Public Knowledge

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Senate Committee on Commerce, Science, & Transportation

Shut Your App: How Uncle Sam Jawboned Big Tech Into Silencing Americans, Part II

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Chairman Cruz and Ranking Member Cantwell, thank you for the opportunity to testify on such a critical topic. I have been an advocate for First Amendment freedoms – especially the right of the public to hear diverse views and production of local news critical to an informed democracy – for over 25 years. One of the most challenging areas of government policy is how to balance the important government interest in creating spaces for robust debate, ensuring the flow of necessary information, while simultaneously avoiding the twin dangers of government censorship or forced carriage of government propaganda.

At the beginning of the 21st Century, these concerns focused on the traditional gatekeepers of broadcast licensees, and preserving an open internet. More recently, the rise of social media and the concentration of our national discussions on a very few giant platforms have raised even more complicated questions. But the fundamental question remains the same. How can the government maintain the news and civic discourse necessary to sustain democracy without becoming the dictator of what people may say or hear?

Unfortunately, since President Trump was sworn into his second term, we have not had to worry about subtle intimidation or "regulation by raised eyebrow." We have seen an unambiguous pattern where the President has publicly boasted that he will take action against those who oppose his agenda or criticize him personally, and where the heads of theoretically independent agencies have rushed to make good on these threats. My personal expertise is with the Federal Communications Commission, and on this I will focus my testimony. But concerns about government censorship extend far beyond the FCC. I will touch briefly on the actions of the Federal Trade Commission and other Executive actions that reinforce the credibility of retaliation for expressing opinions contrary to those favored by the Administration. These actions contrast not only with the actions of the Biden administration but with the actions of the first Trump Administration. It is this pattern of public statements and regulator actions that makes threats real, and gives them coercive power.

I cannot stress too much how consolidation – particularly in the hands of those who have proven themselves loyal to the current Administration – amplifies the ability to control content on an unprecedented scale. Consider the recent statement in the New York Post that the President favors a takeover by Larry and David Ellison (who have been "vetted" by the changes they have made at CBS since it was acquired by Skydance) that any other bidders for Warner Bros "are likely to face stiff hurdles from U.S. regulators." The Omnicom merger, approved by the FTC, created a behemoth that overshadows the entire advertising industry, making it harder for advertisers to control the placement of their ads. Social media remains highly concentrated, giving a handful of opaque algorithms control over the vast majority of online discussions and access to news. And without net neutrality, internet providers may freely prioritize content that the administration favors and degrade content of its political opponents.

It is therefore critical for Congress to reassert itself as the protector of free speech and opponent of censorship, regardless of party. Chairman Cruz deserves credit for admonishing FCC Chairman Carr at a critical moment. If we want an open marketplace of ideas critical for democracy and self-governance, all members of Congress must act together to preserve free speech. We need laws that protect privacy so that people may say what they want without fear. We need laws that promote competition so that people have a choice in what they see, hear, and say. And we need to restore the principle of non-discrimination for broadband, a principle that has enjoyed bipartisan support even where parties remain split on the appropriate legal framework.

I. The "Bully Pulpit" v. Unconstitutional Coercion

President Theodore Roosevelt is credited with inventing the term "bully pulpit," meaning a conspicuous position to advocate an agenda. Certainly, since then, Presidents, members of Congress, and heads of agencies of both parties have used the bully pulpit to reflect their agendas and influence action. Indeed, it has long been regarded as an important function of elected officials to reflect the concerns and priorities of the people who elected them in speeches and in subsequent policy actions. That is not coercion, even if these statements have an influence on the actions of companies or individuals.

By contrast, the Supreme Court has consistently held – and scholars of the First Amendment broadly agree – that the government may not cross from pushing an agenda to compelling obedience and suppressing dissent. The power of the Executive Branch to prosecute – or even investigate – individuals, the power to deny economic benefits or, by contrast grant favors, gives the government tremendous coercive power. Often, the only way to tell the difference between the two is the impact. Do those who defy the President face more than social consequences, such as boycotts by the President's supporters? Are benefits or punishments explicitly tied to obedience or defiance, and if so, does the President carry through on these threats?

The Supreme Court recently illustrated the difference between persuasion and coercion through two cases.[1] Taking these cases together, we find a clear set of criteria (albeit not always so

[1] *National Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175 (2024) (holding that the New York State Department of Financial Services had coerced financial institutions from providing services to the National Rifle

simple to apply). For government statements to cross the line from persuasion to coercion, the individual speaking for the government must make a credible threat clearly based on expressing a disfavored viewpoint, or the refusal to express a viewpoint the government favors. The targeted individual or company must then either change its behavior or suffer consequences directly traceable to the behavior. The credibility of the threat is both a function of the *ability* of the official to impose the punishment (or dispense the reward) and the general understanding of the *likelihood* of the threat. This includes whether the agency in question is acting in a way contrary to its precedent on matters the agency does not generally opine.

Thus, in *Vullo*, when the New York state official with relevant authority directly told a major insurer that it was much more likely to investigate companies providing insurance to the NRA, and issued official guidance reiterating this position, the Supreme Court found that this was an impermissible act of coercion against the NRA by depriving it of access to affordable insurance based on its views. By contrast, the Court in *Murthy* found that, even assuming the contacts between social media companies and the Executive branch took place, they did not constitute coercion. The Court found there was no obvious nexus between the Executive contacts and any reward or punishment for the social media companies and no obvious change in behavior in response to these contacts.[2] Additionally, the Court recognized that the Administration had good reason to coordinate with social media companies with regard to news about the ongoing COVID pandemic and other matters potentially bearing on public safety.

A. The FCC Has Crossed the Line to Unconstitutional Coercion and Censorship

With this in mind, we must view the ongoing activities of the FCC under Chairman Brendan Carr with considerable alarm – especially when contrasted with the actions of Chairman Ajit Pai, who served as Chairman of the FCC in the first Trump Administration. During the First Trump administration, President Trump would frequently denounce his critics on television – particularly those on Saturday Night Live who mocked him. President Trump would post that NBC should "lose its license" for its unfair coverage. Chairman Pai, however, took no action nor suggested any action to make good on these threats. To the contrary, when asked about the President's threats, Pai would refer to similar complaints by President Kennedy to then-FCC Chair Newt Minnow. While not saying so directly, Chairman Pai clearly implied that the President should be free to make his anger known (an example of the bully pulpit), while the Chairman of the FCC should remain independent.

But things have been very different this time around. Throughout his campaign, President Trump promised to punish his enemies when he returned to office. He also promised to use the power of government to punish those who stood in the way of his agenda. Brendan Carr, who as Chair of the FCC could make these threats credible, began to take actions that seemed very much in line with these threats. One of his first acts as Chair was to reinstate complaints for "news distortion" against ABC, NBC, and CBS on the basis of what were alleged to be unfairly

Association) compare with *Murthy v. Missouri*, 603 U.S. 370 (2024) (holding that the government's communications with social media platforms did not cause a direct and redressable injury to the plaintiff).
[2] *Murthy v. Missouri*, 603 U.S. 370 (2024) at 59.

favorable coverage of Vice President Kamala Harris during the 2024 campaign that Chairwoman Jessica Rosenworcel had previously dismissed.

These actions were noteworthy for multiple reasons. For one thing, none of the parties filed a Petition for Reconsideration or any other request to reinstate the complaints.[3] Furthermore, news distortion complaints are extremely difficult to prove. The First Amendment guarantees to broadcasters the right to edit their broadcasts. Additionally, Section 326 of the Communications Act expressly prohibits the FCC from engaging in censorship. This made reinstating the complaints after an opinion in line with Commission precedent extraordinarily peculiar. Finally, even taking the allegations on their face, the matters were moot or quickly became moot. In the case of the complaint against NBC for violating the "equal time" rule,[4] NBC reported that it had offered the Trump campaign comparable time and that the Trump campaign had accepted the offer. In the accusation that CBS had edited an interview with Vice President Harris to make her appear more favorably, the complainants requested as relief that the FCC release the unedited transcript, which the FCC subsequently did.[5]

Carr has often echoed criticism made by President Trump that media coverage is too critical of Trump and his agenda, favors Democrats and liberal viewpoints, and that stations that do not alter their coverage may be guilty of a "pattern of news distortion" and may be violating their public interest obligations. Carr has announced various investigations against outlets Trump has expressly criticized, such as Comcast/NBC Universal and NPR and PBS. Carr has expressly targeted for investigation a broadcast station that covered an ICE raid in a manner unflattering to ICE. All of these fall within the pattern the court identified in *Vullo* as efforts at unconstitutional coercion.

By contrast, Chairman Carr has used his power as Chair to weigh in favorably for licensees who explicitly back the President and have owners known to be President Trump's allies. Networks and affiliates regularly negotiate the terms by which the networks will provide affiliates with programming. Chair has written to Comcast/NBCU that it is investigating its treatment of its affiliates to influence these negotiations,[6] and generally voiced concern over the treatment of networks over their affiliates, when the largest group owners of affiliates – Nexstar and Sinclair – are owned by allies of President Trump and program accordingly.

1. Merger Conditions and Targeting Talk Show Hosts

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[3] By contrast, the Media Bureau simultaneously dismissed a complaint against Fox29 in Philadelphia for violations of the Commission's character policy based on the claims that the 2020 election was stolen by manipulating an electronic voting machine provider – a claim which Fox News subsequently settled. Chairman Carr declined to reinstate that complaint.

[4] 47 U.S.C. §312(a)(7) and §315(a) generally require broadcasters to provide equal time, at similar rates, to qualified federal candidates.

[5] Center for American Rights, *In re Complaint Against WCBS-TV*, at 5 (filed October. 16, 2024), https://drive.google.com/file/d/1kBqZo-10xBLE0Y1dhvBpzZnvcRUvH0H4/view.

[6] Letter from Brendan Carr, Chairman, Fed. Commc'ns Comm'n, to Brian Roberts, CEO, Comcast Corp. (Feb. 11, 2025), https://www.fcc.gov/sites/default/files/Chairman-Carr-Letter%20to-Comcast-02112025.pdf.

The most significant instances of censorship have come from Skydance's acquisition of Paramount and the subsequent "easy way or the hard way" demand to terminate Jimmy Kimmel. While citizen action ultimately forced Disney to reverse its decision to suspend broadcast of Jimmy Kimmel, the incident still raises very troubling concerns over Chairman Carr's willingness to use the power of the FCC to reward and punish to directly control content. Additionally, these incidents show the impact of media consolidation on the power of censorship and why Congress must take immediate steps to prevent further consolidation.

Paramount/Skydance. President Trump has been extremely critical of CBS, particularly 60 Minutes, and what he perceives as the persistent negative coverage of his Presidency. Trump has also been highly critical of Late Night talk show host Stephen Colbert, who has been one of the President's most vocal and persistent critics. Because the sale of Paramount to Skydance required FCC approval, it created the opportunity for Chairman Carr to effectively demand changes to Paramount's programming and commitments to provide more favorable coverage of President Trump and his agenda.

The Skydance acquisition did not present a traditional problem of media consolidation. Although Skydance owned some entertainment properties, it did not own any broadcast licenses or cable channels. While the merger might have arguably raised some concerns over concentration in media generally, it did not raise concerns that the FCC has considered in previous transactions. The transaction should therefore have gone through in fairly short order based on traditional FCC analysis.

Instead, the transaction lingered for months. While Chairman Carr did not (at least not publicly) make specific demands, Paramount apparently understood that it would facilitate regulatory approval if it took steps to address President Trump's complaints that CBS had treated Trump badly and that it would avoid "unbalanced" and "biased" coverage going forward. First, CBS settled a pending lawsuit filed by Trump relating to its editing of the "60 Minutes" interview with Kamala Harris. Although CBS admitted no wrongdoing and maintained that the settlement was simply to resolve the litigation, others argued that the settlement was motivated so that the acquisition could move forward.[7] Stephen Colbert, host of *The Late Show*, denounced the settlement as a "big fat bribe."

Almost immediately after Colbert's statement, CBS canceled *the Late Show*, effective at the end of the season in May 2026. While Trump and Carr both publicly celebrated the cancellation, both also denied that they had been responsible for CBS' decision.[8] Finally, Skydance CEO

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[7] *See* David Folkenflik, "CBS is the Latest News Giant to Bend to Trump's Power," All Things Considered (July 2, 2025), https://www.npr.org/2025/07/02/nx-s1-5454790/cbs-settlement-trump-60-minutes-harris-interview-analysis ; Kinsey Crowley, Kathryn Palmer, and Mike Snyder, "Why is Trump Suing CBS? What to Know About the Complaint Dating Back to Kamala Harris Interview," USA Today (May 20, 2025), https://www.usatoday.com/story/news/politics/2025/05/20/trump-cbs-lawsuit-settlement-explained/83742009007/.
[8] Domenick Mastrangelo, "Trump Says He Didn't Get Colbert Cancelled," The Hill (July 29, 2025), https://thehill.com/homenews/administration/5426557-trump-cbs-colbert-cancellation/.

David Ellison filed in the merger docket a letter to Chairman Carr in the FCC record committing to numerous changes to "reflect the varied ideological perspective of American viewers."[9] When asked whether these were necessary for the acquisition to get approval, Carr demurred, stating that Paramount canceled Colbert for financial reasons and that the FCC would continue to review the Paramount/Skydance deal at its own pace.The fact that the acquisition cleared the FCC mere hours later, however, undercut these assurances. And although Trump denied direct involvement in Colbert's cancellation, he posted on Truth Social that "I absolutely love that Colbert got fired . . . I hear Jimmy Kimmel is next."[10]

Carr soon seized the opportunity to fulfill President Trump's "prediction." Following the tragic assassination of Charlie Kirk, Jimmy Kimmel used his television show to criticize those in the MAGA movement, blaming liberals generally for Kirk's death.[11] Chairman Carr moved from "regulation by raised eyebrow" to full-on public threat. "This is a very, very serious issue right now for Disney," Chairman Carr told conservative podcaster Benny Johnson. In language which Chairman Cruz would rightly criticize as "right out of 'Goodfellas,' Chairman Carr continued: "We can do this the easy way or the hard way. These companies can find ways to take action on Kimmel, or there is going to be additional work for the FCC ahead." Within hours, Nexstar, Tegna, and Sinclair – the three largest broadcast group owners controlling access to well over 25% of the country – announced they would preempt Kimmel. Soon after that, ABC announced it had suspended Kimmel "indefinitely." Carr applauded this "independent decision" of the affiliates as an example of how local affiliates serve their local communities.

Public outrage was swift. Critics of Carr's statements noted that Nextstar and Tegna had already announced plans to merge – a deal that would not only require FCC approval, but actually exceeded FCC ownership limits and therefore would require either waiver or modification of the ownership rules (something Carr had previously indicated he favored). Additionally, the fact that three CEOs could dictate what the country would see brought home the way in which media consolidation has made censorship easier. Customers of Disney+ and Hulu (majority owned by Disney) began canceling their subscriptions in protest. Even Disney actors joined in the call to boycott Disney in protest.[12] Ultimately, after Disney lost 3 million streaming customers,[13] the company brought back Kimmel. Although Nexstar, with Carr's encouragement, preempted Kimmel's return broadcast, it and the other two group owners ultimately relented, and Kimmel is now available again on all ABC affiliates.

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[9] Letter of Mathew A. Brill to Marlene H. Dortch, *Skydance Media and Paramount Global Application for Transfer of Control of Licenses*, MB Docket No. 24-275 (filed July 17, 2025), https://www.fcc.gov/ecfs/document/1071757519667/1.

[10] Truth Social Post of Donald Trump, https://truthsocial.com/@realDonaldTrump/posts/114874422468516376.

[11] At the time, the assassin's motive (and potential political affiliation) was unclear.

[12] Jason Ma, "Even Disney Stars Are Joining Calls to Boycott the Media Giant After ABC Suspended Jimmy Kimmel's Show, Fortune (Sept. 20, 2025), https://www.yahoo.com/entertainment/celebrity/articles/even-disney-stars-joining-calls-224642755.html.

[13] Lindsay Kornick, "Disney+ Lost Nearly 3 Million Subscribers After Jimmy Kimmel Suspension: Report," Fox Business (Oct. 21, 2025), https://www.foxbusiness.com/media/disney-lost-nearly-three-million-subscribers-after-jimmy-kimmel-suspension-report.

B. This is Not How the Public Interest Works

Carr has consistently invoked the public interest standard and traditional media policies of promoting localism and diversity of views as justification for his investigations and threats. But Carr's actions contradict the FCC's traditional policies that carefully avoid influencing content. Especially since the end of the Fairness Doctrine in the 1980s, the FCC has relied on structural limits such as ownership limits to provide for a diversity of owners to ensure diverse viewpoints. Even when the FCC did have rules designed to ensure local programming, they were either structural rules (such as the Financial Syndication rules, the Prime Time Access Rules, or the Local Studio Rule)[14] or explicitly neutral, such as the Fairness Doctrine.[15] Most of these rules were eliminated by the FCC or the courts during the 1980s and 1990s, leaving ownership limits as the one mechanism for ensuring viewpoint diversity in broadcasting.

Indeed, it is idle to speak of localism when decisions about access to broadcast programming are made for dozens of markets by a single corporate CEO. It is no more localism for a programming decision to come from a federal building in Washington, D.C. than for the decision to come from Sinclair's corporate headquarters an hour north in Baltimore. Carr's insistence that his dictates are merely appeals to traditional FCC concerns for localism and the broader public interest cannot stand against a repeated pattern of attacking those that President Trump publicly attacks, while rewarding those the President favors. It cannot square with the traditional ways in which the FCC has addressed the policies Carr cites as justification for his actions. It turns localism on its head to allow further consolidation. By contrast, it makes control of content easier when an ever smaller number of ever larger companies controls what the public sees and hears.

II. Other Agencies Are Acting To Create an Engine of Censorship, Feeding the Credibility of a General Threat to Free Speech

Chairman Carr is not unique as the head of an independent agency now openly working to further the President's agenda on punishing critics and rewarding those who demonstrate loyalty. To the contrary, the President has enlisted every agency at his command to fulfill his campaign promise of punishing his enemies. This, in turn, gives every individual threat of retaliation greater credibility and provides important context. Statements that in Trump's first administration could be dismissed as use of the bully pulpit to express displeasure must now be considered as made with coercive intent.

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[14] The Financial Syndication Rule encouraged independent programming by prohibiting networks from owning the programming they syndicated. The Prime Time Access Rule required that local stations air at least one hour of non-network programming at the beginning of prime time and at the end of prime time. The Local Studio rule required local stations to maintain a local studio for the production of independent programming.

[15] The Fairness Doctrine was not a single rule, but multiple rules requiring licensees to cover issuance of importance to their local communities and to allow opportunities for those with opposing opinions to respond.

It is important to keep this in mind when considering whether the same statements from the Biden Administration, or even the previous Trump Administration, are coercive jawboning. The statement, "Nice place you got here, it would be a shame if something happened to it," sounds entirely different when said by an insurance salesman

A. The FTC Acts Beyond Its Statutory Authority

1. Media Matters lawsuit

Media Matters for America, a liberal watchdog group, is a particular thorn in Elon Musk's side. So much so that Musk sued Media Matters in November 2023, claiming the group had manufactured a report on advertising placed next to extremist content on Musk's X, effectively driving away advertisers from the platform. While this case is ongoing, one of the first initiatives undertaken by FTC Chair Andrew Ferguson was to open an investigation into Media Matters to determine whether the watchdog group indeed organized an advertiser boycott of social media platforms, like X. It is quite the coincidence the FTC that, among its first priorities, target the very same group that plagues Elon Musk, an avid supporter of Donald Trump who spent over $290 million to support Trump's election.[16]

Believing its First Amendment rights are under threat by the FTC, Media Matters filed suit in federal court on June 23, 2025, alleging that the FTC is retaliating against the organization for its reporting on Elon Musk and X. On August 15, 2025, Judge Sparkle Sooknanan granted a preliminary injunction enjoining the FTC from enforcing its civil investigative demand. The judge determined that Media Matters engaged in quintessential First Amendment activity when it published the research regarding Musk's platform and found that the organization was likely to succeed on its First Amendment retaliation claim. Part of the justification pulls from social media posts from chairman Ferguson's *own staffers* expressing their disdain for Media Matters' watchdog efforts, including FTC Senior Policy Advisor Jon Schweppe, who wrote, "Media Matters = scum of the earth."[17] The timing of the investigation, combined with clear animus toward Media Matters by *several* of Ferguson's direct reports, was sufficient for the court to determine that the civil investigative demand to Media Matters was retaliatory, with the intention of stifling the watchdog's capacity to track and report on falsehoods in conservative media.

Judge Sooknanan wrote in the August ruling, "It should alarm all Americans when the Government retaliates against individuals or organizations for engaging in constitutionally protected public debate. And that alarm should ring even louder when the Government retaliates against those engaged in newsgathering and reporting." And on October 23, a U.S. appeals court declined to reinstate the FTC's probe into Media Matters.[18]

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[16] Tim Reid and Jason Lange, *Musk spent over a quarter of a billion dollars to help elect Trump*, Reuters (December 6, 2024),
https://www.reuters.com/world/us/musk-spent-over-quarter-billion-dollars-help-elect-trump-2024-12-06/.
[17] Jon Schweppe @JohnSchweppe, (2023, November 30), [X],
https://x.com/JonSchweppe/status/1730279114748166522.
[18] Wendy Davis, *Court Preserves Block on FTC Probe of Media Matters,* Media Daily News, (October 23, 2025),

2. Omnicom Merger

The FTC's consent order for the Omnicom-Interpublic merger represents another instance of the agency acting beyond its statutory authority to advance a political agenda rather than address genuine competitive concerns. FTC Chair Andrew Ferguson claimed the order was necessary to prevent the merged advertising agency from "boycotting" digital platforms based on political content. However, this fundamentally misunderstands how media buying actually works. Advertisers themselves make placement decisions based on their own brand safety standards, not their agencies. The industry's standard contracts make this explicit, with advertisers maintaining written control over what contexts are "safe and protective" of their brands.

Despite Chair Ferguson's rhetoric, the consent order itself preserves advertisers' ability to choose ad placements, which undermines the order's stated impact while potentially violating Omnicom's rights of association and independent refusals to deal.[19] The real burden falls on advertisers, who must now take on more responsibility for researching and preparing exclusion lists. As one trade publication put it, "If you don't want your stuff to be shown against Nazis, you're going to have to figure out how, and instruct Omnicom accordingly." The order also requires Omnicom to report exclusion lists to the FTC for 4 years, potentially exposing clients to political attacks, even though political ideology isn't the basis for these lists.

Most troubling is what the consent order ignores. The FTC's own complaint acknowledged serious competitive concerns about coordination that could harm consumers by reducing competition, lowering product quality, and slowing innovation. Industry experts warned the merger could "limit contestability or stifle innovation in the market" and impact pricing, ad placement, sponsorships, commission rates, media discounts, and more. Yet the consent order addresses none of these actual competitive harms. Instead, it focuses narrowly on speculative claims about boycotting politically controversial publishers, relying on reports from partisan political actors like Representative Jim Jordan and complaints from Elon Musk rather than robust economic analysis.

The narrow scope suggests the FTC prioritized the political impact of decreased revenue to publishers hosting Trump administration-friendly content over genuine concerns about diminished competition affecting advertisers, consumers, or workers. This pattern aligns with the FTC's recent use of antitrust concepts to further information control goals on behalf of the Trump administration, rather than addressing real monopolistic practices in online advertising that created the opacity requiring brand safety measures in the first place.

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https://www.mediapost.com/publications/article/410132/court-preserves-block-on-ftc-probe-of-media-matter.html.

[19] Lisa Macpherson and Elise Phillips, *Update: The FTC's Consent Order in the Omnicom Ad Agency Merger Misses the Point,* Public Knowledge, (June 27, 2025), https://publicknowledge.org/update-the-ftcs-consent-order-in-the-omnicom-ad-agency-merger-misses-the-point/ (The FTC used the merger to effectuate information-control goals on behalf of the Trump administration, rather than addressing real monopolistic practices in online advertising that created the opacity that requires advertisers to create brand safety requirements).

B. Trump Administration's Pressure Campaign Against Universities and Students to Force "Viewpoint" Changes is a Violation of the First Amendment

In April this year, the Trump administration froze $2.2 billion in grants and $60 million in contracts to Harvard University after the school rejected federal demands to make governance and leadership reforms and conduct an audit of viewpoint diversity of students and employees.[20] Because Harvard asserted its right to academic independence and rejected federal demands (while reiterating its efforts to improve its support and protection of Jewish students), in May 2025, the Trump administration cut another $450 million in federal grants to Harvard, on top of the $2.2 billion already slashed, citing antisemitism concerns. In April, the American Association of University Professors (AAUP) and Harvard University filed a lawsuit seeking to block the Trump administration from demanding that Harvard University restrict speech and restructure its core operations or else face the cancellation of *all* $8.7 billion in federal funding.

On September 3rd, US District Judge Allison Burroughs found that the Trump administration's actions violated Harvard and Harvard faculty's First Amendment Rights, finding that "the government-initiated onslaught against Harvard was much more about promoting a governmental orthodoxy in violation of the First Amendment than about anything else, including fighting antisemitism."[21] The government has the authority to decide which research projects it wants to fund; however, it cannot withdraw or deny funding based on the funding recipient's speech that is unrelated to the research. Moreover, if funding is terminated due to alleged violations of Title VI, as the Trump administration claimed, the government is legally required to follow a specific investigatory process. This process includes holding hearings and providing the opportunity to address the alleged violations.

Drawing broad conclusions without conducting a proper investigation and withdrawing funding based solely on anecdotes or biases constitutes a violation of the First Amendment. And in the end, the Trump administration failed to explain *how* stripping billions in federal funding would protect and improve the experience of Jewish students, especially considering many of those students rely on federal funding for their *own* academic pursuits.

The AAUP also filed a lawsuit to block the Trump administration from carrying out arrests, detentions, and deportations of noncitizen students and faculty members based on their speech content. This lawsuit arose from the abrupt arrest and detention of students like Rümesysa Öztürk, who was targeted for *writing an opinion article* for the Tufts University newspaper that called for the university to divest from Israel. The opinion piece did not call for violence and did not glorify terrorists. It was written under the assumption that Ms. Öztürk could enjoy the freedom of speech guaranteed to individuals in the United States. However, for expressing her

[20] Alvin Powell, *Trump administration freezes $2.2 billion in grants to Harvard,* Harvard School of Public Health, (April 15, 2025), https://hsph.harvard.edu/news/trump-administration-freezes-2-2-billion-in-grants-to-harvard/.
[21] President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs., No. 25-cv-11048-ADB, 2025 WL (D. Mass. Sept. 3, 2025), https://storage.courtlistener.com/recap/gov.uscourts.mad.283315/gov.uscourts.mad.283315.141.0_1.pdf.

views, she was abducted from the streets of a Boston suburb and detained without due process.[22]

The abduction and detention of students due to their pro-Palestinian activism have created a climate of fear and suppression on university campuses, effectively silencing legitimate political dissent that falls beyond the Trump administration's orthodoxy. On September 30, a federal court ruled that the Trump administration's crackdown on students for their speech violates the First Amendment. The court found that "Secretaries Noem and Rubio are engaged in a mode of enforcement leading to detaining, deporting, and revoking noncitizens' visas solely on the basis of political speech, with the intent of chilling such speech and that of others similarly situated. Such conduct is not only unconstitutional, but also almost unknown in our constitutional tradition."

Despite these losses, the Trump administration has not let up in forcing University leaders to eschew First Amendment-protected academic freedom and come to heel to the President's ideological agenda. The White House has approached universities to agree to a "compact" in exchange for preferential treatment for research grants.[23] Curiously, this suggests the government would select grant recipients not on merit – a criterion the White House has championed in its expansive efforts to dismantle Diversity, Equity, and Inclusion initiatives – but rather by a university's willingness to comply with White House-aligned ideological requirements. It is difficult to see how the compact is aligned with academic freedom and freedom of expression – a perspective shared by nearly all universities that received the compact.[24]

III. Some Things Cannot Be Censorship

Some things can be questionable whether they constitute unfair coercion, an exercise of the bully pulpit, or something in between. But some things are never censorship. First, we have long recognized the important responsibility of the government to protect people from harassment, from fraud, and from other forms of false, misleading or weaponized information. Section 223 (47 U.S.C. § 223) of the Communications Act has prohibited harassment by telephone since 1968. In May of this year, Congress recognized the harm done by non-consensual intimate visual depictions (commonly referred to as "revenge porn" or "deep fake porn") and required covered platforms to develop notice-and-takedown procedures for those harmed. (47 U.S.C. § 223a) Laws criminalize election fraud, financial fraud, and other kinds of harmful and deceptive statements. We do not consider this censorship. In our increasingly complex world, good

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[22] Sergio Martinez-Beltran, *Federal court rules Rümeysa Öztürk must be transferred to detention in Vermont,* NPR, (May 7, 2025), https://www.npr.org/2025/05/07/g-s1-64726/federal-court-rules-student-rumeysa-ozturk-detention-vermont-challenge.

[23] Riana Mahtani, *Universities join Penn in rejecting White House compact as consequences for refusal remain unclear*, The Daily Pennsylvanian, (October 22, 2025), https://www.thedp.com/article/2025/10/penn-white-house-compact-update-marc-rowan.

[24] April Rubin, *Colleges turn down Trump's "compact" agreement offer,* Axios, (October 22, 2025), https://www.axios.com/2025/10/22/trump-universities-compact-agreement-rejected.

governance demands that Executive agencies and Congress respond to the emergence of new scams and threats.

Government officials, including election officials, have a responsibility to protect their constituents and ensure accurate information reaches the public, particularly regarding matters of public health, national security, and election integrity. When election officials identify objectively false information about polling locations, voting procedures, or ballot deadlines that could interfere with citizens' ability to vote, facilitating communication with platforms that may be inadvertently hosting such content serves a legitimate governmental function. This is information-sharing, not coercion. This includes when government entities work with university researchers to identify and assess how, for example, influence operations conducted by foreign adversaries may prevent Americans from participating in an election.

But the threats do not end there. We know that foreign governments seek to influence and disrupt us with bot armies spreading divisive and false information. Foreign terrorists use social media platforms to radicalize and recruit vulnerable individuals. Cybersecurity experts warn us that we must share information to identify these threats to protect ourselves, and that social media platforms must constantly engage in a cat-and-mouse game of content moderation to meet these threats. This sort of information sharing also cannot constitute censorship.

Government entities therefore can, even should, engage with platforms to share threat intelligence, coordinate on cybersecurity concerns, address foreign interference, and communicate about public health emergencies. These are standard government-industry coordination activities similar to information-sharing on terrorism and other threats. The key question is not whether the government communicates with platforms, but whether that communication crosses the line into coercion through threats of regulatory action, license revocation, or other forms of retaliation.

Platforms themselves have independent business and reputational reasons to address harmful content, including maintaining user trust and safety, protecting advertiser relationships, avoiding being vectors for foreign interference, and responding to international regulatory pressure. When platforms act on their own policies based on their own interests, this is not government censorship – it is private editorial decision-making protected by the First Amendment.

A. Academic Research and Fact Checking is not Censorship

Academic institutions and researchers engaging in studies of online falsehoods, propaganda, and content moderation are exercising their own First Amendment rights, not participating in government censorship. When university researchers identify and document patterns of harmful content on social media platforms, this constitutes protected speech and legitimate scholarly inquiry. It is important for government agencies, as well as members of Congress, to consult this research to understand the nature of emerging threats. To the extent others feel that this research is biased or politically motivated, they have their own First Amendment right to critique this work.

The Election Integrity Partnership (EIP), which included Stanford Internet Observatory and the University of Washington Center for an Informed Public, has been incorrectly characterized by Senator Cruz's report on CISA as part of a government censorship apparatus. In reality, EIP was formed in 2020 under the Trump administration to help identify election-related misinformation that could interfere with voting. Researcher Renée DiResta of Stanford Internet Observatory explains in a guest essay to the New York Times, "teams of student analysts identified social media posts that were potentially misleading the public about voting procedures or that tried to delegitimize the outcome of an election. Sometimes, a nonprofit clearinghouse that included state and local election officials shared with us posts that concerned them. In some cases, if a post we examined appeared to be going viral and appeared to violate a social media platform's election policies, we let the companies know. Most of the time, the platforms took no action; when they did act, it was primarily to label the post as disputed or to attach a fact check."[25]

There is no mechanism by which university researchers could coerce major technology companies as proxies for government officials. Academic researchers possess no regulatory authority, cannot levy fines, and cannot threaten business licenses or antitrust action. Platforms are under no obligation to act on academic research findings. The suggestion that platforms felt coerced by academic institutions fundamentally misunderstands the power dynamics at play. In fact, platforms welcomed assistance from researchers in identifying content that violated their own policies during unprecedented challenges related to election misinformation and public health crises, precisely because content moderation at scale is extraordinarily difficult.

When researchers publish findings on disinformation campaigns, document harassment patterns, or analyze content moderation practices, they contribute to public knowledge and democratic discourse. Attempts to characterize such research as censorship or government coercion not only misrepresent the nature of academic inquiry but also threaten to chill legitimate scholarship on critical issues affecting our democracy. The recent pattern of expensive lawsuits against academic institutions and civil society organizations focused on understanding and mitigating disinformation has already caused many to lose funding and talent, undermining our collective ability to understand and address these challenges.

B. Calls for Legislation Are Not Censorship.

It is the duty of elected officials to pass laws that serve the public interest – and to change laws that do not function as intended. Accordingly, it cannot be censorship to tell companies that if they refuse to change their ways, Congress will take action. Indeed, as an advocate, I often wish that Congress would step up and pass appropriate legislation rather than rely on industry self-regulation. But threats to introduce legislation fail as coercion for another reason. Neither the President nor a member of Congress has the power to unilaterally pass legislation. As every

[25] Renée DiResta, *What Happened to Stanford Spells Trouble for the Election*, New York Times, (June 25, 2024), https://www.nytimes.com/2024/06/25/opinion/stanford-disinformation-election-jordan-twitter.html.

member of this Committee knows, passing legislation requires persuading a majority of members to pass a law, and for the President to sign it.

Calls for legislation in response to the actions of platforms, or their failure to act, are part of this process or persuasion. They are not censorship, but the robust debate on which our democracy depends. To the extent platforms act to dissuade Congress from acting, they are likewise engaged in the democratic process.

IV. Congress has a Duty To Demand Transparency And Oversight Of Independent Agencies Regulating Speech Platforms

Platforms are more than happy to eschew blame for their moderation mistakes by scapegoating the government. We can acknowledge that platform policies developed during the first Trump administration and in the Biden administration, in part in response to U.S. government public health and election security priorities, resulted in some poor content decisions. But in the end, such were *content moderation* decisions, *not* acts of censorship. Importantly, we must distinguish between mistakes in what constitutes misinformation or disinformation as opposed to efforts to suppress entire viewpoints – especially when the definitions employed are vague and therefore subject to abuse.

For example, in the Executive Order "Countering Domestic Terrorism and Organized Political Violence", the White House has given explicit permission to go after organizations and individuals' speech that, in the Trump administration, represent "anti-Americanism, anti-Capitalism, and anti-Christianity."[26] To be clear, criticizing America, disliking capitalism, and disparaging Christianity may be viewed by many as deplorable, but it is not *illegal*. In fact, it is precisely protected by the First Amendment. More to the point, it is not entirely clear what these terms mean. Is an argument that Google has outsized marketpower "anti-Capitalism"? Is a Protestant critique of Catholic dogma "anti-Christianity?" This sort of vagueness has been roundly condemned by the Supreme Court in multiple First Amendment decisions as creating a chilling effect on free speech.

There are important steps that Congress can take to prevent coercive Jawboning. As an initial matter, the law has long recognized the link between consolidation and censorship. As the Supreme Court stated in *Associated Press v. United States*:

> The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is

[26] Presidential Memoranda, *Countering Domestic Terrorism and Organized Political Violence,* White House, (September 25, 2025), https://www.whitehouse.gov/presidential-actions/2025/09/countering-domestic-terrorism-and-organized-political-violence/.

> essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford nongovernmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom.[27]

Additionally, Congress should reassert its role as supervisor of federal agencies and act to maintain agency independence where appropriate. While recognizing that the Supreme Court may soon reverse *Humphrey's Executor*, Congress can still play an important role through oversight. This also includes legislation designed to promote transparency and discourage government coercion. At the same time, however, members must appreciate the difficulty in drafting legislation that does not prohibit necessary information sharing or impede necessary regulatory oversight.

A. Congress Can Help Prevent Platform Monopolies that Enable Government Coercion

The fundamental problem facing American discourse today is not whether platforms moderate content, but rather that only a handful of massive technology companies control how millions of Americans receive information. Nearly 200 million Americans use Meta platforms, and 239 million use Google platforms. This extraordinary concentration of power means that a small number of corporate executives can effectively determine what content reaches the vast majority of the public. When platforms make content moderation decisions, whether correct or mistaken, users have few (if any) alternatives.

The frustration evident in the nearly 3,500 comments submitted to the FTC docket "Request for Public Comments Regarding Technology Platform Censorship" reflects not just disagreement with specific moderation choices, but a deeper recognition that these platforms wield unprecedented gatekeeping power over public discourse.[28] Aggrieved platform users express frustration over their posts and accounts being moderated in ways they view as unfair. Some users describe being locked out of their primary means of communication with family, friends, and business contacts. Others recount having years of content deleted without explanation or meaningful appeal. Small business owners detail how sudden account suspensions threatened their livelihoods. Independent journalists describe being deplatformed while trying to report on matters of public concern. Yet these incidents of speech suppression are *not* at the hands of government officials, but rather a result of platforms' own content policies.

Online platforms have no obligation to host any and all speech. In fact, it is their First Amendment-protected expressive right to moderate lawful content however they like. The

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[27] *Associated Press v. United States*, 326 U.S. 1, 20 (1945).
[28] Request for Public Comments Regarding Technology Platform Censorship, Docket FTC-2025-0023, Federal Trade Commission (February 19, 2025), https://www.regulations.gov/document/FTC-2025-0023-0001/comment.

problem is not that platforms moderate, but that users have nowhere else to go when platforms get it wrong. This lack of competition, combined with the government's regulatory power over these same platforms, creates the perfect conditions for coercion.

1. Immediate Oversight of Independent Agencies

Congress must investigate how agencies like the FCC and FTC have abandoned their statutory mandates to serve political agendas. The White House has been so successful at pushing its agencies — even the ostensibly independent agencies — to act on ideological agendas rather than real policy because of Congress's lack of oversight. We have far passed simple threats to free speech and are firmly in the realm of suppression of free speech.

Congress must exercise robust oversight over federal agencies, ensuring laws are implemented as intended and that agency leaders act within their authority. When the FCC reinstates dismissed news distortion complaints without petitions for reconsideration, when it conditions merger approvals on content commitments, when it threatens broadcasters with "the easy way or the hard way," these actions demand immediate congressional scrutiny.

The FTC's investigation of Media Matters — a case where federal courts have already found likely First Amendment retaliation — exemplifies the problem. When an agency targets a watchdog organization that criticized a major presidential supporter, using investigative powers Congress granted for consumer protection, the agency has strayed far from its statutory mission. Congress must clarify that antitrust and consumer protection authorities cannot be weaponized to punish critics or reward allies.

2. Halt Media Consolidation and Strengthen Ownership Limits

Congress should impose stricter limits on media ownership and halt further consolidation that concentrates control in fewer hands. The ease with which a handful of CEOs could coordinate to suppress Kimmel demonstrates how consolidation has created censorship chokepoints. The pending Nexstar-Tegna merger deserves particular scrutiny. This deal would not only concentrate broadcast ownership to unprecedented levels but would also require FCC waivers of existing ownership limits. The merger was announced shortly before the Kimmel incident, making it a real-time test case of whether Congress will allow further consolidation that amplifies government coercion.

3. Promote Competition in Digital Platforms

Congress should explore structural reforms that promote genuine competition in the digital marketplace, encouraging the development of alternative platforms and reducing barriers to entry. The current regulatory framework creates high barriers for new entrants while grandfathering in dominant platforms. Meaningful interoperability requirements could allow users to maintain their social connections while switching platforms, reducing lock-in effects that trap users with platforms whose moderation policies they disagree with.

4. Support Transparency Legislation with Proper Safeguards

I understand Senator Cruz is poised to introduce legislation that would facilitate transparency in interactions between social media companies and the government. We support transparency and hope we can support a bipartisan bill. However, such legislation must include proper safeguards that distinguish legitimate government-platform coordination from coercive pressure.

Transparency legislation should protect government entities from liability when they share information about genuine threats to public safety, election integrity, or national security. When election officials identify false information about polling locations, when public health officials track pandemic misinformation that could lead to preventable deaths, when national security officials detect foreign influence operations, these officials must be able to communicate with platforms without fear that every interaction will be characterized as censorship.

At the same time, transparency legislation should create accountability mechanisms for politically-motivated pressure. Any transparency regime should include provisions that allow users whose speech was removed at the government's behest to learn about and challenge such removals. The legislation should establish clear procedures for distinguishing information-sharing from coercion, perhaps requiring agencies to document the basis for communications and prohibiting threats of regulatory action tied to content decisions.

CONCLUSION

Often the line between permissible persuasion and coercion can be difficult to tell. Consider, for example, R Street's criticism of YouTube's new "Second Chance" policy as the product of impermissible Jawboning by Representative Jim Jordan.[29] Under the new policy,[30] Youtube will allow YouTubers whose channels YouTube terminated to apply for a new channel. As the announcement makes clear, this is not restoring a previously terminated channel. According to Google, this is intended as a "fresh start" to reflect the fact that YouTube is an extremely important platform, that standards have changed over the last 20 years, and that "many terminated creators deserve a second chance." Rep. Jordan has publicly claimed that his pressure on Youtube prompted this change in their policy.[31]

Is this impermissible coercion as R Street claims? Is it a legitimate use of the bully pulpit by a powerful member of Congress? Is it an independent decision in which Jordan's pressure campaign played little part?

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[29] Spence Purnell, *YouTube's Second Chance Program is Sadly the Result of More Jawboning*, R Street (October 24, 2025), https://www.rstreet.org/commentary/youtubes-second-chance-program-is-sadly-the-result-of-more-jawboning/.

[30] Youtube, *second chances on YouTube,* (October 09, 2025), https://blog.youtube/inside-youtube/second-chances-on-youtube/.

[31] Mike Masnick, *Jim Jordan Celebrates Google Caving To His Pressure In Letter That Says Caving To Government Pressure Is Wrong, (September 25, 2025),* https://www.techdirt.com/2025/09/25/jim-jordan-celebrates-google-caving-to-his-pressure-in-letter-that-says-caving-to-government-pressure-is-wrong/.

What we can definitively say is that this is not in the same league as a sitting President publicly announcing his intent to retaliate against his critics, and the heads of independent agencies rushing to publicly agree with him and carry out his threats. Rather than focus on past incidents that, at best, fall into similar gray areas, Congress must focus on the very coercion practiced regularly by this Administration. Defending the First Amendment must rise above partisan politics. Chairman Cruz put himself out publicly to defend Disney from Chairman Carr's very real intimidation tactics. This Committee, and Congress as a whole, should similarly act to protect free speech.