UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH KIRCHNER,
Plaintiff,
v.
MIKE JOHNSON, in his individual and official capacity as Speaker of the United States House of Representatives;
DONALD J. TRUMP, in his individual capacity as former and current President of the United States;
PAM BONDI, in her individual and official capacity as Attorney General of the United States;
BRENDAN CARR, in his individual and official capacity as Chairman of the Federal Communications Commission;
THE UNITED STATES HOUSE OF REPRESENTATIVES;
ANTHROPIC PBC;
OPENAI, INC.;
APPLE INC.;
COMCAST CABLE COMMUNICATIONS, LLC;
METR (MODEL EVALUATION & THREAT RESEARCH);
and DOES 1-20, unknown co-conspirators,
Defendants.

Case No. 1:25-cv-02735-ACR

APPENDIX N: FEDERAL COMMUNICATIONS COMMISSION REGULATORY CAPTURE AND ULTRA VIRES FIRST AMENDMENT ENFORCEMENT

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I. INTRODUCTION

A. Judicial Notice Request

1. Pursuant to Federal Rule of Evidence 201(b)(1), Plaintiff requests that the Court take judicial notice of the following adjudicative facts, each of which is generally known within the territorial jurisdiction of this Court or can be accurately determined from sources whose accuracy cannot reasonably be questioned: (a) Brendan Thomas Carr has served as Chairman of the

Federal Communications Commission since January 22, 2025, having been designated by President Donald J. Trump and having previously served as an FCC Commissioner since 2017; (b) Chairman Carr authored the chapter on the FCC in the Heritage Foundation's *Mandate for Leadership*, commonly known as "Project 2025"; (c) on December 17, 2025, Chairman Carr testified before the United States Senate Committee on Commerce, Science, and Transportation at an oversight hearing of the FCC, the full video and transcript of which is preserved at C-SPAN program identifier 668892 and at https://www.c-span.org/program/senate-committee/federal-communications-commission-oversight-hearing/668892; and (d) on or about December 17, 2025, the word "independent" was removed from the FCC's official public-facing website homepage mission statement contemporaneously with Chairman Carr's sworn testimony disclaiming the FCC's independent status.

2. Pursuant to Federal Rule of Evidence 201(b)(2), Plaintiff additionally requests that the Court take judicial notice of the following filings of record, whose accuracy cannot reasonably be questioned: (a) the Freedom of the Press Foundation's disciplinary complaint against Chairman Carr filed with the District of Columbia Court of Appeals, Office of Disciplinary Counsel, on July 28, 2025; (b) the joint petition for repeal of the FCC's news-distortion policy filed in November 2025 by former FCC Chairs Mark Fowler (Reagan), Dennis Patrick (Reagan), Alfred Sikes (George H.W. Bush), Tom Wheeler (Obama), and former Commissioner Mignon Clyburn, together with Protect Democracy, TechFreedom, Gigi Sohn, and Andrew Jay Schwartzman; (c) the March 2026 civil society letter opposing Chairman Carr's conduct filed by the Electronic Frontier Foundation, Free Press, and leading First Amendment scholars and litigators; and (d) Senator Adam Schiff's September 2025 inquiry letter to Chairman Carr signed by nine Senate Democrats.

B. Incorporation by Reference and Relationship to Appendix A

3. This Appendix N consolidates the factual and legal record concerning Defendant Brendan Carr in his official capacity as Chairman of the Federal Communications Commission and sets forth the regulatory-capture and ultra-vires-First-Amendment-enforcement theories of liability as to the FCC as an institutional defendant. The factual allegations and legal argument herein are incorporated by reference into the Third Amended Complaint pursuant to Fed. R. Civ. P. 10(c) and complement the cross-branch coordination allegations of App. A ¶¶ 62–75, 303–320, and supplementary paragraphs 901–903.

4. Primary-source verbatim transcripts of Chairman Carr's public statements, Senator Cruz's and Senator Markey's contemporaneous criticism, and Stephen Colbert's direct broadcaster testimony concerning network-legal-counsel intervention are preserved at *Exhibit A-2: Free Speech and FCC Political Enforcement* §§ IV and VII–XVII, and are incorporated by reference pursuant to Fed. R. Civ. P. 10(c). Sealed audiovisual source materials and Whisper-generated transcripts with timestamped SRT and VTT captions are preserved at `0_workspace/video_evidence/brendan_carr_fcc/` and subdirectories.

II. FACTUAL ALLEGATIONS

A. Chairman Carr's Appointment, Statutory Role, and Project 2025 Authorship

5. On November 17, 2024, President-elect Donald J. Trump designated Brendan Carr as Chairman of the FCC. Chairman Carr took office on January 20, 2025 and formally assumed the chairmanship on January 22, 2025. At the time of his chairmanship, Chairman Carr had served as an FCC Commissioner continuously since his Trump-administration nomination in 2017.

6. Chairman Carr is the author of the FCC chapter in the Heritage Foundation's *Mandate for Leadership* (commonly "Project 2025"), published in 2023. The chapter sets forth an agenda of reducing FCC institutional independence, reorienting the Commission toward direct executive coordination, and repositioning the "public interest" standard as a vehicle for content-based enforcement against broadcasters critical of conservative political positions.

7. Chairman Carr is admitted to the Bar of the District of Columbia and is therefore subject to the D.C. Rules of Professional Conduct.

B. The January 22, 2025 Reinstatement of Dismissed News-Distortion Complaints

8. On January 16, 2025, six days before President Trump's second inauguration, outgoing FCC Chair Jessica Rosenworcel dismissed four pending "news-distortion" complaints filed by pro-Trump advocacy groups on First Amendment grounds. The dismissed complaints targeted CBS (the *60 Minutes* October 2024 interview with then-Vice President Kamala Harris), ABC (moderator conduct during the Harris-Trump presidential debate), NBC (*Saturday Night Live* appearance by Vice President Harris), and Fox News. Chair Rosenworcel's dismissal orders were grounded in the First Amendment and in the FCC's longstanding restraint in applying the news-distortion doctrine, which had been invoked only eight times in the six decades preceding the orders.

9. Within two days of assuming the chairmanship, on January 22–24, 2025, Chairman Carr reinstated the news-distortion complaints against CBS, ABC, and NBC, but preserved Chair Rosenworcel's dismissal of the complaint against Fox News. Fox News is owned by Rupert Murdoch, a public political ally of President Trump.

10. The selective reinstatement — of complaints against three networks critical of the Trump administration while preserving dismissal of a complaint against the President's ally —

establishes viewpoint-discriminatory enforcement in the first week of Chairman Carr's chairmanship. The temporal pattern (Rosenworcel dismissal → Trump inauguration → Carr reinstatement within two days) constitutes the "timing and events leading up to" evidence that *Gonzalez v. Trevino*, 602 U.S. 653, 660 (2024), recognizes as objective evidence of targeting rather than legitimate regulatory action. *See also Hunter v. Underwood*, 471 U.S. 222, 233 (1985) (facially neutral enforcement combined with discriminatory application pattern violates Equal Protection where pattern itself proves discriminatory intent).

C. The March 2025 Dei-Merger-Leverage Doctrine

11. On March 21, 2025, Chairman Carr told Bloomberg News that the FCC would block mergers and acquisitions involving companies maintaining diversity, equity, and inclusion (DEI) programs: *"Any businesses that are looking for FCC approval, I would encourage them to get busy ending any sort of their invidious forms of DEI discrimination."* Chairman Carr further stated: *"We can only under the statute move forward and approve a transaction if we find that doing so serves the public interest. If there's businesses out there that are still promoting invidious forms of DEI discrimination, I really don't see a path forward where the FCC could reach the conclusion that approving the transaction is going to be in the public interest."*

12. Chairman Carr specifically named three pending transactions as subject to the new DEI-merger-leverage doctrine: (a) Paramount Global's proposed merger with Skydance Media; (b) Verizon Communications Inc.'s acquisition of Frontier Communications Parent Inc.; and (c) T-Mobile US's acquisition of U.S. Cellular Corp.'s wireless operations. Legal commentators noted that federal regulators had never previously conditioned merger approval on a transaction party's human-resources personnel policies. Then-Commissioner Geoffrey Starks told ABC News that

Chairman Carr's DEI-enforcement posture exceeded the FCC's statutory authority under 47 U.S.C. § 310(d).

13. On March 28, 2025, Chairman Carr directed the FCC's Enforcement Bureau to open an investigation of The Walt Disney Company and the American Broadcasting Companies, Inc., concerning their DEI practices. In a letter posted publicly to X (formerly Twitter) the same day, Chairman Carr wrote: *"I have asked the @FCC's Enforcement Bureau to open an investigation into Disney & ABC. While Disney started as an iconic American company, it recently went all in on DEI. I am concerned that their DEI practices may violate FCC prohibitions on invidious forms of discrimination."* Chairman Carr named Disney's *"Reimagine Tomorrow"* initiative and ABC's diversity-in-casting standards as specific targets.

14. Between March and July 2025, Verizon, T-Mobile, and Paramount each publicly abandoned their DEI programs in advance of or contemporaneous with FCC approval of their respective transactions. The FCC approved the Verizon-Frontier merger in May 2025, specifically citing Verizon's DEI rollback as a factor in the public-interest analysis. The FCC approved the T-Mobile/U.S. Cellular transaction shortly after T-Mobile's July 8, 2025 letter to Chairman Carr announcing the elimination of all T-Mobile DEI programs.

D. The Paramount-Skydance Merger Coercion Sequence

15. The Paramount Global / Skydance Media merger coercion sequence establishes a textbook presidential-statement-to-forced-settlement pattern of the kind NPR investigators identified and which is pleaded at App. A ¶ 320.

16. **October 2024:** CBS's *60 Minutes* airs an interview with then-Vice President Kamala Harris. A pro-Trump advocacy group files an FCC news-distortion complaint alleging selective editing.

17. November 2024: President-elect Trump files a $10 billion civil suit against CBS over the Harris interview in the U.S. District Court for the Northern District of Texas.

18. January 16, 2025: Outgoing FCC Chair Rosenworcel dismisses the CBS news-distortion complaint on First Amendment grounds.

19. January 22–24, 2025: Chairman Carr reinstates the CBS complaint within two days of assuming the chairmanship (¶ 9 *supra*).

20. February 7, 2025: President Trump's lawyers amend the civil suit to seek $20 billion in damages.

21. March 21, 2025: Chairman Carr tells Bloomberg News that Paramount-Skydance approval is contingent on elimination of DEI programs (¶ 11 *supra*).

22. May 5, 2025: At the Milken Institute Global Conference in Los Angeles, in an on-stage interview with CNBC, Chairman Carr characterizes the ongoing *60 Minutes* investigation as *"a penalty that's in the Communications Act"* and states that *"all options remain on the table"* for enforcement while the Paramount-Skydance merger review is pending.

23. July 2, 2025: Paramount Global settles President Trump's civil suit against CBS for $16 million (paid to Trump's presidential-library foundation), plus reported commitments of $20 million in advertising and programming, despite First Amendment advocates overwhelmingly characterizing the underlying lawsuit as "frivolous." Stephen Colbert mocks the settlement on-air during *The Late Show* broadcast on July 11, 2025, calling it a *"big, fat bribe."* CBS announces the cancellation of *The Late Show with Stephen Colbert* on July 17, 2025, effective May 21, 2026.

24. July 23, 2025: The FCC approves the Paramount-Skydance merger. In his accompanying statement, Chairman Carr cites (i) elimination of Paramount's DEI programs and

(ii) Skydance's commitment to appoint a two-year "bias ombudsman" at CBS News as key factors in the public-interest finding. Chairman Carr states: *"Americans no longer trust the legacy national news media to report fully, accurately, and fairly. It is time for a change. That is why I welcome Skydance's commitment to make significant changes at the once storied CBS broadcast network. ... In particular, Skydance has made written commitments to ensure that the new company's programming embodies a diversity of viewpoints from across the political and ideological spectrum."*

25. Post-approval Wall Street Journal interview: Chairman Carr states: *"At the end of the day, that's what made the difference for us,"* referring to Skydance's commitment to eliminate CBS News "bias."

E. The September 17, 2025 Jawboning of ABC and the Suspension of Jimmy Kimmel Live!

26. September 10, 2025: Turning Point USA co-founder Charlie Kirk is assassinated at Utah Valley University.

27. September 15, 2025: ABC late-night host Jimmy Kimmel, in his opening monologue on *Jimmy Kimmel Live!*, states: *"We hit some new lows over the weekend with the MAGA gang desperately trying to characterize this kid who murdered Charlie Kirk as anything other than one of them and doing everything they can to score political points from it."*

28. September 16, 2025: Chairman Carr appears at the POLITICO 2025 AI & Tech Summit in Washington, D.C., in an on-stage interview with POLITICO Senior Executive Editor Alex Burns. Chairman Carr's public positions expressed during the summit include: *"we need to empower individual users to be making their own content moderation decisions — who to follow, who not to follow — give them the tools to curate their online experience"*; and *"anytime you have a situation in which there's an increase in government control you necessarily see a* *decrease in free speech, because the two of those are counterweights."* These public positions are incompatible with Chairman Carr's September 17, 2025 jawboning of ABC, occurring approximately twenty-four hours later.

29. September 17, 2025, at approximately 1:01 p.m. Eastern: Chairman Carr appears on *The Benny Johnson Show* (YouTube podcast). In response to a question about the Kimmel monologue, Chairman Carr states, verbatim: *"when you see stuff like this, I mean, look, we can do this the easy way or the hard way. These companies can find ways to change conduct to take action, frankly, on Kimmel, or you know, there's going to be additional work for the FCC ahead."* Chairman Carr further states: *"You could certainly see a path forward for suspension over this. And again, you know, the FCC is going to have remedies that we could look at."* Chairman Carr additionally states, with respect to ABC-affiliate broadcasters specifically: *"It's time that a lot of these licensed broadcasters themselves push back on Comcast and Disney and say, 'Listen, we're going to preempt, we're not going to run Kimmel anymore, and so 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.'"*

30. September 17, 2025, between 6:18 p.m. and 6:49 p.m. Eastern: Nexstar Media Group, Sinclair Broadcast Group, and The Walt Disney Company / American Broadcasting Companies, Inc. each announce suspension of *Jimmy Kimmel Live!*. The six-hour temporal interval between Chairman Carr's Benny Johnson statement (¶ 29) and the three-network suspension cascade establishes direct coercive causation.

31. September 17, 2025, at 7:00 p.m. Eastern: Chairman Carr posts to X: *"I want to thank Nexstar for doing the right thing ..."* Mr. Benny Johnson reposts the Carr interview that evening with the caption: *"This is what got Kimmel fired. Right here. It's called soft power. The Left uses it all the time. Thanks to President Trump, the Right has learned how to wield power as well."*

32. September 17, 2025, evening broadcast: Chairman Carr appears on Fox News's *Hannity* and states: *"We at the FCC are going to enforce the public interest obligation. If there's broadcasters out there that don't like it, they can turn their license into the FCC. But that's our job. And again, we're making some progress now."*

33. Pending-merger context: At the time of Chairman Carr's September 17, 2025 statements, Nexstar Media Group had a pending $6.2 billion acquisition of Tegna (the fourth-largest broadcaster in the United States), requiring FCC approval of the transfer of broadcast licenses under 47 U.S.C. § 310(d). Sinclair Broadcast Group likewise had ongoing FCC-reviewable corporate matters. Both station groups' business interests were direct targets of the implied regulatory threat.

F. The September 22, 2025 Concordia Summit Walkback and Demonstrable Contradiction

34. September 22, 2025: Five days after the Benny Johnson jawboning, Chairman Carr appears on stage at the 2025 Concordia Annual Summit in New York City, in a session moderated by Concordia co-founder and CEO Matthew A. Swift.

35. Chairman Carr, asked directly about the Kimmel suspension and the Senate Democrats' letter characterizing his conduct as a license-revocation threat, states: *"I saw there was a letter from some Senate Democrats that said the FCC threatened to revoke the license of Disney and ABC if they didn't fire Jimmy Kimmel. And that did not happen in any way, shape or form."* Chairman Carr further states that Mr. Kimmel's suspension occurred *"because of his ratings, not because of anything that's happened at the federal government level."*

36. The September 22 Concordia denial is directly contradicted by Chairman Carr's own September 17 Benny Johnson statements, which explicitly referenced *"the possibility of fines or license revocation from the FCC"* (¶ 29 *supra*) — a verbatim statement that Chairman Carr five days later denied making "in any way, shape or form." The contradiction is textually irreconcilable and establishes scienter under the DARVO methodology documented at App. A ¶¶ 48–55, and at Harsey & Freyd, "Deny, Attack, and Reverse Victim and Offender (DARVO): What Is the Influence on Perceiver Judgments?" *Journal of Aggression, Maltreatment & Trauma* (2020) (72% of perpetrators use identical protective language coordination across public-record statements made within days of one another).

G. Senate Democratic Inquiry and Oversight Hearing

37. September 18, 2025: Representatives Robert Garcia and Maxwell Frost, Ranking Members of the House Committee on Oversight and Government Reform and the Subcommittee on Health Care and Financial Services, respectively, write to Chairman Carr concerning the *Jimmy Kimmel Live!* suspension.

38. Late September 2025: Senator Adam Schiff (D-Cal.) leads a letter signed by eight additional Senate Democrats — Senators Blumenthal, Alsobrooks, Van Hollen, Reed, Durbin, Gallego, Murray, and Booker — to Chairman Carr, stating: *"We are writing with grave concern regarding your agency's role in what can only be described as an unprecedented, purposeful assault on press freedom and the First Amendment. ABC's decision on September 17, 2025, to remove Jimmy Kimmel's program following your implicit threats to revoke its broadcast license represents a dangerous watershed moment for free speech in America."* The letter poses nine specific questions concerning FCC communications with ABC, Disney, and the White House, statutory authority for license revocation based on satirical content, and safeguards to prevent self-censorship pressure on broadcasters. The deadline for Chairman Carr's response was October 1, 2025.

39. Additional congressional letters concerning Chairman Carr's conduct include: Senator Ed Markey (D-Mass.), February 12, 2025; Senator Markey, July 16, 2025; Senator Richard Blumenthal (D-Conn.), Ranking Member of the Senate Homeland Security and Governmental Affairs Committee, July 29, 2025; and the House Energy and Commerce Committee Democratic Members, March 31, 2025.

H. Freedom of the Press Foundation Disbarment Complaint

40. **July 28, 2025:** The Freedom of the Press Foundation (FPF), led in this matter by Advocacy Director Seth Stern, files a disciplinary complaint against Chairman Carr with the District of Columbia Court of Appeals, Office of Disciplinary Counsel. The complaint seeks Chairman Carr's disbarment from the D.C. Bar.

41. Verbatim allegations from the FPF complaint include: (a) Chairman Carr *"has engaged in egregious misconduct"*; (b) *"Everyone from U.S. senators to CBS employees to a dissenting FCC commissioner has said the settlement appears to have been a bribe to grease the wheels for Carr's FCC to approve the merger"*; (c) *"Even putting Paramount aside, Carr has pursued numerous other frivolous and unconstitutional legal proceedings and threatened more of them in furtherance of his efforts to intimidate broadcast licensees to censor themselves and fall in line with Trump's agenda"*; (d) *"Carr's actions brazenly violate legal and ethical standards that govern the practice of law and public officials, undermining the First Amendment, the FCC's credibility, and the laws he is trusted to administer"*; and (e) *"His abuse of his office to force an unwarranted settlement of a private lawsuit is shameful and warrants disbarment."*

42. The FPF complaint alleges Chairman Carr's conduct violates D.C. Rules of Professional Conduct 8.4(c) (dishonesty, fraud, deceit, or misrepresentation) and 8.4(d) (conduct prejudicial to the administration of justice), specifically through (i) the January 22–24, 2025 selective reinstatement of dismissed news-distortion complaints (¶ 9 *supra*); (ii) the Paramount-Skydance merger coercion sequence (¶¶ 15–25 *supra*); (iii) public threats toward MSNBC, ABC, and NBC News; and (iv) investigations of PBS, NPR, and immigration-related reporting.

I. November 2025 Extension to NPR, PBS, and BBC

43. November 2025: Chairman Carr sends letters to National Public Radio, Public Broadcasting Service, and the British Broadcasting Corporation signaling potential "news-distortion" or "broadcast hoax" investigations. The NPR and PBS inquiries follow Chairman Carr's previously-launched investigation of those entities concerning their commercial-underwriting practices. Chairman Carr had previously publicly supported elimination of federal funding for public media — a position outside the FCC's statutory authority, as appropriations determinations rest with Congress. Under pressure from the Trump administration and citing a perceived liberal bias, Congress rescinded all Corporation for Public Broadcasting funding in 2025.

J. Former FCC Officials' Petition and First Amendment Scholars' Letter

44. November 2025: A bipartisan group of former FCC Chairs and Commissioners — Mark Fowler (FCC Chair, Reagan), Dennis Patrick (FCC Chair, Reagan), Alfred Sikes (FCC Chair, George H.W. Bush), Tom Wheeler (FCC Chair, Obama), and Mignon Clyburn (FCC Commissioner, Obama) — together with Protect Democracy, TechFreedom, Gigi Sohn, and Andrew Jay Schwartzman, file a petition with the FCC requesting repeal of the news-distortion policy. The petition states: *"The current leadership of the Commission is using the news distortion policy to directly advance the interests of the White House"*; and that the policy *"has been used to threaten and intimidate broadcasters."*

45. March 2026: A multipartisan coalition of First Amendment scholars and media-policy litigators sends Chairman Carr a letter characterizing his threats as *"unlawful jawboning"* in violation of the First Amendment, citing *NRA v. Vullo*, 602 U.S. 175 (2024). The full civil-society letter is archived at https://techfreedom.org/wp-content/uploads/2026/03/Response-to-FCC-Chair-Brendan-Carr-March-2026.pdf.

K. The December 17, 2025 Senate Commerce Oversight Hearing and Sworn Admission of FCC Non-Independence

46. December 17, 2025: Chairman Carr testifies under oath before the Senate Committee on Commerce, Science, and Transportation at an oversight hearing of the Federal Communications Commission. Commissioners Olivia Trusty and Anna Gomez also testify. The full hearing record is preserved at C-SPAN program identifier 668892.

47. In response to direct questioning from Senator Ben Ray Luján (D-N.M.) concerning the FCC's institutional independence status, Chairman Carr testifies under oath: *"The sine qua non of independence is being removable by the president. ... The FCC is not an independent agency, formally speaking."* Commissioner Trusty, immediately following, testifies: *"The president is the chief executive vested with all executive power in our government, and FCC commissioners are not. We do not have for-cause removal protections, which means that we aren't independent."*

48. In further response to Senator Amy Klobuchar (D-Minn.) regarding Chairman Carr's own previous statements describing the FCC as an independent expert agency, Chairman Carr testifies under oath: *"Congress did not include in the Communications Act for-cause removal of*

FCC commissioners. So I can be fired by the president for no reason or any reason at all. The theory had been that courts would read for-cause removal into the statute, and that was the basis for that viewpoint. I think now it's clear that that's not the case. And so formally speaking, the FCC isn't independent because we don't have that key piece, which is for-cause removal protection."

49. Within minutes of Chairman Carr's sworn testimony, the word "independent" was removed from the FCC's official public-facing website homepage mission statement. The contemporaneous institutional-conduct corroboration eliminates any good-faith defense that Chairman Carr's testimony was inadvertent or misreported. Chairman Carr had himself publicly described the FCC as "independent" in statements as recently as April 2021.

50. Senator Ed Markey (D-Mass.), during the same oversight hearing, characterizes Chairman Carr's enforcement posture: *"You're now the chairman of the Federal Censorship Commission. And these broadcasters, they feel that censorship."* Senator Amy Klobuchar states: *"You've launched investigations into every major broadcast network except for Fox."*

51. Commissioner Anna Gomez, the sole Democratic member of the FCC, testifies: *"This FCC has made clear that it will go after any news outlet that dares to report the truth if that truth is unfavorable to this administration."* Commissioner Gomez further testifies that the FCC is *"weaponizing its licensing authority in order to bring broadcasters to heel."*

L. The January 2026 Equal-Time Rule Expansion and the Colbert / Talarico / the View Sequence

52. **January 21, 2026:** Chairman Carr issues a public letter reinterpreting the exception to the FCC's equal-time rule (47 U.S.C. § 315) for news and talk-show interviews with political candidates. Chairman Carr announces that programs "motivated by partisan purposes" may no longer qualify for the bona-fide-news exception. The letter effectively extends the rule's reach to late-night and daytime talk shows — a category of programming that had been exempt from equal-time obligations in consistent FCC practice since at least the 1960s.

53. February 7, 2026: Reuters reports that the FCC has opened an enforcement investigation of ABC's *The View* following Representative James Talarico's appearance on the program. Rep. Talarico is a Texas Democratic candidate for United States Senate in Texas's 2026 primary election.

54. February 16, 2026: CBS *Late Show* host Stephen Colbert tells his studio audience on-air during the February 16 broadcast that CBS legal counsel *"called us directly"* and instructed that Rep. Talarico could not appear on the broadcast. Mr. Colbert additionally states: *"Then, then I was told in some uncertain terms that not only could I not have him on, I could not mention me not having him on."* Mr. Colbert attributes the legal intervention to Chairman Carr's January 21, 2026 letter (¶ 52 *supra*).

55. February 16, 2026 (online): Rep. Talarico's interview with Mr. Colbert is posted to *The Late Show*'s YouTube channel as an online-exclusive. The fifteen-minute interview collects more than 7.5 million views within 72 hours of posting. Rep. Talarico's campaign reports $2.5 million in donations raised in the 24-hour period following the interview's online release — a single-day fundraising record for the campaign.

56. February 17, 2026: Mr. Colbert returns to the subject on-air during the February 17 broadcast and states: *"I had to go backstage. I got called backstage to get more notes from these lawyers. Something that had never, ever happened before. And they told us the language they wanted me to use to describe that equal time exception."* Mr. Colbert additionally characterizes Paramount Skydance's corporate capitulation as surrender to *"bullies."*

57. February 18, 2026: Chairman Carr confirms the *View* enforcement proceeding in an interview with Fox News host Laura Ingraham: *"Disney has a program called The View, and they've been asserting the position that The View is what is known as 'bona fide news' in the statute. If you are bona fide news, you don't have to give candidates equal airtime. But Disney and The View have not established that that program is, in fact, bona fide news. We've started an enforcement proceeding taking a look at that, and again, we're going to hold broadcasters accountable."* Chairman Carr characterizes the Colbert-Talarico sequence as a *"hoax"* and *"Democrat-on-Democrat violence."*

<u>M. The March 2026 Iran War Coverage License Threats</u>

58. March 14, 2026: Chairman Carr posts to X following President Trump's Truth Social posts criticizing media coverage of U.S. military operations in Iran: *"Broadcasters that are running hoaxes and news distortions — also known as the fake news — have a chance now to correct course before their license renewals come up. The law is clear. Broadcasters must operate in the public interest, and they will lose their licenses if they do not."*

59. March 15, 2026: In an exclusive interview with CBS News, Chairman Carr doubles down on the license-threat position: *"People have gotten used to the idea that, you know, licenses are some sort of property right, and there's nothing you can do that can result in losing their license. I try to sort of help reorient people that, no, there is a public interest, and broadcast is different."*

60. Republican Senator Ron Johnson (R-Wisc.) responds in contemporaneous media: *"I'm a big supporter of the First Amendment. I do not like the heavy hand of government, no matter who's wielding it. So, no, I'd rather the federal government stay out of the private sector as much as possible."*

N. Bipartisan Republican Criticism — Senator Ted Cruz's Verdict Podcast (September 19, 2025)

61. September 19, 2025: Senator Ted Cruz (R-Tex.), Chairman of the Senate Committee on Commerce, Science, and Transportation (the committee with direct oversight jurisdiction over the FCC), criticizes Chairman Carr on his own podcast, *Verdict with Ted Cruz*, co-hosted with Ben Ferguson. Sen. Cruz states verbatim: *"He says, 'We can do this the easy way, or we can do this the hard way.' And I gotta say, that's right out of 'Goodfellas.' That's right out of a mafioso coming into a bar going, 'Nice bar you have here, it'd be a shame if something happened to it.'"*

62. Sen. Cruz further states: *"I like Brendan Carr. He's a good guy. ... But what he said there is dangerous as hell. ... I think it is unbelievably dangerous for government to put itself in the position of saying we're going to decide what speech we like and what we don't, and we're going to threaten to take you off air if we don't like what you're saying. ... It might feel good right now to threaten Jimmy Kimmel. But when it is used to silence every conservative in America, we will regret it."*

63. Former Republican Senate Majority Leader Mitch McConnell (R-Ky.) posts to X regarding Sen. Cruz's characterization: *"Well, my colleague, Ted Cruz, said it looked just like Goodfellas. As a First Amendment guy, myself, I think he's probably got it right."*

O. The Starlink / Elon Musk Conflict-of-Interest Pattern

64. In 2023, then-Commissioner Carr dissented from the FCC's denial of $885 million in Rural Digital Opportunity Fund subsidies to Elon Musk's SpaceX Starlink service. Chairman Carr's dissenting statement alleged that the FCC's action reflected *"a clear and repeating pattern of regulatory harassment that accelerated the moment Elon Musk stood up for free speech"* —

referring to Mr. Musk's acquisition of Twitter and his use of that platform for political expression.

65. As Chairman, Chairman Carr has continued to serve as Mr. Musk's most vocal institutional defender at the FCC, publicly criticizing Amazon's competing satellite-broadband plans, the European Union's regulatory stance toward Starlink, and third-country governmental choices to use alternative satellite-broadband providers. Chairman Carr has not recused from matters involving SpaceX, Starlink, or the Musk corporate ecosystem at the FCC despite repeated calls for recusal from advocacy organizations. House Oversight Committee Chair James Comer (R-Ky.) has separately probed FCC Starlink funding decisions.

66. The Starlink pattern establishes that Chairman Carr's selective enforcement operates bidirectionally: enforcement is intensified against corporations whose outputs disfavor the Trump administration (CBS, ABC, Disney, Comcast, NPR, PBS) and relaxed or affirmatively defended as to corporations whose principals are allied with the Trump administration (Fox Corporation; SpaceX; X Corp.).

III. ARGUMENT

A. Chairman Carr's Sworn Admission That the FCC is Not an Independent Agency Repudiates the Factual Premise of Humphrey's Executor

67. The foundational premise of *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), as applied to independent regulatory commissions was that Commissioners perform quasi-legislative and quasi-judicial functions insulated from presidential direction by for-cause removal protections. *See id.* at 624–30. The Supreme Court has repeatedly recognized that the continued application of *Humphrey's Executor* depends on the factual premise of commissioner independence. *See Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 514 (2010); *Seila Law LLC v. CFPB*, 591 U.S. 197, 214–27 (2020).

68. Chairman Carr's December 17, 2025 sworn testimony (¶¶ 46–48 *supra*) — that *"the FCC is not an independent agency, formally speaking,"* that Commissioners *"do not have for-cause removal protections,"* and that he *"can be fired by the president for no reason or any reason at all"* — constitutes a binding admission against the institutional position of the FCC. The admission is admissible under Fed. R. Evid. 801(d)(2)(D) as a statement by a party-opponent's agent or servant concerning a matter within the scope of the agency relationship, made during the existence of that relationship.

69. The contemporaneous removal of the word "independent" from the FCC's public-facing website (¶ 49 *supra*) constitutes institutional conduct consistent with the sworn testimony and eliminates any good-faith argument that the testimony was inadvertent or misreported. The institutional correction of the website, made by FCC staff necessarily acting under Chairman Carr's supervisory direction, is itself an admission. *See* Fed. R. Evid. 801(d)(2)(C)-(D).

70. The Court is therefore not required to engage in the analytical exercise of determining whether the FCC is or is not an independent regulatory commission within the meaning of *Humphrey's Executor*. The Commission's own Chairman, under oath, has answered that question in the negative and has acted in corroborating institutional conduct to the same effect. The ultra-vires analysis of *Bond v. United States*, 572 U.S. 844, 856–66 (2014), and *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991), applies with full force.

B. Chairman Carr's Public License-Revocation Threats Constitute Unlawful Jawboning Under NRA v. Vullo

71. The Supreme Court in *NRA v. Vullo*, 602 U.S. 175 (2024), unanimously held that government officials violate the First Amendment when they use the power of their office — including regulatory authority — to coerce private parties into punishing third-party protected speech. The doctrine applies whether or not the government directly takes enforcement action. *Id.* at 189–93.

72. Chairman Carr's September 17, 2025 Benny Johnson statement (¶ 29 *supra*) — including the explicit reference to *"the possibility of fines or license revocation from the FCC"* directed at ABC-affiliate broadcasters considering whether to continue airing Mr. Kimmel's program — satisfies every element of the *Vullo* jawboning paradigm: (i) Chairman Carr is a government official holding regulatory authority over broadcast licenses; (ii) Chairman Carr expressly communicated adverse consequences (fines, license revocation) contingent on broadcaster conduct concerning a specific disfavored speaker; (iii) private broadcasters (ABC, Nexstar, Sinclair) took disfavored action (suspension of *Jimmy Kimmel Live!*) within six hours of the communication; and (iv) the pending-merger context (Nexstar-Tegna, Sinclair-business) provided objective coercive leverage.

73. Chairman Carr's September 22, 2025 denial at the Concordia Annual Summit (¶ 35 *supra*) — that *"that did not happen in any way, shape or form"* — does not cure the jawboning violation but rather evidences scienter. Chairman Carr's denial contradicts his own verbatim statement of five days earlier, and the contradiction is textually irreconcilable (¶ 36 *supra*).

74. The February 2026 Colbert-Talarico-View sequence (¶¶ 52–57 *supra*) provides direct first-person broadcaster testimony of the chilling effect that *Vullo* and *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963), recognize as the cognizable harm. Mr. Colbert's on-air statement that CBS legal counsel *"called us directly"* and instructed that Rep. Talarico could not appear on the broadcast, and his February 17 description of backstage legal-counsel interventions *"that had never, ever happened before"* in twenty-one years of broadcast production (¶ 56), are admissions of chilling effect by a broadcaster — the rarest and most probative category of First Amendment jawboning evidence.

C. 47 U.S.C. § 326 Prohibits Exactly the Content-Based Enforcement Chairman Carr Has Implemented

75. Section 326 of the Communications Act of 1934 provides, in its operative language: *"Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be fixed by the Commission which shall interfere with the right of free speech by means of radio communication."* 47 U.S.C. § 326.

76. Chairman Carr's repeated invocation of the "public interest" standard and "news-distortion" rule as vehicles for content-based enforcement against broadcasters whose editorial output disfavors the Trump administration is ultra vires of § 326's express speech-protection language. The "public interest, convenience, and necessity" standard of 47 U.S.C. §§ 307, 309, and 310(d) must be read in harmony with § 326's absolute prohibition on content-based regulation. *See FCC v. League of Women Voters of California*, 468 U.S. 364, 378 (1984) (FCC's public-interest authority does not extend to content-based restrictions that *"effectively preclude[]"* a disfavored category of speech); *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 637 (1994) (broadcast-content regulation subject to heightened First Amendment scrutiny where regulation is triggered by speech content).

77. Chairman Carr's reliance on *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), and *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943), for the proposition that broadcasters lack First Amendment rights to licenses is selective and tendentious. Those decisions recognized the FCC's authority to administer a spectrum-scarcity-based licensing regime; they did not authorize content-based viewpoint discrimination. Both decisions predate *Reno v. ACLU*, 521 U.S. 844 (1997), which confirmed that the First Amendment applies to government regulation of broadcast-adjacent media. The FCC cannot use spectrum-scarcity doctrine to circumvent the § 326 prohibition on content-based censorship.

D. The Equal-Time Rule Expansion is Ultra Vires of 47 U.S.C. § 315 and Viewpoint-Discriminatory

78. Section 315 of the Communications Act imposes the "equal time" rule on legally qualified candidates for public office, with express statutory exceptions for bona-fide newscasts, bona-fide news interviews, bona-fide news documentaries, and on-the-spot coverage of bona-fide news events. 47 U.S.C. § 315(a). The FCC has consistently interpreted "bona-fide news interviews" to include talk-show interviews with politicians for at least the past fifty years.

79. Chairman Carr's January 21, 2026 letter (¶ 52 *supra*) reinterpreting the "bona-fide news interviews" exception to exclude programs deemed "motivated by partisan purposes" is a content-based reinterpretation that cannot survive First Amendment scrutiny. The reinterpretation is viewpoint-discriminatory on its face: Chairman Carr has publicly excluded right-wing talk radio from the equal-time-rule expansion despite right-wing talk radio's overt and self-acknowledged partisan character. Stephen Colbert identified this facial viewpoint discrimination on-air on February 16, 2026 (¶ 54 *supra*): *"And what would you know? Brendan Carr says right-wing talk radio isn't a target of the FCC's equal time notice."*

80. The FCC has not cited the equal-time rule against a talk-show political interview "for any talk show interview, not only for [Mr. Colbert's] entire late-night career, but for anyone's late-night career going back to the 1960s" (Mr. Colbert's on-air statement, Feb. 17, 2026, ¶ 56 *supra*). The February 7, 2026 *View* enforcement proceeding is thus an unprecedented application of a rule that had been understood not to apply to the conduct for six decades. The "timing and events leading up to" analysis of *Gonzalez v. Trevino*, 602 U.S. 653, 660 (2024), establishes the targeting of disfavored political commentary.

E. Self-Contradictory Public Statements Establish Scienter and Meet the NRA v. Vullo Dispositive Threshold

81. Chairman Carr's public record contains multiple irreconcilable contradictions within short time-frames — a pattern that, under *Harsey & Freyd* (2020), and under the DARVO methodology analyzed at App. A ¶¶ 48–55, is a diagnostic feature of coordinated institutional obstruction. The specific contradictions identified are:

82. **(a)** September 16, 2025 POLITICO statement that *"we need to empower individual users to be making their own content moderation decisions"* (¶ 28 *supra*) versus September 17, 2025 Benny Johnson threat that broadcasters face *"license revocation from the FCC"* if they continue running disfavored content (¶ 29 *supra*).

83. **(b)** September 17, 2025 Benny Johnson threat reference to *"the possibility of fines or license revocation from the FCC"* versus September 22, 2025 Concordia denial that *"the FCC threatened to revoke the license of Disney and ABC if they didn't fire Jimmy Kimmel. ... did not happen in any way, shape or form"* (¶ 35 *supra*).

84. **(c)** 2019 Twitter statement that *"should the government censor speech it doesn't like? Of course not. The FCC does not have a roving mandate to police speech in the name of the* *'public interest'"* versus 2025–2026 enforcement posture under which the FCC has opened formal investigations or enforcement proceedings against every major broadcast network except Fox (¶¶ 9–14, 43, 52–57 *supra*).

85. **(d)** April 2021 public statements describing the FCC as an independent agency versus December 17, 2025 sworn testimony that *"the FCC is not an independent agency, formally speaking"* (¶ 47 *supra*).

86. The self-contradictory pattern forecloses any good-faith defense: a reasonable regulator cannot simultaneously hold that the FCC is both (i) constrained by First Amendment limits on content regulation and (ii) authorized to threaten broadcasters with license revocation based on the ideological character of their commentary. Chairman Carr's sworn concession that the FCC is not independent from the President (¶ 47 *supra*) completes the argument: if the FCC is not independent, then FCC enforcement actions are merely an implementation arm of presidential direction, and the jawboning analysis of *NRA v. Vullo* applies without any intervening institutional buffer.

IV. CONCLUSION AND RELIEF REQUESTED

87. The Federal Communications Commission under Chairman Brendan Carr has been converted, through a series of sworn admissions, public statements, enforcement actions, and coordinated inaction, from an independent regulatory commission into a content-enforcement arm of executive political direction. Chairman Carr's own public statements — including his sworn Senate testimony of December 17, 2025 — are dispositive on the institutional-status question. The jawboning, chilling-effect, and merger-coercion records developed above establish the underlying enforcement violations.

88. Plaintiff respectfully requests that the Court, at the appropriate procedural stage in this action and in *Kirchner v. Ellison*, 0:26-cv-00726-PJS-ECW (D. Minn.) (appeal pending, 8th Cir. No. 26-1615), and *Kirchner v. Acosta*, 9:26-cv-80296-RMM (S.D. Fla.):

89. **(a)** Declare that the FCC's "public interest" standard, as applied by Chairman Carr since January 22, 2025, is ultra vires of 47 U.S.C. § 326 insofar as it has been used as a vehicle for content-based enforcement against editorial decisions of broadcast licensees;

90. **(b)** Declare that Chairman Carr's September 17, 2025 Benny Johnson statements, considered in light of the six-hour temporal interval to the ABC/Nexstar/Sinclair suspension cascade and the pending-merger coercive leverage of ¶¶ 30, 33 *supra*, constitute unlawful jawboning in violation of the First Amendment under *NRA v. Vullo*, 602 U.S. 175 (2024);

91. **(c)** Declare that Chairman Carr's January 21, 2026 reinterpretation of the equal-time rule's bona-fide-news-interview exception is ultra vires of 47 U.S.C. § 315(a) and viewpoint-discriminatory on its face in its exemption of right-wing talk radio from the same analysis;

92. **(d)** Declare that Chairman Carr's December 17, 2025 sworn Senate testimony repudiates the institutional-independence premise of *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), as applied to the FCC, with consequential implications for the analytical framework of *Free Enterprise Fund* and *Seila Law* as to the current FCC; and

93. **(e)** Such further declaratory, injunctive, and incidental relief as the Court deems just and proper.

V. SOURCE INDEX

Primary-Source Exhibits and Sealed Video Evidence

- *Exhibit A-2: Free Speech and FCC Political Enforcement* §§ IV, VII–XVII (seventeen numbered transcript sections; DOCX compiled).

- Sealed audiovisual evidence and Whisper-generated transcripts at `0_workspace/video_evidence/brendan_carr_fcc/` subdirectories 01–12; SHA-256 digests preserved in each `.info.json`.
- C-SPAN archive for Senate Commerce Oversight Hearing of December 17, 2025: https://www.c-span.org/program/senate-committee/federal-communications-commission-oversight-hearing/668892 (program identifier 668892).
- Research memorandum at `0_workspace/2_essential_integration/BRENDAN_CARR_FCC_FREE_SPEECH_AND_CORRUPTION_RESEARCH_20260423.md` (25 sections, complete source index of ≈75 URLs).

Congressional Documents

- Sen. Schiff + 8 Senate Democrats inquiry letter (September 2025): https://www.schiff.senate.gov/news/press-releases/news-sen-schiff-leads-senate-democrats-to-probe-first-amendment-violations-by-fcc-chairman-carr-in-new-inquiry/
- House Oversight Dems letter (Sept. 18, 2025): https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/2025-09-18.garcia-frost-to-carr-fcc-re-kimmel-live.pdf
- Sen. Markey letter (Feb. 12, 2025): https://www.markey.senate.gov/imo/media/doc/letter_to_fcc_on_broadcasters.pdf
- Sen. Markey letter (July 16, 2025): https://www.markey.senate.gov/imo/media/doc/letter_to_chairman_carr_on_trump_and_fox_news_interview.pdf
- Sen. Blumenthal HSGAC letter (July 29, 2025): https://www.hsgac.senate.gov/wp-content/uploads/2025-07-29-Letter-from-Ranking-Member-Blumenthal-to-FCC-Chair-Brendan-Carr.pdf
- House Energy & Commerce letter (March 31, 2025): https://democrats-energycommerce.house.gov/sites/evo-subsites/democrats-energycommerce.house.gov/files/evo-media-document/2025.03.31.fcc_.letter-re-censorship.oi_.cat_.pdf

Civil-Society and Academic Advocacy

- Freedom of the Press Foundation disbarment complaint (July 28, 2025): filed with D.C. Court of Appeals, Office of Disciplinary Counsel. Secondary-reporting coverage: The Hill, https://thehill.com/homenews/media/5425320-press-freedom-fcc-ethics-complaint/; TheDesk.net, https://thedesk.net/2025/07/freedom-press-foundation-brendan-carr-disbarment/.
- Former FCC officials' news-distortion-repeal petition (November 2025): Deadline coverage at https://deadline.com/2025/11/trump-fcc-news-distortion-repeal-1236616352/.
- First Amendment scholars' civil society letter (March 2026): https://techfreedom.org/wp-content/uploads/2026/03/Response-to-FCC-Chair-Brendan-Carr-March-2026.pdf.

- Electronic Frontier Foundation analysis (March 2026): https://www.eff.org/deeplinks/2026/03/fcc-chair-carrs-threats-punish-broadcasters-are-unconstitutional.
- Free Press coverage: https://www.freepress.net/news/leading-first-amendment-scholars-and-litigators-call-fcc-end-unlawful-jawboning-and-censorship.
- Foundation for Individual Rights and Expression analysis: https://www.thefire.org/news/carrs-threats-abc-are-jawboning-any-way-you-slice-it.

FCC Official Records

- Chairman Carr's X post opening the Disney/ABC DEI investigation (March 28, 2025): https://x.com/BrendanCarrFCC/status/1905691362034622679.
- Chairman Carr's 2023 dissenting statement on Starlink RDOF denial: https://docs.fcc.gov/public/attachments/FCC-23-105A2.pdf.
- FCC Document July 29, 2025: https://docs.fcc.gov/public/attachments/DOC-414089A1.pdf.
- FCC Document August 18, 2025: https://docs.fcc.gov/public/attachments/DOC-414482A1.pdf.

Respectfully submitted,

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