 1949, the FCC has had a policy against “news distortion.”⁸ The news distortion doctrine was primarily developed through FCC enforcement actions levied in the 1960-70s to generally prohibit the “deliberate staging, slanting, and falsifying of news, as well as promotion or suppression of news to serve the licensees’ private interests rather than the public interest.”⁹ Licensees’ obligations to avoid news distortion are premised on their obligations to the public interest.¹⁰ These obligations, however, are limited. Court precedent, and subsequent FCC policy, has made clear that the FCC’s authority only extends to “deliberate distort[ion of] a factual news report” and does not extend to “mere inaccuracy or difference of opinion.”¹¹ Moreover, FCC policy states that the “FCC will only investigate claims that include evidence showing that the broadcast news report was deliberately intended to mislead viewers or listeners.” Without evidence such as “testimony from persons who have direct personal knowledge of an intentional falsification of the news,” the FCC “generally cannot intervene.”¹² Because CBS’s editing does not amount to deliberate distortion of a factual news report, and the complaint of the Center for American Rights does not include any evidence of CBS’s deliberate intent to mislead viewers or listeners, CBS’s actions do not constitute news distortion, and the FCC’s investigation of CBS is improper and in violation of its news distortion policy.

The Center for American Rights’ complaint involves an interview conducted by CBS journalist Bill Whitaker with then-Presidential candidate Kamala Harris that aired on CBS’s “Face the Nation” and “Sixty Minutes” in October 2024.¹³ In the interview as displayed on broadcast, CBS edited Harris’s response to a single question (“But it seems that Prime Minister Netanyahu is not listening”) into two responses (one beginning “[T]he work that we have done has resulted in a number of movements . . .” and one beginning “We are not gonna stop pursuing what is necessary for the United States . . .”) that separately aired on the two broadcasts.¹⁴ The Center for American Rights’ complaint alleges that CBS’s editing of this response amounts to news distortion for “so transforming an interviewee’s answer that it is a fundamentally different answer.”¹⁵ The transcript of the Whitaker-Harris interview, however, makes

<https://www.wsj.com/opinion/trump-cbs-and-news-distortion-broadcast-license-kamala-harris-interview-6591835d>.

⁸C. Raphael (2001). The FCC’s broadcast news distortion rules: Regulation by drooping eyelid. *Communication Law & Policy*, 6(3), 485-539, *citing* Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949); L. Levi (2000). Reporting the Official Truth: The Revival of the FCC’s News Distortion Policy. Wash. ULQ, 78, 1005.

⁹ Raphael, *supra* note 8.

¹⁰ CBS Program “Hunger in America,” 20 F.C.C.2d 143, 151 (1969).

¹¹ FCC, Broadcast News Distortion, at: <https://www.fcc.gov/broadcast-news-distortion>, *citing* Carl Galloway, Petitioner, v. Federal Communications Commission and United States of America, 778 F.2d 16 (D.C. Cir. 1985).

¹² *Id.*

¹³ Complaint of Center for American Rights Against WCBS, *supra* note 4.

¹⁴ *Id.*; Transcript of Whitaker-Harris Interview, at <https://static01.nyt.com/newsgraphics/documenttools/98d25bf9739b7d5e/d0377ef8-full.pdf>.

¹⁵ Complaint of Center for American Rights Against WCBS, *supra* note 4.

clear that Harris' answer was not, in fact, different from that which she gave. Rather, CBS divided a single response into two segments, simply altering the flow of the interview while maintaining the original question and Harris's words:

24 MR. BILL WHITAKER: But it seems that
25 Prime Minister Netanyahu is not listening. The

8

1 Wall Street Journal said that he -- that your
2 administration has repeatedly been blindsided by
3 Netanyahu, and in fact, he has rebuffed just
4 about all of your administration's entreaties.

5 VICE PRESIDENT KAMALA HARRIS: Well,
6 Bill, the work that we have done has resulted in
7 a number of movements in that region by Israel
8 that were very much prompted by, or a result of
9 many things, including our advocacy for what
10 needs to happen in the region. And we're not
11 going to stop doing that. We are not going to
12 stop pursuing what is necessary for the United
13 States to be clear about where we stand on the
14 need for this war to end. 16

In no way can such editing be interpreted to have materially staged, slanted, or falsified the substance or delivery of either Whitaker's question or Harris' response. Broadcasters routinely air only a portion of an interview due to time constraints and other editorial judgments. That is all CBS did here. The fact that it aired two different portions on two shows does not in any way amount to distortion – to the contrary, doing so had the effect of disclosing more of Harris' answer than if CBS had just aired the same portion on both shows.

Moreover, the Center for American Rights' complaint includes no evidence of any deliberate intent by CBS to mislead viewers. The FCC's news distortion policy is clear that, in order for the FCC to proceed

¹⁶ Screenshot of transcript of Whitaker-Harris Interview, at <https://static01.nyt.com/newsgraphics/documenttools/98d25bf9739b7d5e/d0377ef8-full.pdf>.

with an investigation or intervention, news distortion allegations must be accompanied by evidence of deliberate intention to mislead.¹⁷ The Center for American Rights' complaint includes no such evidence.

As such, the FCC's investigation is improperly predicated, violates its own news distortion policy, and should fail on both its substantive and procedural merits. The utter lack of evidence of deliberate intent to mislead, paired with the absence of any actual distortion by CBS's editorial decision making, makes clear that the FCC's reinstatement of this investigation is not based on the merits of the Center for American Rights' complaint, but rather an abuse of the FCC's regulatory authority in violation of the First Amendment and in excess of the FCC's authority to ensure broadcasters operate in the public interest.

III. This Proceeding Undermines Broadcasters' First Amendment Rights By Seeking to Weaponize Their Public Interest Obligations

The FCC's investigations into CBS and other broadcasters find no purchase in even the broadest interpretation of broadcasters' public interest obligations, demonstrating the improper nature of these proceedings. Broadcasters' public interest obligations, which provide the basis for the FCC's news distortion policy, are informed and governed by the First Amendment.¹⁸ The FCC cannot redefine public interest obligations or news distortion in order to suppress viewpoints it does not like, because the First Amendment bars such politically-motivated interpretations of the scope of broadcasters' public interest obligations.¹⁹ Moreover, this type of unconstitutional weaponization of government power with the goal of censoring constitutionally-protected speech, also known as jawboning, harms the rights of viewers and listeners who depend on broadcast news as an important source of independent coverage of the activities of elected officials and the operations of the federal government.

A. This Proceeding Exceeds Even the Outer Limits of the FCC's Public Interest Authority

The Communications Act of 1934 as amended by the Telecommunications Act of 1996 and other statutes vests the power to manage spectrum in the FCC.²⁰ As part of this authority, the FCC grants licenses to broadcast television and radio stations. Due to the purportedly limited supply of spectrum and the need to ensure broadcasters do not interfere with each other's use of spectrum, not all applications for broadcast licenses can be granted. Courts have generally held that because not all who

¹⁷ FCC, Broadcast News Distortion, at: <https://www.fcc.gov/broadcast-news-distortion>.

¹⁸ See generally, *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), *Red Lion Broadcasting Co. v. FCC*, 396 U.S. 367 (1970).

¹⁹ See *Rosenberger v. Rectors and Visitors of the University of Virginia*, 515 U.S. 819, 829 (1995) ("Viewpoint discrimination is ... an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.").

²⁰ See 47 U.S.C. §§ 303, 309.

wish to engage in speech over broadcast spectrum are able to obtain a license, those who do obtain a license must abide by certain obligations in order to ensure all people in the United States are served by broadcast stations.²¹ Those obligations include a requirement to operate in the “public interest, convenience, and necessity.”²²

The precise contours of the broadcast public interest standard have never been concretely defined.²³ It is not given form in statute, and the FCC’s interpretation of the standard has varied widely throughout its history.²⁴ Generally speaking, however, the FCC has considered a number of factors when determining whether a broadcast station is operating in the public interest, including ownership diversity, competition, and whether the programming the station offers is generally responsive to the needs and issues facing its local community.²⁵

Importantly, even in the context of its news distortion policy, the agency openly acknowledges that it is “prohibited by law from engaging in censorship or infringing on First Amendment rights of the press. Those protected rights include, but are not limited to, a broadcaster’s selection and presentation of news or commentary.”²⁶ The scope of the constitutional restriction on the FCC’s authority to police content has evolved over time, and is now significantly circumscribed to narrow and non-viewpoint based contexts. While constitutional limitations on regulating broadcasters’ editorial judgment have increased, even under prior more expansive views of FCC authority to regulate broadcasters’ public interest obligations, this proceeding would be considered an improper and unconstitutional use of FCC power and would not withstand scrutiny.

In the past, the FCC did consider the viewpoints broadcasters included in their programming when deciding whether they had operated in the public interest. This policy was known as the Fairness Doctrine. The Fairness Doctrine²⁷ consisted of two basic requirements:

- (1) that every licensee devote a reasonable portion of broadcast time to the discussion and consideration of controversial issues of public importance; and

²¹ See *Red Lion*, 396 U.S. at 390 (“Because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.”); Stuart N. Brotman, *Revisiting the broadcast public interest standard in communications law and regulation*, Brookings, (Mar. 23, 2017), <https://www.brookings.edu/articles/revisiting-the-broadcast-public-interest-standard-in-communications-law-and-regulation/>.

²² 47 U.S.C. § 303.

²³ See Brotman, *supra* note 21.

²⁴ *Id.*

²⁵ *Id.*

²⁶ FCC, News Distortion Policy, <https://www.fcc.gov/broadcast-news-distortion>.

²⁷ Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 29 Fed. Reg. 10426 (1964).

(2) that in doing so, [the broadcaster must be] fair – that is, [the broadcaster] must affirmatively endeavor to make ... facilities available for the expression of contrasting viewpoints held by responsible elements with respect to the controversial issues presented.

Under this doctrine, broadcasters had the affirmative duty to determine which issues were controversial issues of public importance.²⁸ They also had the affirmative duty to identify the appropriate opposing viewpoints on those issues, who the appropriate entities to represent them were, and ensure they received time to present their viewpoints.²⁹ Congress partially codified the Fairness Doctrine in the Equal Time Rule, which requires broadcasters to provide equal time using their facilities to candidates for public office, though news broadcasts are specifically excluded from the requirement.³⁰ The FCC further implemented the related Personal Attack and Political Editorial (PAPE) rules, which required licensees to notify anyone whose character had been impugned over their airwaves and to provide that person with the opportunity to respond, unless the attack occurred in a news story.³¹

The FCC's authority to impose the Fairness Doctrine and the PAPE rule as well as the constitutionality of the policies were upheld by the Supreme Court in *Red Lion Broadcasting v. FCC*.³² When examining the FCC's authority to implement these policies, the Court found that the agency had not "embark[ed] on a frolic of its own," but, instead, was exercising authority granted to it by Congress to determine the entities to which to grant broadcast licenses and what it means for those licensees to act in the public interest.³³ When affirming the constitutionality of the policies, the Supreme Court relied on what has come to be known as the "scarcity rationale."³⁴ The Court essentially found that because broadcast spectrum is a finite resource that belongs to the American people, the Fairness Doctrine ensures that the viewpoints of all people can be aired via the broadcast medium even if they cannot all obtain broadcast licenses.³⁵ In other words, it was the right of broadcast viewers as a whole, rather than broadcast stations individually, that was paramount.³⁶

The Court's decision in *Red Lion* represents the apex of the FCC's authority to regulate the content of broadcast station programming. But even under that expansive interpretation, this proceeding would fail. The reasoning underpinning the Court's decision in *Red Lion* indicated that the Court expected and anticipated that the Fairness Doctrine would increase the number of viewpoints on matters of public concern available over broadcast. Nothing in the complaint about the editing of Harris' interview even begins to raise an issue about increasing viewpoints aired. To the contrary, the clear intent of this

²⁸ Report on Editorializing, 13 FCC at 1249.

²⁹ *Id.*

³⁰ 47 U.S.C. § 315.

³¹ *Red Lion*, 396 U.S. at 373.

³² *Id.* at 390.

³³ *Id.* at 375.

³⁴ *Id.* at 390.

³⁵ *Id.*

³⁶ *Id.*

proceeding against CBS and the others reopened by the FCC is to eliminate viewpoints unfavorable to the current Administration. Courts have never found that policies to censor viewpoints available over broadcast are within the scope of the FCC's public interest authority.

Moreover, the Fairness Doctrine has been widely discredited both legally and as a policy matter.³⁷ In the 1980s the FCC reviewed the impact of the Fairness Doctrine and determined that in practice it was harming the public interest, in part because the requirements to offer coverage to all viewpoints operated to deter broadcasters from covering issues of public importance at all.³⁸ The FCC also appropriately expressed discomfort with its obligation to make subjective judgments regarding which issues were of sufficient importance, and which viewpoints on those issues were significant enough to trigger broadcaster obligations.³⁹ These growing concerns within the FCC about the judgments the Fairness Doctrine required it to make about constitutionally-protected editorial discretion eventually led the agency to repeal the doctrine in 1987.⁴⁰ The FCC also, eventually, explicitly repealed the PAPE rules.⁴¹

Since *Red Lion*, the Supreme Court has also expressed its doubts about the precedent.⁴² Lower courts have also encouraged the Supreme Court to overrule it.⁴³ It is widely believed that if the Court were to reconsider the case today it would likely reach a very different decision regarding the doctrine's constitutionality.⁴⁴ And, in light of recent decisions significantly restricting the deference courts give to agencies' interpretation of ambiguous statutes, the scope of the FCC's authority to implement the

³⁷ See Jim Chen, *Liberating Red Lion from the Glass Menagerie of Free Speech Jurisprudence*, 1 J. TELECOMM. & HIGH TECH. L. 293, 296 (2002). (“Dissatisfaction with *Red Lion* has spawned an academic cottage industry.”).

³⁸ General Fairness Doctrine Obligations of Broadcast Licensees, Report, 50 Fed. Reg. 35418 (1985).

³⁹ In re Complaint of Syracuse Peace Council against Television Station WTVH Syracuse, New York, 2 FCC Rcd 5043 (1987).

⁴⁰ *Id.* at 5058. The decision to repeal the Fairness Doctrine was upheld by a federal appellate court. *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1988).

⁴¹ Personal Attack and Political Editorial Rules, 15 FCC Rcd. 20697 (Oct. 26, 2000) (repeal or modification).

⁴² See *FCC v. League of Women Voters*, 468 U.S. 364, 376 n. 11 (1984).

The prevailing rationale for broadcast regulation based on spectrum scarcity has come under increasing criticism in recent years. Critics, including the incumbent Chairman of the FCC, charge that with the advent of cable and satellite television technology, communities now have access to such a wide variety of stations that the scarcity doctrine is obsolete. We are not prepared, however, to reconsider our longstanding approach without some signal from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required. *Id.* (internal citations omitted). *Id.*

⁴³ See Chen, *supra* note 37 at 296 n. 25 (citing numerous cases).

⁴⁴ See Catherine J. Cameron, *It's Time to End the Zombie Reign of Red Lion Broadcasting*, 20 OHIO ST. TECH L. J. 327, 356 (2024) (noting that many commentators have criticized *Red Lion's* continued existence).

doctrine might also be in doubt.⁴⁵ Justice Clarence Thomas has questioned the validity of the precedent, calling it a “deep intrusion into the First Amendment rights of broadcasters,” which the Court justified based only on the nature of the medium.”⁴⁶

Consequently, the scope of the FCC’s authority to regulate broadcast programming in the public interest likely no longer includes the authority to determine which viewpoints broadcasters must espouse or allow to be espoused over their services or which issues broadcasters must cover in their programming, notwithstanding the continued application of the equal time rule. It never included the authority to force broadcasters to cover political candidates in a manner the government prefers, as the current proceeding seeks to do.

B. Opening This Proceeding Was an Improper and Unconstitutional Exercise of FCC Authority

This proceeding is a classic example of unconstitutional jawboning. As noted above, it cannot possibly relate to real concerns about news distortion. Instead, it appears to be part of a concerted effort on the part of the FCC to pressure certain broadcast stations into providing more favorable coverage to the current President and less favorable coverage to his political opponents.⁴⁷ The fact that the FCC reopened complaints against some stations that are perceived as being more critical of the President and did not reopen a similar complaint against stations whose coverage is favored by the President further underlines the censorious implications of this proceeding. This proceeding also coincides with and reiterates allegations that President Trump has made in a private lawsuit against CBS making similar claims about the veracity of the broadcast program at issue in this proceeding, adding to the appearance of an improper effort to undermine broadcasters’ editorial independence.⁴⁸

The First Amendment prohibits not only direct censorship, but also indirect censorship of constitutional speech.⁴⁹ Under the Constitution, the government may not threaten private actors with legal repercussions to coerce them into engaging in speech they otherwise would not, or prevent them from engaging in their preferred lawful speech. The Supreme Court recently reaffirmed this principle in *NRA v. Vullo*, holding that while the government may attempt to persuade a speaker, “[w]hat [it] cannot do . . . is use the power of the State to punish or suppress disfavored expression.”⁵⁰

⁴⁵ See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (holding that courts are responsible for resolving ambiguity in statutes rather than agencies).

⁴⁶ *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1820 (2009) (Thomas, J. concurring).

⁴⁷ See also Letter from Public Knowledge, et. al to FCC Chair Brendan Carr (Mar. 7, 2025) (expressing concerns about the FCC’s assault on broadcasters’ editorial independence), <https://publicknowledge.org/policy/group-letter-to-fcc-chairman-carr/>.

⁴⁸ Gene Maddaus, *Trump Doubles Down on 60 Minutes Lawsuit, Now Wants 20 Billion*, *Variety* (Feb. 7, 2025) <https://variety.com/2025/tv/news/trump-doubles-down-cbs-60-minutes-20-billion-lanham-act-1236301341/>.

⁴⁹ *Bantam Books v. Sullivan*, 372 U.S. 58, 71 (1963)

⁵⁰ *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175 (2024).

Using the power of the state to punish or suppress disfavored expression is precisely what the FCC is using this proceeding to do. It is threatening a broadcaster with negative consequences for having engaged in coverage of a political candidate that the government dislikes. It does not matter if the FCC closes this proceeding without a finding that CBS violated FCC law or policy: the damage has been done. The reinstatement of the complaint and opening of this proceeding are intimidation tactics intended to pressure a news organization into providing the type and style of coverage that those currently holding political power would prefer. Without correction from the FCC and an acknowledgment of its misuse of its power, the broadcaster now understands that failure to comply with the government's strong-arming will result in repeated and additional scrutiny from the government into its editorial judgment, taxing resources and distracting from other important work serving its community of license.

To make matters worse, the audience for the government's unconstitutional pressure campaign extends beyond the broadcast station at issue in this proceeding. With the reinstatement of this complaint in addition to the reinstatement of complaints against other stations perceived by the Administration as providing disfavored coverage, and the refusal to reinstate a similar complaints against a station perceived as providing favorable coverage, the FCC has placed all broadcast stations on notice that they must engage in favorable coverage of the current Administration (and unfavorable coverage of its political opponents and others expressing disagreement) or else they may face continued legal jeopardy and the associated costs. These intimidation tactics fly in the face of the First Amendment and recent Supreme Court precedent.

It must be noted that the FCC's reinstatement of this complaint against CBS Broadcasting is part of a dangerous pattern of recent actions by the agency intended to threaten and silence dissenting viewpoints. The FCC is undertaking a similar viewpoint-based attack against its licensees in its recent investigation against National Public Radio (NPR) and Public Broadcasting Service (PBS) alleging violations of the Communications Act.⁵¹ In a letter dated January 29, 2025, Chairman Carr informed NPR and PBS that he has directed the FCC's Enforcement Bureau to open an investigation against the broadcasters for alleged violations of their obligations regarding sponsorships.⁵² While the FCC has an appropriate role in enforcing rules under its purview and alerting NPR and PBS to their obligations to serve the public interest, the January 29 letter sought not to do just that, but to undermine funding for and operation of the networks altogether. Chairman Carr made clear that he was providing copies of the letter to "relevant Members of Congress" to inform "ongoing legislative debate," and that he "do[es] not see a reason why Congress should continue sending taxpayer dollars to NPR and PBS"⁵³ It is inappropriate and unlawful for the FCC to weaponize its regulatory authority to attempt to influence legislative appropriations allocated to two of its licensees to undermine their operations.

⁵¹ Letter from Chairman Brendan Carr to Katherine Maher, President and Chief Executive Officer of NPR, and Paula A. Kerger, President and Chief Executive Officer of PBS (Jan. 29, 2025), <https://static01.nyt.com/newsgraphics/documenttools/340343f285781674/6da3eb69-full.pdf>.

⁵² Id.

⁵³ Id.

The FCC similarly launched a viewpoint-based investigation into a radio station's coverage of Immigration and Customs Enforcement (ICE) activities in East San Jose, with Chairman Carr simultaneously applauding ICE deportations while alleging that coverage of newsworthy federal enforcement actions was inconsistent with the station's public interest obligations.⁵⁴ While broadcasters have public interest obligations under the Communications Act, the FCC does not have the authority to define that public interest in terms of the viewpoints with which it agrees or to revoke licenses for alleged "liberal bias."⁵⁵ Doing so undermines the FCC's own obligations to the public interest and its obligations under the First Amendment. Any one of these instances would be concerning. Taken together, they suggest that the FCC is attempting to pressure broadcasters into engaging in speech that pleases the current government, rather than adhering to its mandate to ensure broadcasters serve the public interest.

This unconstitutional pressure campaign to force broadcasters to espouse the views of the current government will ultimately harm the viewing public and undermine, if not entirely subvert, the public interest standard. It will deprive broadcast audiences of independent coverage of government officials and government actions. It will further corrode trust in broadcast journalism. It will also violate viewers' First Amendment rights to receive information from their preferred sources.

V. Conclusion

If the First Amendment means anything at all, it means that the government cannot require speakers to espouse its preferred messages or punish them for expressing views the government dislikes, regardless of the medium for the message. This basic principle has been the cornerstone of our democracy. The FCC's decision to reopen this proceeding and pursue this complaint does a disservice to our nation's history of protecting free expression through the First Amendment. The FCC should reverse course and close this proceeding immediately. It should also publicly recommit to the values of protecting and supporting editorial independence, in order to remedy any chilling effect on legitimate news coverage these proceedings may have already caused.

⁵⁴ Brian Flood, *FCC chair says it's 'really concerning' that a Soros-backed radio station exposed undercover ICE agents*, Fox News (Feb. 6, 2025), <https://www.foxnews.com/media/fcc-chair-says-its-really-concerning-soros-backed-radio-station-exposed-undercover-ice-agents>.

⁵⁵ CNBC Transcript: Exclusive: FCC Commissioner & President-Elect Trump's Pick for FCC Chairman Brendan Carr Speaks with CNBC's "Squawk on the Street" Today, at: <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>.