

Statement of Robert Corn-Revere
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**SPOTLIGHT FORUM ON TRUMP ADMINISTRATION'S ASSAULT ON
FREE SPEECH & FREE PRESS**

Dirksen Senate Office Building
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My name is Robert Corn-Revere and I am Chief Counsel at FIRE, the Foundation for Individual Rights and Expression. FIRE is a nonprofit, nonpartisan foundation that for the past 26 years has defended the law of free expression and promoted a culture of free speech. I was invited here today not to represent or describe an official position of my organization, but to speak about current controversies involving the Federal Communications Commission based on my experience and expertise.

I am a First Amendment litigator with more than four decades experience working on matters defending freedom of expression, including cases involving jawboning by government officials.¹ A number of my cases have involved challenges to congressional and FCC authority to restrict content on regulated media.² I have also served as an FCC official, as Chief Counsel to former FCC Chairman James H. Quello. I have taught First Amendment and communications law at the Catholic University of America School of Law, and have published widely in this field, including a three-volume treatise on communications law.³ Based on my experience,

¹ *E.g., Backpage. com, LLC v. Dart*, 807 F. 3d 229 (7th Cir. 2015), *cert. denied*, 580 U.S. 816 (2016).

² *E.g., United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 503 (2000); *CBS Corp. v. FCC*, 663 F.3d 122 (3d Cir. 2011), *cert. denied*, 567 U.S. 953 (2012); *MPAA, Inc. v. FCC*, 309 F.3d 796 (D.C. Cir. 2002); *Branch v. FCC*, 824 F.2d 37 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 959 (1988).

³ *E.g., Zuckman, Corn-Revere, Frieden and Kennedy, MODERN COMMUNICATIONS LAW* (West Group, 1999); Robert Corn-Revere (Ed.), *RATIONALES & RATIONALIZATIONS: REGULATING THE ELECTRONIC MEDIA* (Media Institute, 1997); Robert Corn-Revere, *THE MIND OF THE CENSOR AND THE EYE OF THE BEHOLDER: THE FIRST AMENDMENT AND THE CENSOR'S DILEMMA* (Cambridge University Press, 2021).

I will try to put some of the current developments at the FCC into a proper legal and historical context.

Over the past ten months we have witnessed an extraordinary number of formal and informal assertions of power over the broadcast media and the national broadcast networks. Of course, the most recent example involved Chairman Brendan Carr's crude threat directed at Disney and its ABC Network to "take action on Kimmel or there is going to be additional work for the FCC ahead." The ultimatum stemmed from a monologue on *Jimmy Kimmel Live!* in which the late-night host joked about the possible motives of Charlie Kirk's assassin.

Chairman Carr's call to "take action" was followed immediately by ABC's announcement that it was suspending Kimmel's show "indefinitely." Two major station group owners, Nexstar Media Group and Sinclair Broadcast Group, also announced that their ABC-affiliated stations would not carry *Jimmy Kimmel Live!* because of what they saw as offensive remarks. Kimmel's show has since been restored to the air, first by the network, and then by both station group owners.

This incident did not occur in a vacuum. Since being elevated to the FCC chairmanship, Carr has revived previously dismissed complaints against the ABC, CBS, and NBC networks for alleged programming violations; slow-rolled approval of a merger between Paramount Global (owner of CBS) and Skydance Media (which has since been granted after the promise of an internal ombudsman to police "news bias" complaints); publicly cheered the demise of *The Late Show with Stephen Colbert* on CBS (the cancellation of which coincided with the merger approval); and has publicly solicited "news distortion" complaints against network news programs he evidently perceives to be critical of the President or his policies.

Carr has described his actions as business as usual for the FCC. He has said that broadcasters are licensed under the Communications Act to serve the "public interest," and that he is merely holding them to that commitment. He has pointed to FCC policies against "news distortion" and "broadcast hoaxes" and claimed the agency is obligated to act if it receives complaints. And he has asserted that he is merely enforcing policies crafted by his Democratic predecessors, essentially arguing that if authority has been abused in the past, why shouldn't he do the same?

None of this behavior is normal, authorized by the Communications Act, or permitted by the First Amendment. Just last term, the Supreme Court unanimously reaffirmed that the "threat of invoking legal sanctions and other means of coercion

... to achieve the suppression' of disfavored speech violates the First Amendment.”⁴ This constitutional rule applies regardless of any authority Chairman Carr may believe the FCC has over broadcast programming.

But his characterization of the FCC's authority is distorted and overstated. Congress designed the FCC to be independent, bipartisan, and to operate within constitutional bounds. Section 326 of the Communications Act expressly withholds from government the power to “interfere with the right of free speech by means of radio communication.” The law denies to the FCC “the power of censorship” as well as the ability to promulgate any “regulation or condition” that interferes with freedom of speech.⁵ And the Supreme Court has long made clear that “the ‘public interest’ standard necessarily invites reference to First Amendment principles,”⁶ and “the First Amendment must inform and give shape to the manner in which Congress exercises its regulatory power in this area.”⁷

The only issue about which Chairman Carr has a point is when he claims the FCC's authority over broadcast programming has been abused in the past by Democratic commissioners. That is true; it is a fact that FCC commissioners of both parties have overstepped in this regard (although never to this extent). I have spent a fair amount of my career both calling this out and opposing such actions in court. But regardless of whether jawboning is accomplished with the erudite sophistication of Newton Minow's 1961 “vast wasteland” speech to the National Association of Broadcasters or Brendan Carr's clumsy Godfather impression—telling ABC “we can do this the easy way or the hard way”—it is still improper and unconstitutional.

Chairman Carr used to at least pay lip service to the idea that the FCC must respect the First Amendment, correctly observing that “to inject partisan politics into our licensing process” would be “a deeply troubling transgression of free speech and the FCC's status as an independent agency.”⁸ He also used to say that the FCC cannot

⁴ *NRA v. Vullo*, 602 U.S. 175, 180 (2024).

⁵ 47 U.S.C. § 326.

⁶ *CBS, Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 121 (1973).

⁷ *FCC v League of Women Voters of Cal.*, 468 U.S. 364, 378 (1984).

⁸ Democrats Pressure FCC to Deny Sale of Spanish-Language Radio Station in Florida Based on Political Viewpoints, April 19, 2021, <https://docs.fcc.gov/public/attachments/DOC-371715A1.pdf>.

serve as the nation’s “speech police.”⁹ As chairman, however, he no longer makes such statements, nor does he follow the principles he once espoused.

Shortly after Carr was named Chairman I published an open letter asking him to show restraint in his assertions of power. In *A Plea for Institutional Modesty*, I reminded Chairman Carr of his numerous statements that once earned him the title of “free speech warrior,” and asked that he put those principles into practice.¹⁰ I understand political reality, so I did not expect him to heed my unsolicited advice. But I had no idea how far he would stray from the oath of office he took to uphold and defend the law and the Constitution of the United States.

⁹FCC Proposes Disclosure Rules for the Use of AI in Political Ads, July 25, 2024, <https://www.fcc.gov/document/fcc-proposes-disclosure-rules-use-ai-political-ads/carr-statement>.

¹⁰ Robert Corn-Revere, *A Plea for Institutional Modesty*, COLUMBIA JOURNALISM REVIEW, February 6, 2025 (<https://www.cjr.org/politics/a-plea-for-institutional-modesty-fcc-corn-revere-brendan-carr-inconsistent-hypocrisy.php>).