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Ranking Member Blumenthal, Senator Warren, and Members of Congress, thank you for inviting me to speak about this important and timely matter.

I serve as counsel at Protect Democracy, a non-partisan non-profit organization with the mission of preventing the United States from declining into a more authoritarian form of government. Our work combats abuses of executive power and defends the civil society institutions that are critical to a healthy, informed, and participatory democracy. We therefore view the troubling pattern of abuses of power at the FCC as a particularly urgent matter.

Since assuming the position of Chairman of the FCC in January 2025, Commissioner Brendan Carr has exercised the agency's considerable regulatory powers in deeply troubling and possibly illegal ways.

He has reinstated previously-dismissed complaints against broadcasters regarding their exercise of editorial judgment, after the President has attacked those judgments. He has threatened to investigate a radio station for the content of its coverage of a raid conducted by Immigration and Customs Enforcement. Invoking the Commission's equal employment opportunity rules, he has opened investigations into media companies' diversity, equity, and inclusion efforts, aspects of which are clearly protected by the First Amendment.¹ He has used the FCC's merger review authority to exert influence over the content and coverage produced by the subject media companies *and* to compel millions of dollars in legal settlements to President Trump's private presidential library fund. And most recently, Chairman Carr threatened late night host Jimmy Kimmel over comments the comedian made about the administration's response to Charlie Kirk's killing. He has indicated that his work is far from done.²

These actions are deeply anti-democratic. They likely transgress the limits Congress has placed on the FCC's authority in the Communications Act and other statutes. They violate the First Amendment by retaliating against news outlets for critically covering the administration and discriminating on the basis of the viewpoints the coverage expresses. They seek to eliminate the independence of the media, an essential institution in any healthy democracy. And they are corrupt, enriching the president personally and seeking to entrench his power by inducing anticipatory obedience.

In my statement today, I would like to provide you with legal and political science context to understand the FCC's recent actions. I will first provide a brief overview of the FCC, its organic statute, and the intersection of the agency's powers with the limits imposed by the First Amendment. I will then discuss in detail the FCC's actions under Chairman Carr, and how these actions may violate legal limits on agency power as well as the norms that have historically kept

¹ See *Honeyfund.com, Inc. v. DeSantis*, 94 F.4th 1272, 1277–80 (11th Cir. 2024).

² Cecilia Kang, *Brendan Carr Plans to Keep Going After the Media*, N.Y. Times (Sept. 24, 2025), <https://tinyurl.com/yts63m3t>.

the agency's actions within those limits. And finally, I will present insights from political scientists and other experts who study authoritarian behavior as to why the regulatory abuses at the FCC should alarm those concerned for the future of our democracy.

1. The FCC's Powers, and Statutory and Constitutional Limits

In 1934, Congress passed the Communications Act, establishing the FCC as an independent agency authorized to regulate broadcast communications in the United States. The Act gives the FCC broad regulatory authorities, but it also imposes critical limits on the scope and extent of these powers. Additionally, the First Amendment prohibits the FCC from exercising its powers to retaliate on the basis of speech or in any other way that abridges the expressive, associative, and journalistic freedoms protected by that amendment.

I want to discuss these structural and legal limits on the FCC's power to give a sense of what the proper operation of the agency looks like, and to illustrate how far Chairman Carr has strayed from these limits.

Starting with the FCC's status as an independent agency. Congress structured the FCC to operate as a bipartisan expert agency insulated from the political influence of the White House. The five commissioners serve staggered terms.³ No more than three commissioners may be from the same political party.⁴ And though the Act does not provide any mechanism for removal, it is generally understood that under current Supreme Court precedent commissioners may only be removed by the President for cause—that is for malfeasance, inefficiency, or neglect.⁵

Congress devised this independent design to both allow the FCC to develop the regulatory expertise necessary to govern a complex and highly technical industry, and to ensure that the FCC would exercise its authority in the public interest, free from political influence. Indeed, during the passage of the Radio Act of 1927—the statutory predecessor to the Communications Act from which the later law heavily borrowed—the House of Representatives proposed giving the Secretary of Commerce primary authority to regulate broadcasting. Congress ultimately rejected this approach, finding that putting the agency under cabinet-level control risked inviting political interference. As the House Committee on Interstate Commerce explained, Congress must “establish an entirely independent body... The exercise of this power is fraught with such

³ 47 U.S.C. § 154(c).

⁴ *Id.* § 154(b)(5).

⁵ See *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 537 F.3d 667, 695–96 (D.C. Cir. 2008) (Kavanaugh, J., dissenting), *aff'd in part, rev'd in part and remanded*, 561 U.S. 477 (2010); but see *FCC v. Consumers' Rsch.*, 145 S. Ct. 2482, 2517 (2025) (Kavanaugh, J., concurring) (stating that “the FCC, in light of the statutory text, should not be considered an independent agency”); see also *Trump v. Wilcox*, 145 S. Ct. 1415 (2025) (stay order calling into doubt Congress's ability to legislate removal restrictions under Article II); *Trump v. Slaughter*, ___ S. Ct. ___, 2025 WL 2692050 (Sept. 22, 2025) (granting certiorari to review, in part, whether Congress has the power to legislate removal restrictions as understood in *Humphrey's Executor*).

great possibilities that it should not be entrusted to any one man nor to any administrative department of the Government. This regulatory power should be as free from political influence or arbitrary control as possible.”⁶

In addition to agency independence, Congress placed statutory limits on the Commission’s regulatory powers. The Communications Act expressly prohibits the FCC from engaging in censorship or from interfering with the right to free speech.⁷ The Act also only authorizes the FCC to take specific regulatory actions. For instance, the Act allows the FCC to grant, revoke, or renew operating licenses;⁸ issue permits for the construction of radio stations;⁹ designate station call letters;¹⁰ and assign frequency bands.¹¹ The FCC cannot take a regulatory action that Congress has not authorized.¹² It could not, for instance, require broadcasters to maintain smoke-free workplaces.

But as a practical matter, the FCC’s specific regulatory authorities are incredibly potent and touch on integral aspects of a broadcaster’s operation. Broadcasters cannot operate without a license, and the FCC grants and renews these licenses. The FCC is also empowered to investigate “any matter” related to or concerning the enforcement of the Communications Act.¹³ And it is empowered to make rules and regulations “necessary” for the execution of its functions.¹⁴ As the United States Court of Appeals for the District of Columbia Circuit put it in 1942, these provisions “impl[y] the grant of all means necessary or appropriate to the discharge of the powers” of the Commission.¹⁵

Congress requires the FCC to exercise these substantial powers “in the public interest.”¹⁶ But the public interest standard in the Communications Act has been historically understood by the Commission and the courts as an amplifier of authority, rather than a limit on it.

The Act does not define the term “public interest,” but the Supreme Court has characterized it as “supple” and “comprehensive” and noted that it grants the FCC “expansive powers” to pursue its regulatory mandate.¹⁷ Though expansive, the Court has stated that the standard is not “so

⁶ H.R. Rep. No. 79-722, at 2 (1926), <https://tinyurl.com/y6fz9vt9>.

⁷ 47 U.S.C. § 326.

⁸ *Id.* §§ 307, 312, 309.

⁹ *Id.* § 319.

¹⁰ *Id.* § 303(o).

¹¹ *Id.* § 303(c).

¹² *See Cellco P’ship v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012); *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 438 (5th Cir. 2021).

¹³ 47 U.S.C. § 403; *but see Nat’l Religious Broadcasters v. FCC*, 138 F.4th 282, 292–93 (5th Cir. 2025) (narrowly interpreting the FCC’s investigatory authority as limited to subjects specifically authorized for consideration in the Communications Act).

¹⁴ 47 U.S.C. § 154(i).

¹⁵ *Stahlman v. FCC*, 126 F.2d 124, 128 (D.C. Cir. 1942).

¹⁶ 47 U.S.C. § 303.

¹⁷ *FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 138 (1940); *NBC v. United States*, 319 U.S. 190, 217, 219 (1943).

indefinite as to confer an unlimited power.”¹⁸ Rather, the public interest must be determined by reference to the purposes of the Act.¹⁹ Those purposes, however, are also broad. They include, for instance, ensuring the provision of quality and affordable telecommunications services “so far as possible, to all the people of the United States.”²⁰ Under this scheme, in which expansive powers can be exercised in the pursuit of broad purposes, the FCC has been permitted to craft regulations based on policy considerations as diverse as antitrust principles and national security considerations.²¹

The FCC power which has received the most sustained attention from the courts, commentators, and the Commission itself is the power to make content-based distinctions in regulating broadcast media—that is, the FCC’s power to determine whether certain programming is in the public interest or not.

Typically, the First Amendment subjects content-based exercises of governmental power to strict scrutiny, an exacting standard of judicial review that few regulations survive.²² But broadcast media has long been treated differently than print media and other forms of speech.²³ The FCC routinely makes determinations about whether certain kinds of programming are in the public interest, and therefore deserving of regulatory approval.

For instance, the statutorily-required “equal opportunity rule” requires broadcasters who give airtime to a candidate for public office to also give her opponents an equal opportunity for airtime.²⁴ This rule thus imposes burdens on broadcasters when they choose to air the messages of certain political candidates. Another example is the Children Television Act’s requirement that the FCC consider whether a broadcaster’s programming “has served the educational and informational needs of children” when reviewing a license renewal request.²⁵ The FCC, in turn, requires each commercial broadcaster to provide at least three hours of children’s programming a week to satisfy this provision of the Children’s Television Act.²⁶ These are regulations that impose burdens based on the content of the broadcast.

¹⁸ *NBC*, 319 U.S. at 216.

¹⁹ *Id.*

²⁰ 47 U.S.C. § 151.

²¹ *FCC v. Nat’l Citizens Comm. for Broad.*, 436 U.S. 775, 795 (1978); *Huawei*, 2 F.4th at 438–38.

²² *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642–43 (1994).

²³ *Id.* at 637–38; Lucas A. Powe Jr., *American Broadcasting and the First Amendment* 13–21 (1987).

²⁴ 47 U.S.C. § 315(a); 47 C.F.R. § 73.1941; *see also Branch v. FCC*, 824 F.2d 37, 49 (D.C. Cir. 1987) (upholding equal opportunity rule as constitutional). This is also sometimes referred to as the “equal time rule.”

²⁵ 47 U.S.C. § 303b.

²⁶ 47 C.F.R. § 73.671.

The First Amendment bars the federal government from enacting similar regulations for print media.²⁷ The Supreme Court has allowed lesser protections for broadcast media under the theory that because the electromagnetic spectrum is a scarce resource with only so many frequencies available for use, increased government regulation is necessary to make the resource usable at all, and to ensure that the public's right to receive information is satisfied.²⁸ This scarcity rationale has been vigorously critiqued almost since its inception.²⁹ But at present, the FCC operates with some additional leeway to regulate broadcasters' speech.

Aware of the tension between its regulatory mandate and the First Amendment, the FCC has historically exercised its power to regulate content cautiously.³⁰ The Commission has repealed on its own initiative several content-regulatory doctrines. The *Mayflower* doctrine, which forbade broadcasters from editorializing the news, was repealed nine years after the FCC announced it.³¹ That was replaced with the "fairness doctrine" which required broadcasters to provide coverage of "vitally important controversial issues" and ensure that "contrasting viewpoints on such issues" were given an opportunity to be presented.³² Though upheld as constitutional by the Supreme Court, the FCC later conducted its own study of the fairness doctrine and concluded that, in operation, the doctrine chilled speech and therefore violated the First Amendment.³³ The Commission abandoned the fairness doctrine in 1987.

In the contemporary era, the FCC has developed exacting evidentiary and pleading standards that constrain the application of the agency's content-regulatory policies. These standards help ensure the policies are exercised sparingly. The "news distortion policy," which can result in the investigation and sanction of a licensee that deliberately distorts the news, may only be invoked if the alleged distortion is deliberate, involves a significant matter, is made with the knowledge of management or the principals of the broadcaster, and is substantiated with extrinsic evidence

²⁷ See *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241 (1974). It is not just direct content regulation that triggers First Amendment scrutiny either. Other seemingly content-neutral regulatory powers like the power of investigation can trigger constitutional scrutiny when used discriminatorily, in retaliation, or to coerce or suppress speech. See Comments of the Foundation for Individual Rights and Expression, MB Docket No. 25-133, at 6–7 (Apr. 11, 2025), <https://tinyurl.com/mywtbbre>; *NRA v. Vullo*, 602 U.S. 175, 188 (2024).

²⁸ *NBC*, 319 U.S. at 218; *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 375 (1969).

²⁹ R.H. Coase, *The Federal Communications Commission*, 2 J.L. & Econ. 1, 12–14 (1959); *Telecomms. Rsch. & Action Ctr. v. FCC*, 801 F.2d 501, 508 (D.C. Cir. 1986) (Bork, J.).

³⁰ Coase, *supra*, at 11 ("If we ask why it is that the Commission's policies have met with so little opposition, the answer, without any doubt, is that the Commission has been extremely hesitant about imposing its views on the broadcasting industry."). Some political scientists and jurists have observed that this cautious approach is the natural consequence of Congress's choice to leave the public interest standard largely undefined. Without substantive guidance from legislation, the FCC is left on its own to navigate the political limits of what are and are not acceptable uses of regulatory power to industry, interest groups, and the public. See Erwin G. Krasnow, et al., *The Politics of Broadcast Regulation* 16–19 (3rd ed. 1982).

³¹ Mem. Op. & Order, *In re: Editorializing by Broadcast Licensees*, 13 F.C.C. 1246 (1949); Powe, *supra*, at 108–11; Thomas W. Hazlett & David W. Sosa, "Chilling" the Internet? Lessons from FCC Regulation of Radio Broadcasting, 4 Mich. Telecomm. & Tech. L. Rev. 35, 44–45 (1998).

³² Hazlett & Sosa, *supra*, at 42–43.

³³ *In re: Complaint of Syracuse Peace Council*, 2 F.C.C. 5043 (1987).

beyond the broadcast itself.³⁴ Unsurprisingly, very few complaints of news distortion meet this high standard.³⁵ This is by design. The agency has, through this heightened standard, taken steps to ensure that its content regulatory powers, which exist in tension with the First Amendment, are exercised sparingly and only when necessary.³⁶

Past administrations have attempted to use the FCC's regulatory clout to intimidate and pressure the media, but those attempts are fundamentally different from the public assertions of power to regulate speech that we are seeing today under Chairman Carr.

In the Nixon administration, White House aides frequently privately harangued media executives they felt treated the president unfairly or were insufficiently supportive of his views.³⁷ A central feature in this jawboning was the threat of using the FCC's licensing renewal authority to put noncompliant broadcasters out of business. Nixon's chief of staff even went so far as to propose that the FCC develop an "official monitoring system" at the FCC that could create a legal basis for retaliatory regulatory action.³⁸

But the Nixon administration ultimately was unable to open any formal investigations at the FCC or otherwise move the agency to take regulatory action against any of the press that were on Nixon's "enemies list."³⁹ The most the administration was able to do was orchestrate a complaint filing campaign by citizens and organizations allied with the president—a tactic that was successful in suppressing some unfavorable media coverage.⁴⁰ In essence, the Nixon administration's abuses were an attempt by those outside the FCC to use the agency's powers to cow the media, rather than an attempt from those within the FCC to do the same.

2. The FCC's Actions Under Chairman Carr

Recent actions taken by Chairman Carr suppress opposition speech even more dramatically than the abuses of the Nixon administration. Since being elevated to chairman, Commissioner Carr has used the FCC's regulatory powers to attack the press and extract incredible concessions from

³⁴ *Serafyn v. FCC*, 149 F.3d 1213, 1217 (D.C. Cir. 1998).

³⁵ Chad Raphael, *The FCC's Broadcast News Distortion Rules: Regulation by Drooping Eyelid*, 6 Comm. L. & Pol'y 485, 502 (2001) (finding that, between 1969 and 1999, only 10% of complaints resulted in a finding of news distortion, and those typically accompanied findings of other violations).

³⁶ *See Am. Sec. Council Ed. Found. v. FCC*, 607 F.2d 438, 453 (D.C. Cir. 1979) (Skelly Wright, J., concurring) (discussing how formidable prima facie case requirements properly balance regulatory obligations and First Amendment concerns).

³⁷ Hazlett & Sosa, *supra*, at 47–50; Powe, *supra*, at 121–41.

³⁸ S. Rep. No. 93-981, at 268 (1974).

³⁹ Powe, *supra*, at 137 (“[M]any of the administration’s tactics...were threats of legal action rather than affirmative steps toward that action.”).

⁴⁰ *Id.* at 137–39. Professors Hazlett and Sosa chronicle an episode where CBS dropped its policy of presenting news analysis immediately after presidential statements. Many viewed this as CBS succumbing to intimidation from the White House, but CBS chairman William Paley denied that the policy change was due to pressure from the Nixon administration. Hazlett & Sosa, *supra*, at 48–49.

media companies, including millions of dollars for the president’s library fund and the installation of an ombudsman to monitor bias—that is, viewpoint—at CBS News.

Chairman Carr has wielded a variety of the FCC’s authorities in creative and unprecedented ways to exert influence over media companies. He has reinstated formal complaints that the FCC had previously dismissed—a move that a bipartisan group of former FCC commissioners called a “remarkable departure” from the agency’s historical practice, both in substance and procedure.⁴¹ He publicly threatened to investigate a politically-disfavored Bay Area radio station because it covered an ICE raid,⁴² and opened an investigation into PBS and NPR over whether their underwriting announcements constitute commercial advertising, jeopardizing the public networks’ federal funding.⁴³ And of course most recently, Chairman Carr succeeded in suspending late night host Jimmy Kimmel over comments made about Charlie Kirk’s killing. The Chairman’s threat to Disney and ABC that “we could do this the easy way or the hard way” provoked condemnation from across the political spectrum.⁴⁴

All of these actions target entities the president or his advisors have publicly attacked. And all raise serious questions under both the First Amendment and the Communications Act.

But perhaps most troubling has been Chairman Carr’s use of the FCC’s merger review authority to exploit financial incentives at media companies in order to extract significant monetary and policy concessions. Here, the Paramount-Skydance merger stands out, but it is by no means the only example.

In July 2024, Paramount Global, the parent company of CBS Broadcasting, announced that it intended to merge with Skydance Media. The merger was valued at \$8 billion and would provide a critical infusion of capital to an overleveraged Paramount.⁴⁵ It also stood to enrich the chair of Paramount’s board and controlling shareholder Shari Redstone’s family business by several billion dollars.⁴⁶ As part of the merger, the FCC would need to approve the transfer of Paramount’s broadcast licenses to the new entity.⁴⁷

⁴¹ Comments of Former Commissioners Rachelle B. Chong, Ervin S. Duggan, Alfred C. Sikes, Gloria Tristani, and Tom Wheeler, MB Docket No. 25-73, at 3 (Mar. 26, 2025), <https://tinyurl.com/yud9w6jb>.

⁴² Juan Carlos Lara, *FCC Investigates SF Radio Station for ICE Reporting, Sparking Press Freedom Fears*, KQED (Feb. 6, 2025), <https://tinyurl.com/y87ukmh8>; Brian Flood, *FCC Launches Probe into Soros-Backed Radio Station That Revealed Live Locations of Undercover ICE Agents*, Fox News (Feb. 4, 2025), <https://tinyurl.com/5hxnwdwa>.

⁴³ David Folkenflik, *Trump’s FCC Chief Opens Investigation into NPR and PBS*, NPR (Jan. 30, 2025), <https://tinyurl.com/35br6may>.

⁴⁴ Brian Stelter, *How Brendan Carr, The Attack-Dog FCC Chair, Helped Take Down Jimmy Kimmel with Words, Not Actions*, CNN (Sept. 18, 2025), <https://tinyurl.com/5bzxsp5t>; *Republican US Senators Knock FCC Chair for Threatening Disney over Kimmel*, Al Jazeera (Sept. 22, 2025), <https://tinyurl.com/pmkarddp>.

⁴⁵ Cynthia Littleton, *David Ellison Set as Chairman-CEO, Jeff Shell as President of Paramount; Shari Redstone to Sell Family Empire to Skydance Media in \$8 Billion Deal*, Variety (July 7, 2024), <https://tinyurl.com/mymnx8bc>.

⁴⁶ *Shari Redstone To Get Whopping \$180M in Severance, Benefits after Skydance Deal: Report*, N.Y. Post (Sept. 5, 2024), <https://tinyurl.com/59w4f3rz>.

⁴⁷ See 47 U.S.C. § 310(d).

Paramount's transfer application was pending before the FCC when Donald Trump was inaugurated to his second term and when Commissioner Carr assumed the chair. At the same time, the company was defending itself in a civil case filed by President Trump in his private capacity. Trump's suit sought \$20 billion in damages for "election interference" alleged to have been caused by a *60 Minutes* interview with Trump's opponent in the presidential race, Vice President Kamala Harris. Trump's case was considered exceedingly weak by legal analysts.⁴⁸ His legal theory was that by editing the raw footage of the Harris interview, *60 Minutes* portrayed Harris in a more favorable light than she would have appeared had CBS aired the unedited interview in its entirety. But since 1974, the Supreme Court has recognized that these kinds of editorial judgments—what information to report and what to omit—are protected by the First Amendment.⁴⁹

CBS itself argued as much, urging the case be dismissed as "an affront to the First Amendment."⁵⁰ At the same time, though, Paramount needed the approval of the FCC to proceed with the merger. In May, the FCC had approved a merger between Verizon and Frontier Communications on the condition that Verizon abandon its DEI policies and practices, a policy focus of the president's but one seemingly unrelated to the FCC's regulatory mandate.⁵¹ Observers warned that a similarly improper hold up might be occurring in the Paramount-Skydance merger.⁵² These concerns were confirmed as the FCC's merger review dragged on and as it became apparent that Paramount was seeking to settle the president's frivolous claims against CBS.⁵³

On July 1, 2025, Paramount paid \$16 million as settlement to President Trump's presidential library fund—a virtually unregulated non-profit corporation that holds the proceeds of a number of Trump's legal settlements and donations he has received while president.⁵⁴ Three weeks later, Chairman Carr announced that the FCC would approve the merger between Paramount and

⁴⁸ Noah Feldman, *Trump's CBS Lawsuit Is A Frivolous Election Stunt*, Bloomberg (Nov. 1, 2024), <https://tinyurl.com/3ynk79vt>.

⁴⁹ *Miami Herald*, 418 U.S. at 258.

⁵⁰ Defs.' Mem. of Law in Support of Their Motion to Dismiss at 21, *Trump v. CBS Broad., Inc.*, No. 2:24-cv-236 (N.D. Tex. Dec. 6, 2024) (ECF No. 25).

⁵¹ Mem. Op. & Order, *In re: Frontier Commc'ns Parent, Inc. & Verizon Commc'ns, Inc. Application for Consent to Transfer Control*, 33 (May 16, 2025), <https://tinyurl.com/2r69uk3s>; Letter from Vandana Venkatesh, EVP & Chief Legal Officer, Verizon, to Brendan Carr, Chairman FCC (May 15, 2025), <https://tinyurl.com/mssch3y4>.

⁵² *M&A in the Spotlight: Skydance, Paramount and the Politics of Media Power*, Inst. for Mergers, Acquisitions & All. (Aug. 4, 2025), <https://tinyurl.com/taabzwmf>.

⁵³ The FCC has an informal 180-day timeline for deciding applications for transfer. See FCC, *Informal Timeline for Consideration of Applications for Transfers or Assignments of Licenses or Authorizations Relating to Complex Mergers* (available at: <https://tinyurl.com/38p5zd7w>). The FCC took more than 300 days to approve Paramount's transfer application.

⁵⁴ Benjamin Mullen, et al., *Paramount to Pay Trump \$16 Million to Settle '60 Minutes' Lawsuit*, N.Y. Times (July 2, 2025), <https://tinyurl.com/2c6t2d6d>; Madeleine May & Julia Ingram, *Critics of Trump's Presidential Library Fundraising Say "There are No Rules"*, CBS News (July 16, 2025), <https://tinyurl.com/sety8uyz>.

Skydance.⁵⁵ In its merger approval order, the FCC noted that Skydance had agreed to make a number of changes at Paramount. The new entity would eliminate its DEI initiatives, present “a diversity of viewpoints across the political and ideological spectrum,” and, most concerning, install an ombudsman to monitor complaints of bias at CBS News and report to the new entity’s president.⁵⁶ In the words of the former *New York Times* public editor, this ombudsman appears “designed to ensure little critical is aired about the current administration.”⁵⁷ Additionally, President Trump announced that Skydance has promised him roughly \$20 million in free advertisements or public service announcements in a “secret side deal.”⁵⁸

This is a stunning exploitation of state power to both enrich the president and alter the viewpoint and content of programming and reporting at what has been one of our nation’s foremost news outlets.

3. The Weaponization of the FCC Represents Democratic Backsliding

These abuses of FCC power are not *ad hoc* responses to unfavorable press coverage or flare-ups with the president, as during the Nixon administration, but rather follow a strategy employed in Hungary, Poland, and other de-democratizing societies to permanently destroy press independence and solidify the president’s control over civil society.

Chairman Carr’s actions at the FCC mirror those taken by Hungarian president Viktor Orbán’s ruling party, Fidesz. In the “Hungary model” of media capture, a nominally independent media regulator, who in fact is completely aligned with the president or the ruling party, exerts financial and administrative pressure on independent media in an effort to destabilize their business and, ultimately, eliminate the independent media company.⁵⁹ This in turn diminishes the opportunity for and efficacy of political opposition by reducing critical coverage, suppressing unpopular facts, and eliminating critical narratives. State power is wielded to entrench the ruling party’s power and reduce the political power of the opposition.

⁵⁵ Benjamin Muller, *F.C.C. Approves Skydance’s \$8 Billion Merger With Paramount*, N.Y. Times (July 24, 2025), <https://tinyurl.com/e7exs94v>.

⁵⁶ Mem. Op. & Order at ¶¶ 58–59, *In re: Applications for Consent to the Transfer of Control of Paramount Global* (July 24, 2025), <https://tinyurl.com/2jpe9fzw>.

⁵⁷ Margaret Sullivan, *A ‘Bias Monitor’ for CBS News Is A Bad Idea. Here’s Why*, The Guardian (Aug. 9, 2025), <https://tinyurl.com/yf5mprzy>.

⁵⁸ Todd Spangler, *Trump Makes Unconfirmed Claim Skydance Will Give Him \$20 Million in ‘Advertising, PSAs or Similar Programming’ After Paramount Merger Goes Through*, Variety (July 22, 2025), <https://tinyurl.com/yzv2s2my>.

⁵⁹ James Wiseman, *‘The Hungary model’: How Poland Copied Illiberal Tactics for Weakening Independent Media*, Int’l Press Inst. (May 20, 2020), <https://tinyurl.com/35wbhjrjw>.

When Fidesz achieved its supermajority in 2010, one of the first laws it passed was a media law, justified as a needed “corrective” to left wing bias in the press.⁶⁰ This new law replaced Hungary’s media regulator with a new authority whose members were appointed by, and as a practical matter controlled by, Fidesz.⁶¹ Similar to the FCC, Hungary’s new media authority is authorized to revoke broadcasting licenses, approve or prohibit mergers, and permit the dissemination of government messaging that it considers “social purpose messaging.”⁶² And similarly to the FCC under Chairman Carr, the Fidesz-controlled authority has used these powers to penalize media critical of the government and encourage the expansion and consolidation of pro-government media.⁶³ Unsurprisingly, since Orbán returned to power in 2010, Hungary’s press freedom score has declined significantly.⁶⁴ The country now ranks 68th in Reporters Without Borders’s global press freedom index.⁶⁵

The Hungary model has been deployed in de-democratizing societies around the world. In Poland, the Law and Justice party, which held the government from 2015 to 2023, followed suit and deployed regulatory power to weaken critical media. Through antitrust investigations, licensing decisions, and retroactive taxation the party attacked the business side of adversarial media outlets, reducing their influence and undermining their independence.⁶⁶

I don’t need to explain that a free press is essential to a healthy democracy. Debate, disagreement, and deliberation of public issues by the public is, in the words of the Supreme Court, “indispensable to decisionmaking in a democracy.”⁶⁷ “Speech concerning public affairs is more than self-expression; it is the essence of self-government.”⁶⁸ And without an independent and pluralistic press to provide both reliable factual information and a diversity of views on this information, there cannot be meaningful public discourse necessary to self-government. This is why as a country’s press freedom declines, so does its overall democratic health.

There is a second way in which Chairman Carr’s abuses at the FCC further authoritarian decline in our government, and that is through corruption. As mentioned, the FCC only approved the Paramount-Skydance merger after Paramount paid President Trump’s presidential library fund \$16 million to settle what was widely viewed as a frivolous lawsuit. To be sure, both Paramount

⁶⁰ Marius Dragomir, *The State of Hungarian Media: Endgame*, LSE Blog (Aug. 29, 2017), <https://tinyurl.com/ywp23uee>.

⁶¹ Int’l Press Inst., *Media Capture Monitoring Report: Hungary*, at 7 (2024), <https://tinyurl.com/mbtdans5>.

⁶² *Id.* at 8.

⁶³ *Id.*; Int’l Press Inst., *Leading Independent Radio Station Muzzled in Hungary* (Feb. 9, 2021), <https://tinyurl.com/3sw3eczh>.

⁶⁴ Free Press Unlimited, *Hungary*, <https://tinyurl.com/9aaxzxbr> (last visited Aug. 14, 2025).

⁶⁵ Reporters Without Borders, *Hungary*, <https://tinyurl.com/ywprme55> (last visited Aug. 14, 2025).

⁶⁶ Int’l Press Inst., *Democracy Declining: Erosion of Media Freedom in Poland*, 13 (2020), <https://tinyurl.com/4bwe7ssj>.

⁶⁷ *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 777 (1978).

⁶⁸ *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964).

and the FCC have maintained that the settlement was unrelated to the merger review process.⁶⁹ But your colleagues in the Senate, as well as lawmakers in California, have observed that there is evidence that Paramount and the administration viewed the settlement as a necessary payment in exchange for regulatory approval.⁷⁰ The allegation is that this was, in essence, a bribe.

Corruption is antithetical to democratic principles like the rule of law and public trust. However, certain kinds of corruption are also, according to political scientists, accelerants of democratic decline. Corruption that uses state resources not just to enrich public officials, but to reduce accountability, subvert institutional checks and balances, and establish a non-competitive political system undermines democratic structures and entrenches authoritarian forms of power.

To illustrate the distinction between enriching corruption and entrenching corruption, consider two kinds of corrupt practices. In Kenya, the practice of kickbacks is pervasive, where public funds are regularly siphoned by officials of many political parties and redistributed locally to supporters.⁷¹ In Turkey, zoning changes and non-competitive contract procurement have been used by leaders of Erdoğan's Justice and Development party (the ruling authoritarian party) to co-opt opposition figures and parties.⁷² Certainly, both are harmful, but the latter may pose a more acute risk to democratic backsliding by consolidating authoritarian power.

What has been widely reported as Chairman Carr's exchange of regulatory favor for concessions in the newsroom falls into the entrenching category of corruption. It furthers the president's control over an independent, power-checking institution in our democracy. It also signals to other actors in the media and in other sectors of civil society the terms on which they will have to engage with this administration. And, indeed, we have seen that the administration's strategy of wielding state power—not in the pursuit of any public policy, but purely to assert control—is not limited to the media. It has been deployed against universities, law firms, and non-profit organizations, many of which have obeyed in advance even when they are not the direct targets of the administration.

4. What Congress Can Do

⁶⁹ Todd Spangler, *After Skydance Doesn't Deny 'Side Deal' With Trump as Part of CBS Settlement, Sen. Warren Repeats Call for Investigation Into Potential 'Criminal Behavior'*, Variety (Aug. 1, 2025), <https://tinyurl.com/54rzhamh>.

⁷⁰ *Id.*; Max Tani, *California Opens Inquiry into Paramount and Trump*, Semafor (May 30, 2025), <https://tinyurl.com/yc56r2dk>.

⁷¹ U4 Anti-Corruption Resource Centre, *Kenya: Overview of Corruption and Anti-corruption* (2012), <https://tinyurl.com/26mwpwth>.

⁷² Abdullah Bozkurt, *Erdoğan Co-opts Turkey's Main Opposition Party*, Middle East Forum Online (Oct. 21, 2024), <https://tinyurl.com/yc2dt9fw>.

Congress has confronted this kind of regulatory corruption before, and it has crafted potent legislative correctives. Congress should pursue a similar course of action to remedy the abuses of the FCC's merger review authority and its content-regulation powers.

First, Congress can constrain the FCC's merger review authority by requiring judicial review, under certain circumstances, of FCC orders approving license transfers to determine whether the transfers are in the public interest.⁷³ Congress established a similar scheme of review of antitrust settlements after the International Telephone and Telegraph scandal in the Nixon administration. There, ITT received a plum settlement from the government after the company made a \$400,000 donation to the Republican National Committee. Congress responded by passing the Tunney Act, which required federal courts to review each consent decree entered in DOJ antitrust suits to determine whether the proposed remedy is in the public interest. Similar oversight of the FCC is clearly warranted.

Congress should also pass legislation eliminating the FCC's news distortion policy. As discussed, this is the policy which Chairman Carr has deployed to investigate CBS over its editing of an interview with Vice President Harris. The FCC also has opened public comments on a news distortion complaint against ABC over the network's fact checking of Donald Trump during the 2024 presidential debate.

The FCC's news distortion policy is not a formally promulgated regulation or rule, and it is not expressly required by statute; rather, it is an internal agency "policy" to investigate and remedy deliberate and egregious distortion of the news. As discussed, this policy that the FCC has developed for itself is a dangerous tool of content regulation in deep tension with the First Amendment. The FCC has long acknowledged the need to use it sparingly and only in the most extreme circumstances. However, under Commissioner Carr's chairmanship, the policy has been invoked in unprecedented ways to target media disfavored by the president and to silence coverage critical of the administration. This power should be denied by Congress. Its history of only occasional use demonstrates that it serves no critical regulatory purpose, and the FCC possesses other policies such as the broadcast hoax rule with which it can properly police egregious forms of misrepresentation in the news.

These are just some of the legislative reforms that Congress should consider. But action need not wait for new law. Many of the abuses at the FCC described above appear to exceed either the limits of the Communications Act or the First Amendment. Furthermore, they may, after investigation by Congress, be shown to be regulatory actions that are not in the public interest. Congress should thoroughly investigate and exercise its oversight powers.

⁷³ Currently, judicial review is available, but not mandatory. *See* 47 U.S.C. § 402.

5. Conclusion

A free, robust, and diverse press is critical for a democratic society. Congress recognized this nearly a century ago when it created the FCC with the Communications Act. That law recognized that any regulation of media would need to strike a delicate balance between the need to order and structure the marketplace of ideas, and the strong commitments to non-interference in this marketplace prescribed by the Constitution. Accordingly, Congress created an independent agency to be free of political capture whose powers were to be exercised in the public interest.

This design has functioned fairly well for the last ninety years. But the FCC under Chairman Carr has shown how this power and trust can be abused, and most concerningly, how easily this power can be wielded to undermine our democratic institutions. Congress should take action to reform these vulnerabilities, as it did before in response to the abuses of the Nixon administration.

I am grateful for your attention to this matter and I look forward to answering your questions.