

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	)	
	)	
KTRK Television, Inc. and	)	Docket No. _____
American Broadcasting Companies, Inc.	)	
	)	
Petition for Declaratory Ruling Under Section	)	
315(a) of the Communications Act of 1934, as	)	
Amended	)	

PETITION FOR DECLARATORY RULING

May 7, 2026

Summary

The Commission's order to file this Petition for Declaratory Ruling is unprecedented, beyond the Commission's authority, and counterproductive to the Commission's stated goal of encouraging free speech and open political discussion. The Commission's actions threaten to upend decades of settled law and practice and chill critical protected speech, both with respect to *The View* and more broadly.

The View has been broadcasting under a bona fide news exemption granted to it more than twenty years ago, consistent with longstanding Commission interpretations designed to minimize the serious First Amendment problems inherent in the equal time regime.¹ *The View*'s exemption remains valid and the constitutional infirmities in the equal time doctrine are even more pronounced today, when the broadcast airwaves account for a slice of the numerous media options through which Americans get their political information. Indeed, the marketplace of ideas has never been more robust, and people can hear virtually any brand of political commentary by listening to a podcast, watching cable, scrolling social media, or streaming on a phone, computer or connected TV. The free flow of ideas flourishes on these non-broadcast platforms even though the equal opportunities rule does not apply there.

¹ *The View* is a live, one-hour talk show created by legendary journalist Barbara Walters and television producer William Geddie. Since its inception, the fundamental format of the program has featured a panel of women of different backgrounds discussing news, politics, entertainment, popular culture, and social issues. Although the line up of the co-hosts has changed over the years, *The View* has consistently prioritized having a panel of women from different backgrounds in order to facilitate interesting discourse and the exchange of divergent perspectives. *The View* currently is co-hosted by Joy Behar, Alyssa Farah Griffin, Whoopi Goldberg, Sara Haines, Sunny Hostin, and Ana Navarro. Among its dozens of awards and nominations over the years, *The View* has received more than 30 Daytime Emmy Awards from the National Academy of Television Arts and Sciences and, in 2024, the program received the prestigious DuPont-Columbia Award for journalism.

The public interest would best be served by supporting broadcasters’ efforts to maintain their place in this marketplace of ideas. Narrowing the Commission’s long-established approach to bona fide news exemptions, however, would risk restricting political discourse exactly when it is needed most. While candidates are always able to connect with voters on cable, podcasts, and social media, specifically requiring broadcast airtime for all qualified candidates does not expand speech; rather, it makes coverage infeasible, which ultimately reduces it. In California’s upcoming gubernatorial “jungle primary,” for instance, affording equal time would mean accommodating over 60 legally qualified candidates, regardless of their perceived newsworthiness. The government should neither suppress nor compel speech in support of any political viewpoint in order “to achieve [the state’s] own conception of speech nirvana.”² That includes telling a private publisher “how to exercise their editorial discretion about what content to carry or favor.”³

Some may dislike certain—or even most—of the viewpoints expressed on *The View* or similar shows. Such dislike, however, cannot justify using regulatory processes to restrict those views. The government does not get to decide “what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”⁴ Or which “ideas and beliefs [are] deserving of expression [and] consideration.”⁵ The danger is that the government will simply decide which perspectives to regulate and which to leave undisturbed. In fact, while the Commission now questions *The View*’s decades-long exemption, it has not expressed any inclination to apply a similar

² *Moody v. NetChoice, LLC*, 603 U.S. 707, 742 (2024).

³ *U.S. Telecom Ass’n v. FCC*, 855 F.3d 381, 435 (D.C. Cir. 2017) (Kavanaugh, J., dissenting from denial of rehearing en banc).

⁴ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

⁵ *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994).

interpretation of the equal opportunities rule to other broadcasters, including the many voices—conservative and liberal—on broadcast radio. And as a broad array of voices, including many conservatives, have recognized, if the government is allowed to discriminate on the basis of viewpoint in a Republican administration, there is little preventing it from doing so when the Democrats are in charge.⁶

Until now, it has never been disputed that *The View* qualifies as a bona fide news interview program. In 2002, ABC requested and obtained a Declaratory Ruling from the Mass Media Bureau confirming that status. That Declaratory Ruling remains in full force and effect. The Commission has taken no action over the last two decades to modify or overturn the Declaratory Ruling and there is no basis for doing so now. Given that KTRK Television acted in good faith reliance on the Declaratory Ruling and the consistent guidance provided by the Commission for decades, the Commission cannot find now that KTRK Television violated any of the Commission’s rules with respect to appearances by legally qualified candidates on *The View*.

Nevertheless, at the end of March, the Media Bureau ordered KTRK Television to file another Petition for Declaratory Ruling regarding *The View*’s status as a bona fide news interview program. In parallel, on April 28, 2026, the Media Bureau issued an extraordinary order demanding the early filing of all of ABC’s license renewal applications, including for KTRK-TV. Combined with the Commission’s other recent actions, including publicly

⁶ See, e.g., Alexandra Koch, *Cruz warns conservatives ‘will regret’ FCC censorship push against ABC, other media outlets*, Fox News (Sept. 19, 2025), <https://foxnews.com/politics/cruz-warns-conservatives-will-regret-fcc-censorship-push-against-abc-other-media-outlets>; Ben Shapiro, *Glad Kimmel’s Gone But Don’t Overreach*, The Daily Wire (Sept. 18, 2025), <https://www.dailywire.com/news/glad-kimmels-gone-but-dont-overreach>.

announcing its investigation concerning *The View* and presaging an outcome,⁷ this suggests that the Commission is implementing major shifts in policy and practice, including how the Commission intends to apply the equal opportunities requirements. Such an abrupt and substantial change in long-established policy requires the action of the full Commission and the oversight of the courts.

The View continues to qualify as a bona fide news interview program because it continues to meet all of the legal requirements set forth by Congress and the Commission. Specifically, (1) *The View* is a regularly scheduled program, (2) *The View* is fully controlled by ABC, which produces the show for broadcast by the ABC Television Network, and (3) decisions concerning *The View*'s format, content, and participants are based on newsworthiness rather than on an intention to advance or harm an individual's candidacy. With respect to whether a broadcaster's programming decisions are based on newsworthiness, the Commission has long recognized that it was Congress's intent that the Commission respect the good faith news judgments of broadcast licensees.

Uncertainty as to the scope of broadcast licensees' editorial discretion threatens to limit news coverage of political candidates and chill core First Amendment-protected speech for years and potentially decades to come. As the 2026 midterm election approaches, the American people need more access to political news and more exposure to political candidates, not less. The Commission therefore must act quickly to assure broadcasters that it will uphold long-established legal standards by affirming that *The View* continues to qualify for the bona fide news interview exemption under Section 315(a).

⁷ See, e.g., Madison Columbo, *FCC chair warns 'The View' faces 'uphill climb' in equal-time probe*, Fox Business (Feb. 27, 2026), <https://www.foxbusiness.com/media/fcc-chair-warns-the-view-faces-uphill-climb-equal-time-probe>.

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I. INTRODUCTION.

By this Petition, KTRK Television, Inc. (“KTRK Television”), licensee of station KTRK-TV, Houston, Texas (“KTRK”), and its parent company, American Broadcasting Companies, Inc. (individually and together with KTRK Television, “ABC”), comply with the Commission’s unprecedented order to request that the Commission affirm that *The View* is a “bona fide news interview” program under 47 U.S.C. § 315(a).⁸ The Commission has analyzed this program already, and the factors that drove that decision remain controlling today. In 2002, ABC requested and obtained a Declaratory Ruling from the Mass Media Bureau that *The View* qualifies as a bona fide news interview program. Consistent with that ruling, hundreds of political candidates across the political spectrum and other notable and newsworthy figures have appeared on *The View* over the past two decades, in full compliance with the Act and the Commission’s rules.

However, as the 2026 election season approaches, recent statements from the Commission suggest a significant change in how it will apply its long-standing rules and

⁸ While the Commission’s order was directed to KTRK Television, the existing Declaratory Ruling was issued to ABC.

standards concerning the bona fide news exemptions to the equal opportunities requirements. On January 21, 2026, the FCC’s Media Bureau released a *Public Notice* which purports to provide guidance on the equal opportunities requirement.⁹ Rather than provide clarity, however, the *Public Notice* has created harmful ambiguity in an area where none previously existed and has a chilling effect on First Amendment-protected free speech on the eve of the 2026 elections. The *Public Notice* states that the Media Bureau “has not been presented with any evidence” that any current late night or daytime television talk show would qualify as a bona fide news interview program.¹⁰ The *Public Notice* thus “encourages” any program or station that wishes to obtain formal assurance that it qualifies for the bona fide news exemption to file a request for declaratory ruling. The *Public Notice* reiterates certain elements of the standards that have long applied to the equal opportunities requirements and the bona fide news exemption, while simultaneously casting doubt on whether the Commission would continue to interpret those standards consistently with the approach it has taken for over 40 years.¹¹

On February 11, 2026, the Media Bureau sent a Letter of Inquiry (“LOI”) to KTRK Television concerning the appearance of senatorial primary candidate James Talarico on *The*

⁹ *FCC’s Media Bureau Provides Guidance on Political Equal Opportunities Requirement for Broadcast Television Stations*, Public Notice, DA 26-68 (rel. MB Jan. 21, 2026) (“*Public Notice*”).

¹⁰ *Id.* at 4. The *Public Notice* conspicuously omits any reference to radio broadcasters.

¹¹ The *Public Notice* also contradicts prior Commission statements that formal petitions for declaratory ruling are not necessary for stations to be covered by the bona fide news exemptions. See *Request of Infinity Broadcasting Operations Inc.*, Declaratory Ruling, 18 FCC Rcd 18603, 18604 (MB 2003) (“*Infinity Declaratory Ruling*”) (“[W]e emphasize that licensees airing programs that meet the statutory news exemption, as clarified in our case law, need not seek formal declaration from the Commission that that such programs qualify as news exempt programming under Section 315(a).”).

View, which aired on KTRK on February 2, 2026.¹² The LOI inquired whether the station had placed a record of the Talarico appearance in the station’s political file and whether KTRK Television took the position that *The View* qualified as a bona fide news interview program. KTRK Television responded on February 12, 2026 that *The View* qualifies as a bona fide news interview program and, accordingly, the station had not placed a record of the Talarico appearance in the station’s political file.

On March 26, 2026, the Media Bureau sent KTRK Television a Supplemental Letter of Inquiry (“SLOI”) stating that it needed additional information concerning the matter.¹³ The Bureau based its need for further inquiry on its assertion that “19 ABC affiliates serving parts of Texas all filed a notice of Mr. Talarico’s February 2 appearance on *The View* pursuant to 47 CFR § 73.1943.”¹⁴ Thus, the Bureau suggested, “the assertion by KTRK Television, Inc. that *The View* qualifies for the *bona fide* news interview exception is not a position uniformly held by broadcasters that air the program.”¹⁵ The Bureau neglected to note, however, that while certain ABC affiliates documented Talarico’s appearance in their online public inspection files, the filings were made more than two weeks after Talarico’s appearance and apparently at the request of the FCC, which reportedly promised to eschew enforcement for the late filing. KTRK Television received no such request and no such offer, despite the Bureau specifically contacting

¹² Letter from Erin Boone, Acting Chief, Media Bureau, FCC, to KTRK Television Inc., KTRK, Houston, TX (Fac. Id. 35675) (Feb. 11, 2026) (“LOI”).

¹³ Letter from Erin Boone, Chief, Media Bureau, FCC, to KTRK Television, Inc., KTRK, Houston, TX (Fac. Id. 35675), at 3 (Mar. 26, 2026) (“SLOI”).

¹⁴ *Id.*

¹⁵ *Id.*

it about the Talarico appearance less than 10 days after it occurred.¹⁶ The Bureau concluded the SLOI with an unprecedented order: “[W]e direct KTRK Television, Inc. to produce and submit to the Commission a petition for declaratory ruling regarding *The View* that satisfies the statutory requirements for a bona fide news exemption.”¹⁷

The Bureau lacks the authority to issue an order mandating a licensee to file a petition for declaratory ruling. In support of its unprecedented order, the Bureau cited to the Commission’s general authority to issue orders and conduct its proceedings as necessary to execute its functions.¹⁸ Such authority, however, gives the Commission latitude to determine the manner in which it conducts its business, not blanket authority to order licensees to file petitions or initiate legal proceedings. Moreover, such an order flatly contradicts prior statements that “licensees airing programs that meet the statutory news exemption, as clarified in our case law, need not

¹⁶ At the time of the February 11, 2026, LOI, it appears that *none* of the 19 ABC affiliates referenced by the Media Bureau had seen fit to place a notification of the February 2 Talarico appearance in their political files.

¹⁷ *Id.* On April 28, 2026, the Bureau issued an extraordinary order demanding that KTRK Television, along with all of ABC’s broadcast licensees, file their license renewal applications years ahead of schedule, and has cited as its rationale the inadequacy of the Company’s response to the FCC’s investigation into the Company’s diversity, equity, and inclusion (DEI) practices. *The Walt Disney Company, American Broadcasting Company, et. al.*, Order, DA 26-416, ¶ 2 n.1 (MB rel. Apr. 28, 2026). In that DEI investigation, the Company received a Letter of Inquiry from the Enforcement Bureau on June 5, 2025, and promptly negotiated an agreed scope and timetable for its responses with the Bureau. Between July and September 2025, the Company produced over 6,200 pages of documents in response consistent with the schedule and scope agreed to by the Bureau. The Company next heard from the Commission five months later when the Commission issued an expansive Supplemental Letter of Inquiry. The Company completed its response to the Supplemental Letter of Inquiry on April 21, 2026, on the timetable agreed to by the Bureau, producing a 38 page narrative response to the Commission’s 78 additional written requests and producing an additional 4,839 pages of documents—one week before the Bureau’s order requiring early license renewal applications.

¹⁸ *Id.* (citing 47 U.S.C. § 154(i) and(j) and 47 C.F.R. § 1.1).

seek formal declaration from the Commission that such programs qualify as news exempt programming under Section 315(a).”¹⁹

As for the merits, the Commission should interpret the exception to cover *The View* to avoid the serious constitutional problems that would arise from applying the equal opportunities rule to the program. While the Supreme Court may once have upheld the FCC’s distinct “personal attack” and “political editorial” regulations,²⁰ the fundamental factual predicates of that decision no longer exist. The decision to hold broadcasters—and broadcasters alone—to a different First Amendment standard was dubious then and unsupportable now. In the absence of any meaningful scarcity of information resources, it is difficult to see how the equal opportunities rule can survive First Amendment scrutiny. The Commission should avoid those constitutional concerns by affirming that *The View* still qualifies for a Section 315(a) exemption as a bona fide news interview program.

As noted above, the Commission previously ruled that *The View* is exempt from the equal opportunities requirements as a bona fide news interview program. There has been no subsequent action from the Commission modifying or overturning that ruling. As KTRK (and all other stations airing *The View*) acted in accordance with that determination, the Commission cannot find that KTRK Television or any other licensee violated any aspect of those requirements with respect to the appearance of Talarico or any other political candidate on *The View*.

ABC stresses its full commitment to compliance with all regulations, statutes and, of course, the Constitution, and believes it has acted consistently with them. As demonstrated herein, there can be no doubt that *The View* continues to qualify as an exempt bona fide news

¹⁹ See *Infinity Declaratory Ruling*, 18 FCC Rcd at 18604.

²⁰ *Red Lion Broad. Co. v. FCC*, 395 U.S. 367 (1969).

interview program. As additional elections approach, however, ABC and similarly situated broadcasters face complex programming decisions, including with respect to bookings of legally qualified candidates. Uncertainty fostered by the *Public Notice* as to the scope of broadcast licensees' editorial discretion and, conversely, their obligation to air material that they otherwise might not, chills core First Amendment-protected speech.

Because of this uncertainty and its harmful effects on free speech, it is critical that the Commission act quickly to reaffirm its long-standing principles concerning bona fide news programming, as well as *The View*'s qualification as a bona fide news interview program. Affirming *The View*'s exempt status will advance the Congressional mandate to bring "the news concerning political races to the greatest number of citizens,"²¹ support the public interest service provided by broadcast station licensees, and ratify the Commission's dedication to core First Amendment principles. Indeed, constitutional avoidance compels *The View*'s continued qualification for an equal opportunities exemption.

It is equally critical that any further action in this matter be conducted via consideration by and a vote of the full Commission and not by Media Bureau staff acting under delegated authority. While the Commission may delegate some functions to Bureau staff, changes in long-standing Commission rulings can only be made by the Commission itself.²² The Commission established its current approach to bona fide news interview programs over 40 years ago and has consistently applied it ever since. Changes in the law must come from the Commission itself, not Bureau staff. In addition, because this matter will impact elections—many of which are in full swing—it is vital that this matter be resolved quickly by the Commission and, if necessary,

²¹ 105 Cong. Rec. 14451 (1959) (statement of Sen. Holland).

²² See 47 U.S.C. §§ 155(c)(1)-(3); 47 C.F.R. § 0.5(c).

the courts. Bureau level action in this matter would only result in delay that will chill time sensitive news coverage of elections. News delayed is news denied and, as Senators Ted Cruz and Maria Cantwell recently reminded the Commission, “[t]hat concern is not merely academic. Process choices in high-profile cases establish precedent.”²³

ABC therefore requests that the Commission act expeditiously to affirm its long-standing approach to the bona fide news interview exemption and the Commission’s continued support of the public interest services provided by broadcast stations.

II. FIRST AMENDMENT CONSIDERATIONS MUST GOVERN THE COMMISSION’S ACTIONS.

A. The Equal Opportunities Rule Raises Profound First Amendment Concerns.

The First Amendment emphatically protects “both the right to speak freely and the right to refrain from speaking at all.”²⁴ Since “all speech inherently involves choices of what to say and what to leave unsaid,” it is bedrock law that “one who chooses to speak may also decide ‘what not to say.’”²⁵ For the broadcast media, each right is equally important. Curating news programming requires editorial decisions about what stories, guests, and topics to feature—choices that inevitably require trade-offs. Those decisions define a broadcaster’s speech offering and its contribution to public discourse. And those editorial decisions are especially important today, as broadcasters attempt to inform and entertain the public in competition with a cacophony of other voices and sources of information, from cable television to social media to artificial intelligence tools. The First Amendment thus protects “editorial discretion in the

²³ Letter from Ted Cruz & Maria Cantwell to Brendan Carr, Chairman, FCC (Mar. 30, 2026) (Chair & Ranking Member, Senate Committee on Commerce, Science, and Transportation).

²⁴ *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

²⁵ *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995).

selection and presentation” of speech.²⁶ Under the First Amendment, the government is not in the business of compelling or suppressing speech to achieve officials’ ideal or preferred news presentations.

Governments are free to criticize private speech, but not to compel or suppress it. When the government has sought to shape the news landscape, the Supreme Court has roundly rejected those efforts. In *Miami Herald Pub. Co. v. Tornillo*, for instance, the Court invalidated a Florida law requiring newspapers to offer political candidates space to respond to negative press.²⁷ The Court stressed that the “choice of material to go into a newspaper, and the decisions made as to ... treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment,” which is itself protected speech.²⁸ Whatever interest the state may have had in “ensur[ing] that a wide variety of views reach[ed] the public” is not sufficiently compelling to force a newspaper to “print that which it would not otherwise print.”²⁹

That is hardly the only context in which the Court has rejected the notion that the government may restrict the First Amendment rights of private parties in service of “balancing” the public’s information diet. Most recently, the Court rejected state efforts to force social media companies to disseminate speech in order “to achieve [the state’s] own conception of speech nirvana.”³⁰ Whatever the medium, the government may not tell private parties “how to exercise their editorial discretion about what content to carry or favor.”³¹ The government may not “tell

²⁶ *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 674 (1998).

²⁷ *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256 (1974).

²⁸ *Id.* at 258.

²⁹ *Id.* at 248.

³⁰ *Moody*, 603 U.S. at 742.

³¹ *U.S. Telecom Ass’n*, 855 F.3d at 435 (Kavanaugh, J., dissenting from denial of rehearing en banc).

Amazon or Politics & Prose what books to promote; or tell *The Washington Post* or the *Drudge Report* what columns to carry; or tell ESPN or the NFL Network what games to show; or tell *How Appealing* or *Bench Memos* what articles to feature; or tell Twitter or YouTube what videos to post; or tell Facebook or Google what content to favor.”³²

The equal opportunities rule operates in the teeth of these principles, compelling and chilling speech by broadcasters. The rule provides, in relevant part, that “[i]f any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.”³³ By forcing broadcasters to air *all* qualified candidates without regard to their newsworthiness, the rule squelches editorial discretion: Sometimes that means a broadcaster will be compelled to change its offerings and broadcast speech it views as unnewsworthy, and sometimes it means a broadcaster will self-censor and refrain from speech it believes is newsworthy to avoid obligations to multitudes of less-newsworthy aspirants to elected office. The equal opportunities rule is utterly irreconcilable with the Court’s repeated admonitions that “a speaker has the autonomy to choose the content of [its] own message.”³⁴ Just as the government may not compel private parties to convey its own message,³⁵ it may not compel one private speaker to convey the message of another.³⁶

³² *Id.*

³³ 47 U.S.C. § 315(a).

³⁴ *Hurley*, 515 U.S. at 573.

³⁵ *W. Va. State Bd. of Educ.*, 319 U.S. 624.

³⁶ 303 *Creative LLC v. Elenis*, 600 U.S. 570, 588-89 (2023); *Hurley*, 515 U.S. at 573; *Pac. Gas and Elec. Co. v. Pub. Utils. Comm’n*, 475 U.S. 1, 11 (1986) (plurality op.); *Tornillo*, 418 U.S. at 258.

To be sure, the Supreme Court’s decision in *Red Lion* held that those principles applied somewhat differently in the 1960s broadcasting context.³⁷ But *Red Lion*’s factual predicates no longer obtain.³⁸ The *Red Lion* Court upheld the FCC’s “personal attack” and “political editorial” regulations, reasoning that these aspects of the fairness doctrine were permissible in view of scarce broadcast spectrum and the right of the public to information.³⁹ These justifications were dubious then—“[t]he text of the First Amendment makes no distinctions among print, broadcast, and cable media,”⁴⁰ and in any event “[a]ll economic goods are scarce, not least the newsprint, ink, delivery trucks, computers, and other resources that go into the production and dissemination of print journalism.”⁴¹ But they are unsupportable now in an age of information ubiquity. The public does not rely on compelling broadcasters’ speech “to receive suitable access to social, political, esthetic, moral, and other ideas and experiences,”⁴² when seemingly endless sources of information abound at the tap of a smartphone. Indeed, *Red Lion* itself “implied that its result would have been different in the absence of such a [scarcity] predicate,”⁴³—a reservation to which the Court,⁴⁴ and several justices,⁴⁵ have subsequently alluded.

³⁷ *Red Lion*, 395 U.S. at 386-93.

³⁸ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 530 (2009) (Thomas, J., concurring).

³⁹ 395 U.S. at 389-92.

⁴⁰ *Denver Area Educ. Telecomm. Consortium, Inc. v. FCC*, 518 U.S. 727, 812 (1996) (Thomas, J., joined by Rehnquist, C.J. and Scalia, J., concurring in part).

⁴¹ *Telecommunications Rsch. & Action Ctr. v. FCC*, 801 F.2d 501, 508 (D.C. Cir. 1986).

⁴² *Red Lion*, 395 U.S. at 390.

⁴³ *Time Warner Ent. Co., L.P. v. FCC*, 105 F.3d 723, 725 (D.C. Cir. 1997) (Williams, J. dissenting from denial of rehearing en banc).

⁴⁴ *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 376 n.11 (1984).

⁴⁵ *Fox Television Stations*, 556 U.S. at 533 (Thomas, J., concurring).

Shorn of scarcity concerns that are no longer tenable, the equal opportunities rule is in serious tension with the First Amendment. Much as with Section 315(a), the State in *Tornillo* argued that the right-of-reply statute was critical “to ensure that a wide variety of views reach the public.”⁴⁶ The press, the State lamented, had become “enormously powerful and influential in its capacity to manipulate popular opinion and change the course of events.”⁴⁷ The “result,” the state continued, was “to place in a few hands the power to inform the American people and shape public opinion,” leading to “homogeneity of editorial opinion, commentary, and interpretive analysis” and “abuses of bias and manipulative reportage.”⁴⁸ The Court refused to allow these fears to override the speech rights of newspapers, finding that the law’s blatant “intrusion into the function of editors” decidedly failed to “clear the barriers of the First Amendment.”⁴⁹ The Court has rejected precisely the same speech-balancing rationale in invalidating a ban on public-broadcaster editorializing.⁵⁰ *League of Women Voters of Cal.* emphasized that determining the constitutionality of broadcaster regulations “requires a critical examination of the interests of the public and broadcasters in light of the particular circumstances of each case,”⁵¹ and ultimately struck down the policy.

Because Section 315(a) “restrict[s] precisely that form of speech which the Framers of the Bill of Rights were most anxious to protect—speech that is ‘indispensable to the discovery

⁴⁶ 418 U.S. at 247-48.

⁴⁷ *Id.* at 249.

⁴⁸ *Id.* at 250.

⁴⁹ *Id.* at 258.

⁵⁰ *League of Women Voters of Cal.*, 468 U.S. at 398 (invalidating the Communications Act’s prohibition in Section 399 for noncommercial broadcast stations that received grants from the Corporation for Public Broadcasting from engaging in editorializing).

⁵¹ *Id.* at 381.

and spread of political truth’—[courts] must be especially careful in weighing the interests that are asserted in support of this restriction and in assessing the precision with which” the requirement operates.⁵² It is difficult to see how Section 315(a) can survive that “careful ... weighing.” In short, if the Supreme Court were to consider the question anew—as several Justices have suggested it should—it is hard to see how it could hold the equal opportunities rule constitutional.

B. At Minimum, the Equal Opportunities Rule Could Not Survive Constitutional Scrutiny Without a Robust Bona Fide News Exemption.

At a minimum, the equal opportunities rule could not survive constitutional scrutiny without the kind of robust bona fide news exemption that the Commission has applied for decades. “When legislation and the Constitution brush up against each other,” an agency’s “task is to seek harmony, not to manufacture conflict.”⁵³ By adding the bona fide news exemption to the equal opportunities rule, Congress provided a means by which the rule can be “construed to avoid serious constitutional doubts.”⁵⁴ But the bona fide news exemption can operate as a First Amendment pressure-release valve only if the Commission maintains the robust interpretation of the exemption that it has long employed.

The equal opportunities rule was adopted as part of the Radio Act of 1927 to help ensure that candidates for public office were treated in an equal manner with respect to access to broadcast facilities. This was particularly important at that time and for the next several decades, when broadcast radio and television represented the sole forms of mass media and the only

⁵² *Id.* at 383.

⁵³ *United States v. Hansen*, 599 U.S. 762, 781 (2023).

⁵⁴ *Fox Television Stations*, 556 U.S. at 516.

means by which political candidates could communicate their direct message to mass audiences. Nevertheless, Congress had come to recognize even by the time of *Red Lion* that the equal opportunities rule imposed substantial burdens on, and threatened to chill, broadcast stations' coverage of political information. That concern became particularly acute after the Commission reversed longstanding precedent and imposed equal-opportunities obligations based on candidate appearances during newscasts.⁵⁵

Congress responded in 1959 by adding the bona fide news exemption to foster coverage of political campaign activity and preserve broadcasters' discretion to exercise their good faith news judgment in deciding which candidates to cover and in what formats.⁵⁶ As the legislative history confirms, Congress's goal in doing so was "to enable what probably has become the most important medium of political information to give the news concerning political races to the greatest possible number of citizens, and to make it possible to cover the political news to the fullest degree."⁵⁷ To that end, Congress provided:

Appearance by a legally qualified candidate on any—

- (1) bona fide newscast,
- (2) bona fide news interview,
- (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
- (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

⁵⁵ *Petitions of Columbia Broadcasting System, Inc., and National Broadcasting Co.*, Interpretive Opinion, 26 F.C.C. 715 (1959); see *Chisholm v. FCC*, 538 F.2d 349, 351-52 (D.C. Cir. 1976).

⁵⁶ See, e.g., 105 Cong. Rec. 14446 (1959) (statement of Sen. McNamara) (the amendments leave "the control of news coverage of politics in the hands of the broadcasters"); see also *Request by Multimedia Entertainment, Inc. for Declaratory Ruling*, Memorandum Opinion and Order, 56 Rad. Reg. 2d 143, 144 (1984) ("*Donahue Decision*") ("Congress contemplated and intended to encourage increased news coverage of political campaign activity.").

⁵⁷ 105 Cong. Rec. 14451 (1959) (statement of Sen. Holland).

shall not be deemed to be use of a broadcasting station within the meaning of this subsection.⁵⁸

Those exemptions notably are not confined to traditional “newscasts,” but rather sweep in (among other things) “bona fide news interview” programs.⁵⁹ While Congress did not attempt to specifically define the types of programs that would qualify as bona fide news interviews, the legislative history identified factors such as whether a program is “regularly scheduled,” and whether its “content and format” are “determined by the licensee” or by the network “in the exercise of its ‘bona fide’ news judgement and not for the political advantage of the candidate for public office.”⁶⁰

In keeping with that guidance, which the Commission concluded Congress had “enjoined” it to follow,⁶¹ the Commission established three factors to determine whether something qualifies as a bona fide news interview: (1) whether the program is regularly scheduled; (2) whether the broadcaster or an independent producer controls the program; and (3) whether the broadcaster’s or independent producer’s decisions on format, content, and participants are based on newsworthiness rather than on an intention to advance or harm an individual’s candidacy.⁶² The overarching newsworthiness consideration reflects Congress’s

⁵⁸ 47 U.S.C. § 315(a).

⁵⁹ 105 Cong. Rec. 17776, 17777 (1959) (Conference Report) (“[A]n appearance on a ‘bona fide news interview’ is exempted without regard to whether it is included as part of a newscast.”).

⁶⁰ 105 Cong. Rec. at 17777. *See also id.* at 17782 (statement of Sen. Harris) (“This requirement regarding the bona fide nature of the newscast, news interview or news events was not included without careful thought by the conference committee. It sets up a test which appropriately leaves reasonable latitude for the exercise of good faith news judgment on the part of broadcasters and networks.”).

⁶¹ *See Inquiry Concerning “Equal Time” Requirements Under Section 315 of the Communications Act of 1934, as amended*, 40 F.C.C. 395, 396 (1964).

⁶² *See, e.g., Hearst Television Inc., Declaratory Ruling*, 31 FCC Rcd 7191, 7192-93 (MB 2016) (citing *ANE Productions Inc., Declaratory Ruling*, 26 FCC Rcd 16148, 16149 (MB 2011) (“*ANE*

decision to qualify each exemption with the term “bona fide,” thereby emphasizing that the key question is whether programming at issue is of genuine news value, as opposed to designed for the partisan purpose of advancing or harming any particular candidate.⁶³

While the Commission’s application of that three-part test evolved in the early years, it has remained largely stable since the landmark *Donahue Decision* in 1984, in which the Commission recognized that the exemption must be interpreted consistent with “Congress’ overriding intent to increase news coverage of the political campaign process.”⁶⁴ In the *Donahue Decision*, the Commission reversed a prior decision denying a bona fide news interview exemption to the talk show *Donahue*.⁶⁵ In doing so, the Commission applied the standard three-part test. First, the Commission recognized that there was no dispute as to whether *Donahue* was regularly scheduled. With respect to the second prong, whether the program’s producers maintained control over the program, the Commission explicitly concluded that a talk show format did not preclude a finding of licensee control:

[I]t would be unsound to rule that a program involving a unique or innovative approach to interviewing its guests somehow lacks sufficient licensee control evident in more traditional news interview programs like

Declaratory Ruling”); *Request of ABC, Inc. for Declaratory Ruling*, 15 FCC Rcd 1355, 1358 (MMB 1999) (“*ABC Declaratory Ruling*”).

⁶³ See *Petitions of Henry Geller and National Association of Broadcasters and the Radio-Television News Directors Association to change Commission interpretation of Subsections 315(a)(3) and (4) of the Communications Act*, Report and Order, 95 F.C.C.2d 1236, 1243 (1983), *aff’d sub nom League of Women Voters Educ. Fund v. FCC*, 731 F.2d 995 (D.C. Cir. 1983).

⁶⁴ *ABC Declaratory Ruling*, 15 FCC Rcd at 1358 (recognizing a shift in focus from programs with “more traditional question and answer formats” to “varying less conventional interview formats”); see also *Requests of Fox Broadcasting Company, Public Broadcasting Service, and Capital Cities/ABC, Inc. for Declaratory Rulings*, Declaratory Ruling, 11 FCC Rcd 11101, 11108 (1996) (“*Fox Declaratory Ruling*”) (“Initially, the Commission interpreted the exemptions narrowly. Over the last twenty years, however, the Commission has interpreted the exemptions to allow for more diverse kinds of news programming, particularly with respect to the *bona fide* news interview and on-the-spot coverage of *bona fide* news event exemptions.”).

⁶⁵ *Donahue Decision*, 56 Rad. Reg. 2d 143-44.

“Meet the Press” or “Face the Nation” when the licensee has implemented reasonable techniques to ensure control. To do so would discourage programming innovation by sending a signal to broadcasters that to be exempt an interview program should adhere only to the format of certain programs mentioned by Congress over twenty-five years ago.⁶⁶

Regarding the third prong, the Commission held that “[t]he proper Commission concern is limited to whether a licensee’s claim of newsworthiness is reasonable” and that “it would seem elemental that Congress contemplated interviews with elected officials and candidates for elected office as newsworthy subject matter.”⁶⁷ Noting that “Congressional intent is to defer substantially to the good faith news judgments of broadcast licensees,” the Commission held *Donohue* qualified for the bona fide news interview exemption.⁶⁸

In the ensuing 40 years, the Commission has consistently reaffirmed this approach, finding that a wide variety of programs qualify as bona fide news interview programs, including programs that featured non-traditional formats and hosts without formal journalistic backgrounds. As the Mass Media Bureau explained in 1999, “[i]n attempting to fulfill the letter and the spirit of the law, the Commission’s decisions in this area have continued to expand the kinds of programming eligible for exemption in recognition of change and innovation in broadcast production.”⁶⁹ Programs deemed qualified as bona fide news interview programs include such varied programs as *The Morning Program* (1987), *Geraldo* (1988), *Sally Jessy Raphael* (1991), *Later with Bob Costas* (1991), *The Jerry Springer Show* (1994), *The Howard Stern Show* (2003), *Governor Heineman’s Call-In Show* (2006), and *The Tonight Show* (2006).⁷⁰

⁶⁶ *Id.* at 146.

⁶⁷ *Id.* at 147.

⁶⁸ *Id.* at 148.

⁶⁹ *ABC Declaratory Ruling*, 15 FCC Rcd at 1359.

⁷⁰ *Request by CBS Inc. for Declaratory Ruling*, 2 FCC Rcd 4377 (MMB 1987); *Request of Tribune Broadcasting Company for Declaratory Ruling*, 3 FCC Rcd 6248 (MMB 1988); *Request*

For example, in 2008 the Media Bureau found that the news interview segments of *The 700 Club* qualified for the bona fide news interview program exemption.⁷¹ In making its determination, the Bureau emphasized assurances that, among other things, “all questions are prepared by a CBN employee based upon journalistic news principles” and that interviewees were selected based on newsworthiness and other factors.⁷²

Similarly, in *ANE Productions Inc.*, the Media Bureau found that the daytime talk show *Anderson*, which featured “a mixture of news and entertainment topics,” qualified for the bona fide news interview exemption.⁷³ The producers of the program stated that “the format also includes interviews with celebrity guests and that ‘qualified candidates for political office will be interviewed when their stories are considered by the producers to be relevant and newsworthy.’”⁷⁴ In its discussion of the case, the Bureau noted its long-standing position that “its ‘role is not to decide, by some qualitative analysis, whether one kind of news story is more *bona fide* than another ... [s]o long as the program characteristics set out by Congress are met,

of Multimedia Entertainment, Inc. for Declaratory Ruling, 6 FCC Rcd 1798 (MMB 1991); *Request of National Broadcasting Co., Inc. for Declaratory Ruling*, 6 FCC Rcd 5200 (MMB 1991); *Request of Multimedia Entertainment, Inc. for Declaratory Ruling*, 9 FCC Rcd 2811 (MMB 1994); *Infinity Declaratory Ruling*, 18 FCC Rcd 18603; *Request of Nebraska Broadcasters Association for Declaratory Ruling*, 21 FCC Rcd 10742 (MB 2006) (“*NBA Declaratory Ruling*”); *Equal Opportunities Complaint Filed by Angelides For Governor Campaign Against 11 California Television Stations*, 21 FCC Rcd 11919 (MB 2006).

⁷¹ *Petition of The Christian Broadcasting Network for Declaratory Ruling*, 23 FCC Rcd 7165, 7166 (MB 2008).

⁷² *Id.*

⁷³ *ANE Declaratory Ruling*, 26 FCC Rcd at 16148.

⁷⁴ *Id.*

[its] role is properly limited to determining whether a broadcaster was reasonable in deciding that a program fits within an exemption.”⁷⁵

Likewise, in 1999 the Bureau found that *Politically Incorrect with Bill Maher* qualified for the bona fide news interview exemption.⁷⁶ The Bureau followed the standard three-part test; with respect to the second prong—whether the broadcaster controls the program—the Bureau credited the broadcaster’s “various reasonable mechanisms” for maintaining control over the production, finding that “those structural safeguards appear reasonably designed to assure that good faith news judgment can be adequately protected.”⁷⁷ Acknowledging the guidance from Congress and the Commission’s decision in *Donohue* to “not second-guess broadcasters about the relative newsworthiness of the interviewees or the topics of discussion,” the Bureau found that decisions about format, content and selection of participants on *Politically Incorrect* were based on newsworthiness and not motivated by any partisan purpose, despite the satirical nature of some of the program content.⁷⁸

Notably, the Commission’s analysis of the “bona fide” nature of a program has never rested on an examination of the political views of the program’s host or required a host to profess partisan neutrality. Indeed, the Commission has granted exemptions to programs hosted by elected officials (a group not generally known for partisan neutrality). For instance, in 2006, the Media Bureau concluded that both *Governor Heineman’s Call-In Show* and *Senator Ben*

⁷⁵ *Id.* at 16469 (quoting *Request for Declaratory Ruling By Paramount Pictures Corporation, Cox Broadcasting Corporation, Taft Television Productions, and Television Program Enterprises*, 3 FCC Rcd 245, 245-46 (MMB 1988)).

⁷⁶ *ABC Declaratory Ruling*, 15 FCC Rcd 1355.

⁷⁷ *Id.* at 1359.

⁷⁸ *Id.*

Nelson's Call-In Show qualified for the bona fide news interview exemption under Section 315(a)(2) of the Act.⁷⁹

In short, in accordance with Congressional intent and the requirements of the First Amendment, the Commission has consistently given deference to broadcasters' good faith judgment.⁸⁰ And courts have long affirmed that this deference is necessary to avoid the equal opportunities rule's encroaching on core First Amendment rights. As the D.C. Circuit put it, "absent evidence of broadcaster intent to advance a particular candidacy, the judgment of the newsworthiness of an event is left to the reasonable news judgment of professionals."⁸¹ The First Amendment demands nothing less.

⁷⁹ *NBA Declaratory Ruling*, 21 FCC Rcd at 10742-43.

⁸⁰ See, e.g., *Fox Declaratory Ruling*, 11 FCC Rcd at 11108 ("In recognition of Congress' primary goal in enacting the exemptions – to facilitate a better informed electorate through greater news coverage of the political process – the Commission has accorded greater deference to a licensee's good faith news judgment."); *Donahue Decision*, 56 Rad. Reg. 2d at 148.

⁸¹ *Kennedy for President Comm. v. FCC*, 636 F.2d 417, 427 (D.C. Cir. 1980) (quoting *Chisholm*, 538 F.2d at 359). Courts have long recognized this Congressional intent in interpreting the scope and application of the Section 315(a) exemptions. The D.C. Circuit, for instance, noted that Congress had concluded that "the concept of absolute equality among competing political candidates would have to give way, to some extent, to two other 'worthy and desirable' objectives: First, the right of the public to be informed through broadcasts of the political events; and Second, the discretion of the broadcaster to be selective with respect to the broadcasting of such events." *Chisholm*, 538 F.2d at 352 (citing Hearings on Political Broadcasts Equal Time Before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess. 2 (1959) (statement of Chairman Harris)). Thus, the Court stated, "[i]n creating a broad exemption to the equal time requirements in order to facilitate broadcast coverage of political news, Congress knowingly faced risks of political favoritism by broadcasters, and opted in favor of broader coverage and increased broadcaster discretion." *Chisholm*, 538 F.2d at 366.

III. *THE VIEW* IS A BONA FIDE NEWS INTERVIEW PROGRAM TODAY, JUST AS IT WAS IN 2002.

As the foregoing should make clear, the best way for the Commission to avoid the grave First Amendment problems that the equal opportunities rule presents is by holding, as it did in 2002, that *The View* qualifies for a Section 315(a) exemption as a bona fide news interview program. *The View* continues to easily satisfy the criteria the Commission has long applied. And interpreting the bona fide news interview program exemption to exclude shows like *The View* would only exacerbate the constitutional problems with the statutory scheme.

A. Description of *The View*.

The View is an ABC Television Network program that has aired weekday mornings since August 1997. *The View* is a live, one-hour talk show created by legendary journalist Barbara Walters and television producer William Geddie. Since its inception, the fundamental format of the program has featured a panel of women of different backgrounds discussing news, politics, entertainment, popular culture, and social issues. Each episode includes the panel's discussion of the day's "hot topics," along with interviews with newsmakers from all walks of life and points of view.

Now in its 29th season, *The View* has remained committed to this format that has made it one of the most successful and longest-running daytime programs of all time. Although the co-host line up has changed over the years, *The View* has consistently prioritized having a panel of women from different backgrounds in order to facilitate interesting discourse and the exchange of divergent perspectives. *The View* currently is co-hosted by Joy Behar, Alyssa Farah Griffin, Whoopi Goldberg, Sara Haines, Sunny Hostin, and Ana Navarro.⁸²

⁸² *The View* also features guest co-hosts from time to time including, for example, Savannah Chrisley, who filled in during Griffin's maternity leave in February 2026. See Olivia Rondeau,

- Joy Behar was one of the original hosts of *The View* when it premiered in 1997. Ms. Behar is among today's leading media personalities and has won numerous awards, including the 2009 Daytime Emmy Award for Outstanding Talk Show Host.⁸³ Ms. Behar's professional background is rooted in education and news production. She went on to serve as a producer for ABC News' *Good Morning America*, hosted *The Joy Behar Show* on CNN's HLN, and frequently guest-hosted *Larry King Live*.⁸⁴ She also hosted a WABC radio program, and worked as a high school English teacher for several years before transitioning to media.⁸⁵ Ms. Behar holds a Bachelor of Arts in sociology from Queens College and a Master's Degree in English Education from Stony Brook University.⁸⁶
- Alyssa Farah Griffin is a Republican political strategist who joined *The View* as a co-host in 2022.⁸⁷ Ms. Griffin served as White House Director of Strategic Communications and Assistant to President Donald Trump during his first term and previously held roles as Press Secretary for the Department of Defense and Deputy Assistant to the Secretary of Defense in prior Republican administrations. From 2017 to 2019, she served as Press Secretary for former Vice President Mike Pence, and previously spent several years working as a senior communications aide for Representative Mark Meadows (R-NC) and the House Freedom Caucus under Representative Jim Jordan (R-OH) and Meadows. Ms. Griffin began her career in journalism as a broadcast media intern at the National Journalism

Trump-Supporting TV Personality Savannah Chrisley to Guest Host 'The View', Breitbart (Feb. 5, 2026), <https://www.breitbart.com/entertainment/2026/02/05/trump-supporting-tv-personality-to-guest-host-the-view>. More recently, former co-host Elisabeth Hasselbeck returned to the show last month, garnering attention due to her defense of U.S. military actions in Iran. See Julia Moore, *Elisabeth Hasselbeck's Return to The View Is Interrupted by Trump's Remarks on Iran*, People (Mar. 2, 2026), <https://people.com/elisabeth-hasselbeck-return-to-the-view-interrupted-by-trumps-remarks-on-iran-11917380>. Co-host selection is "all about a different point[s] of view at the table," and ensuring the panel consists of people "who are good at this job." Ted Johnson, *Elisabeth Hasselbeck, Abby Huntsman & Savannah Chrisley To Be Among Guest Co-Hosts On 'The View' During Alyssa Farah Griffin's Maternity Leave*, Deadline (Feb. 4, 2026), <https://deadline.com/2026/02/the-view-guest-co-hosts-alyssa-farah-griffin-1236708881>.

⁸³ Joy Behar, ABC.com, <https://abc.com/cast/b2ffc195-a56a-49d4-812a-a918a6fa717c> (last visited Apr. 25, 2026) (cast biography).

⁸⁴ Lacey Rose, *HLN Confirms 'The Joy Behar Show' Has Not Been Renewed*, The Hollywood Reporter (Nov. 17, 2011), <https://www.hollywoodreporter.com/news/general-news/hln-confirms-joy-behar-show-cancelled-263095>.

⁸⁵ Joy Behar, CNN, https://www.cnn.com/CNN/anchors_reporters/behar.joy.html (last visited Apr. 25, 2026) (anchors and reporters biography).

⁸⁶ Zoey Lyttle, *Joy Behar's Life in Photos*, People (Oct. 7, 2022), <https://people.com/tv/joy-behars-life-in-photos>.

⁸⁷ Alyssa Farah Griffin, ABC.com, <https://abc.com/cast/8003d444-bb1c-4fcb-9fd4-4f941247fef0> (last visited Apr. 25, 2026) (cast biography).

Center.⁸⁸ Ms. Griffin holds a Bachelor of Arts in journalism from Patrick Henry College.⁸⁹

- Whoopi Goldberg has served as moderator and co-host of *The View* since 2007. An award-winning actress, producer and author,⁹⁰ Ms. Goldberg's career launched on Broadway in 1984 with her critically acclaimed one-woman stage show, *Whoopi Goldberg*. Ms. Goldberg made her Hollywood debut in Steven Spielberg's *The Color Purple*, earning an Academy Award nomination for Best Actress, and later won the Academy Award for Best Supporting Actress for her role in *Ghost*. In 2001, she received the Mark Twain Prize for American Humor. In 2002, she completed the rare EGOT distinction, having earned an Emmy, Grammy, Oscar, and Tony Award (as a producer of the musical *Thoroughly Modern Millie*).⁹¹ Prior to joining *The View*, Ms. Goldberg also hosted *The Whoopi Goldberg Show* and a nationally syndicated morning radio program, *Wake Up with Whoopi*. Beyond performance, she has written several books, including a collection of humorous essays, and two children's books, and serves as a UNICEF International Goodwill Ambassador.⁹² She has been honored with an honorary degree from Wilson College.⁹³ Goldberg has stated she does not identify with a specific political party.⁹⁴
- Sara Haines, a former ABC News correspondent, joined *The View* as a co-host from 2016 to 2018, and returned to the program in 2020 after co-hosting ABC's

⁸⁸ Alyssa Griffin, Legistorm.com, https://www.legistorm.com/person/bio/220812/Alyssa_Farah_-_Griffin/hashkey/f7c373fb.html (last visited Apr. 25, 2026).

⁸⁹ Marjorie Pratt, *White House Spotlight: Alyssa Farah* (May 18, 2020), <https://www.phc.edu/-learnphc/alyssa-farah>.

⁹⁰ Whoopi Goldberg, ABC.com, <https://abc.com/cast/00fdbde0-e115-4778-9dc8-b7091ce2caa9> (last visited Apr. 25, 2026) (cast biography).

⁹¹ Whoopi Goldberg, Encyclopedia Britannica (last updated Apr. 13, 2026), <https://www.britannica.com/biography/Whoopi-Goldberg>.

⁹² Whoopi Goldberg, American Academy of Achievement, <https://achievement.org/achiever/whoopi-goldberg> (last visited Apr. 25, 2026); Whoopi Goldberg, Yale Center for Dyslexia & Creativity, <https://dyslexia.yale.edu/story/whoopi-goldberg> (last visited Apr. 25, 2026) (biographical profile and interview).

⁹³ William C. Trott, *Whoopi By Degrees*, UPI (Dec. 4, 1987), <https://www.upi.com/Archives/1987/12/04/WHOOPI-BY-DEGREES/7754565592400>.

⁹⁴ Goldberg declared on the show that she does not subscribe to a particular political party ideology, in that she believes “the only way to get stuff done is to have both parties represented at the same time.” Amanda Bell, *Whoopi Goldberg Explains Exactly Why She's Not a Democrat on 'The View'*, TV Insider (June 5, 2025), <https://www.tvinsider.com/1195574/the-view-whoopi-goldberg-not-democrat-explained>.

GMA Day.⁹⁵ Before joining ABC in 2013, Ms. Haines worked for NBC's *Today* show, beginning as a production coordinator in 2002 after completing NBC's Page Program.⁹⁶ She expanded her role at *Today* in 2008 as host of *TODAYshow.com*'s entertainment video blog *Backstage Pass*, through which she conducted celebrity interviews and offered behind-the-scenes coverage of the show. At ABC, she served as a network correspondent and pop news anchor for the weekend editions of *Good Morning America*, before transitioning to *The View*. Ms. Haines holds a Bachelor of Arts in government from Smith College.⁹⁷

- Sunny Hostin, an attorney and investigative journalist, has been a co-host of *The View* since 2016. Before her television career, Ms. Hostin worked as an appellate law clerk to Chief Judge of the Maryland Court of Appeals Robert M. Bell.⁹⁸ Later, she joined the Department of Justice's antitrust unit under President Bill Clinton. Ms. Hostin also served as an assistant United States attorney specializing in child sex crimes under Attorney General Janet Reno, from whom she received a Special Achievement Award.⁹⁹ Moving into private practice, Ms. Hostin served as a Managing Director of Business Intelligence and Investigations at Kroll.¹⁰⁰ She subsequently built a prominent media presence, appearing weekly on the "Is It Legal?" segment of Fox News' *The O'Reilly Factor* and serving as a host and legal analyst at CNN. Ms. Hostin has also filled in as co-anchor for ABC News' *World News Now* and *America This Morning*.¹⁰¹ She holds a degree in Communications from Binghamton University and a Juris Doctorate from Notre Dame Law School.

⁹⁵ Hilary Lewis, *It's Official: Sara Haines Joins 'The View' as Season 20 Co-Host*, The Hollywood Reporter (Aug. 3, 2016), <https://www.hollywoodreporter.com/news/general-news/sara-haines-joins-view-as-916914>; Meaghan Darwish, *Why Was 'Strahan, Sara, and Keke' Canceled at ABC?*, TVInsider (Aug. 4, 2020), <https://www.tvinsider.com/944258/strahan-sara-keke-canceled-abc>.

⁹⁶ Sara Haines, ABC.com, <https://abc.com/cast/59670fc4-d5a9-4101-96bd-7a83d68dbed8> (last visited Apr. 25, 2026) (cast biography).

⁹⁷ *Id.*

⁹⁸ Laurie Yarnell, *The View's Sunny Hostin Talks Life On and Off the Camera*, Westchester (Sept. 24, 2018), <https://westchestermagazine.com/things-to-do/the-view-sunny-hostin-interview>.

⁹⁹ *Breaking News, Everyone's Watching Sunny Hostin*, Executive Woman Media (Jan. 7, 2015), <https://www.executivewomanmedia.com/breaking-news-everyones-watching-sunny-hostin>.

¹⁰⁰ About Sunny, Sunny Hostin, <https://sunnyhostin.com/about/> (last visited Apr. 25, 2026).

¹⁰¹ Sunny Hostin, The State University of New York, <https://www.suny.edu/events/eop/sunny-hostin/> (last visited Apr. 25, 2026).

- Ana Navarro joined *The View* as a co-host in 2022, having previously appeared as a guest co-host on several occasions in 2013 and 2018.¹⁰² Ms. Navarro is a Republican political strategist and senior political commentator on CNN. She has advised numerous federal and state campaigns in Florida and nationally. She subsequently worked on Governor Jeb Bush’s transition team and served as his first Director of Immigration Policy. Ms. Navarro served as the National Hispanic co-chair and a national surrogate for John McCain’s 2008 presidential campaign.¹⁰³ She also briefly held the same role for Governor Jon Huntsman’s 2012 presidential campaign.¹⁰⁴ She self-identifies as a “lifelong Republican,” “a centrist,”¹⁰⁵ and has credited President Ronald Reagan’s support for the anticommunist rebels in Nicaragua as her inspiration for becoming a Republican. Ms. Navarro holds a Bachelor in Arts with Majors in Latin American Studies and Political Science from the University of Miami and a Juris Doctorate degree from St. Thomas University.¹⁰⁶

While *The View* is known for engaging and entertaining banter between its co-hosts, the program also has been widely recognized for the journalistic impact of its content—particularly its interviews with newsmakers, including political candidates. Among its dozens of awards and nominations over the years, *The View* has received more than 30 Daytime Emmy Awards from the National Academy of Television Arts and Sciences and, in 2024, the program received the prestigious DuPont-Columbia Award for journalism.

Brian Teta is currently the Executive Producer of *The View*. Teta, a highly experienced television producer, joined *The View* in 2015 as co-Executive Producer and was named Executive Producer in 2017. Teta reports to Almin Karamahmedovic, the President of ABC News. As

¹⁰² Ana Navarro, ABC.com, <https://abc.com/cast/8b1e427a-f54f-40a8-91f2-0cbd48dd347c> (last visited Apr. 25, 2026) (cast biography).

¹⁰³ Ana Navarro-Cárdenas, Carnegie Corporation of New York, <https://www.carnegie.org/awards/honoree/ana-navarro-cardenas> (last visited Apr. 25, 2026).

¹⁰⁴ Navarro, ABC cast biography, *supra* note 102 .

¹⁰⁵ Ana Navarro, *Ana Navarro: Why I’m voting for Andrew Gillum (a Democrat!)*, CNN (Nov. 3, 2018), <https://www.cnn.com/2018/11/02/opinions/why-im-voting-for-andrew-gillum-navarro/index.html>.

¹⁰⁶ Ana Navarro, Harvard Kennedy School Institute of Politics (2013), <https://iop.harvard.edu/fellows/ana-navarro>.

Executive Producer, Teta is responsible for and is the final decision maker with respect to all aspects of the production of *The View*, including the format, content, and participants of the program.¹⁰⁷

Interview subjects are selected and invited through a booking process overseen by the Executive Producer. The Executive Producer holds a twice-weekly meeting with *The View*'s booking staff to discuss and select potential guests. *The View*'s booking staff generally make suggestions for interview subjects based on current events in news, entertainment, popular culture, and politics. Publicists and other outside public relations professionals routinely "pitch" potential guests (e.g., book authors) to *The View*'s booking staff. *The View*'s co-hosts also suggest potential guests. Importantly, however, while he receives this input, the Executive Producer is the sole decisionmaker with respect to the selection of interviewees. He selects potential interview subjects based on newsworthiness, anticipated audience interest, and their potential to "make news" on the show.¹⁰⁸

After potential interview subjects are selected by the Executive Producer, *The View*'s booking staff contacts the interview subjects or their representatives to issue the invitation and discuss scheduling. As part of the booking process, the booking staff will describe in general terms the topics they expect will be covered in the interview. Interview guests are not provided with any guarantees as to what content will be covered or included in the broadcast of the program. Interview guests who agree to appear on the program are scheduled based primarily on the guests' availability and the overall balance of each day's program.¹⁰⁹

¹⁰⁷ Declaration of Brian Teta ("Teta Declaration") ¶ 8.

¹⁰⁸ *Id.* ¶ 20.

¹⁰⁹ *Id.* ¶ 27.

Once a guest agrees to appear on the program, a segment producer prepares an outline of potential interview questions. The interview outline generally is based on research provided to the segment producer by *The View*'s staff and the "pre-interview" conducted by the segment producer with the guest and/or the guest's representatives. The interview outline is reviewed and edited by *The View*'s co-hosts and may be further reviewed and edited by other ABC personnel. Final review and approval of the interview outline is conducted by the Executive Producer. Interview guests do not review, edit, or approve the interview outline and are not provided with interview questions in advance of the interview.¹¹⁰

The View's co-hosts conduct guest interviews based on the interview outline approved by the Executive Producer, although they may deviate from the outline during the course of the interview, particularly based on the guest's responses and the co-hosts' or the audience's reactions. The co-hosts rely on their experience and judgment to ensure that they, rather than the interview subjects, manage the conduct and flow of each interview (and, at all times during the interview, the show's producers can communicate directions to the co-hosts as needed). While some interview segments are recorded prior to broadcast, most interviews are conducted before a studio audience and typically are not edited prior to broadcast. Indeed, most regular season episodes of *The View* are aired live on eastern time zone stations, with a five second delay to help ensure compliance with broadcast standards. Interview subjects are not given any option to edit or otherwise control the broadcast of the interview, and do not see the final interview until it airs.¹¹¹

¹¹⁰ *Id.* ¶ 30.

¹¹¹ *Id.* ¶ 33.

B. *The View* Was Properly Determined to Be a Bona Fide News Interview Program in 2002.

Following the Commission’s long-established three-part test, the Bureau concluded in 2002 that *The View* is exempt from Section 315(a) of the Act as a bona fide news interview program.¹¹² That determination has remained unchallenged and unchanged since that time and, to this day, *The View* remains fully qualified for the exemption under the applicable legal standards.

On October 20, 2000, ABC filed a petition for declaratory ruling (the “Petition”) with the Commission requesting that the Commission’s Mass Media Bureau issue a declaratory ruling that *The View* is a bona fide news interview program and thus exempt from the equal opportunities provision of Section 315(a) of the Act.¹¹³ In the Petition, ABC explained that *The View* planned to invite additional political candidates to appear on the program and thus sought the Commission’s formal assurance that the equal opportunities requirements did not apply to *The View*.¹¹⁴

The Petition explained that *The View* was co-produced by the ABC Television Network (owned and operated by ABC) and BarWall Productions¹¹⁵ and described the content and format of *The View*. In addition, the Petition detailed how *The View* satisfied each of the Commission’s criteria for exemption as a bona fide news interview program. In addressing the established

¹¹² Letter from Robert Baker, Chief, Office of Political Programming, Policy and Rules Division, Mass Media Bureau, FCC, to ABC, Inc. (Mar. 1, 2002) (“2002 Declaratory Ruling”).

¹¹³ Letter from ABC, Inc., to Bobby Baker, Chief, Office of Political Programming, Policy and Rules Division, Mass Media Bureau, FCC (Oct. 20, 2000) (the “Petition”).

¹¹⁴ *Id.*

¹¹⁵ BarWall Productions is a production company co-founded by Barbara Walters and Bill Geddie.

three-part test for the exemption, ABC first showed that *The View* was regularly scheduled. Second, ABC demonstrated that *The View* was exclusively controlled by its producers and that the producers decided the program's format, content and participants for each segment of the program. Finally, ABC stated that programming decisions were based solely on the producers' good faith judgments regarding newsworthiness and viewer preferences and not for the purpose of supporting or opposing a particular candidate or for any other partisan purpose.¹¹⁶

By letter ruling dated March 1, 2002, the Mass Media Bureau granted the Petition without qualification, stating "[b]ased on the record before us, we conclude that the program '*The View*' qualifies for the *bona fide* news interview exemption under Section 315(a)(2)."¹¹⁷ Accordingly, every appearance by every legally qualified candidate on *The View* since March 1, 2002, (including the Talarico appearance) has been in accordance with a valid and effective formal determination that *The View* qualifies for the *bona fide* news interview exemption under Section 315(a)(2).¹¹⁸ Such appearances thus are not deemed to be "uses" of KTRK or any other station. Given that KTRK Television and many other licensees acted in good faith reliance on the explicit ruling provided by the Mass Media Bureau in 2002 and the consistent guidance provided by the Commission since 1984, the Commission cannot find that KTRK Television, or

¹¹⁶ Petition.

¹¹⁷ 2002 Declaratory Ruling.

¹¹⁸ Even if ABC had not sought and received a formal determination, *The View*, since its inception, has fully qualified for exemption under all of the long-standing criteria for *bona fide* news interview programs and, as previously noted, the Commission has previously stated that no prior formal declaration is required for a *bona fide* news exemption to apply. See *Infinity Declaratory Ruling*, 18 FCC Rcd at 18604.

any other licensee, violated any of the Commission's rules with respect to appearances by legally qualified candidates on *The View*.¹¹⁹

C. *The View* Remains a Bona Fide News Interview Program Today.

In the 24 years since the Commission issued the 2002 Declaratory Ruling, the format and production processes of *The View* that were previously reviewed have remained the same, notwithstanding changes in hosts and staffing. *The View* continues to meet all three of the factors considered by the Commission in determining whether a program qualifies for the bona fide news interview exemption under Section 315(a)(2): (1) it is regularly scheduled, (2) ABC, through the program's Executive Producer, controls the program, and (3) decisions on format, content, and participants are based on newsworthiness rather than on an intention to advance or harm any individual's candidacy.

i. *The View* is regularly scheduled and is in the same timeslot since it first aired in 1997.

The View has been a regularly scheduled part of ABC Network programming for almost 30 years. Since August 1997, *The View* has been broadcast on weekdays, Monday to Friday, from 11:00 a.m. to 12:00 p.m. (EST). Over its entire history, *The View* has consistently maintained its 11:00 am ET weekday timeslot. The program takes an annual summer production break for the month of August, during which the ABC Network airs "encore" episodes (*i.e.*, previously aired episodes of *The View*). The show generally resumes production at the end of

¹¹⁹ *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473 (D.C. Cir. 2008) (cleaned up) (citation omitted) ("In assessing forfeitures against regulated entities, the Commission is required to provide 'adequate notice of the substance of the rule.' The court must consider 'whether by reviewing the regulation and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.'").

August, and a new season begins the Tuesday after Labor Day. ABC Network intends to maintain this schedule.¹²⁰

ii. ABC continues to control the format, content and participants of *The View*.

As was the case in 2002, *The View* continues to be produced by the ABC Television Network. In this capacity, ABC has ultimate control over all aspects of *The View*, including its format, content and participants.¹²¹ Day-to-day control over *The View* is exercised by the program's Executive Producer who reports to the President of ABC News, which is a division of the ABC Television Network. *The View*'s format, first established by Walters and Geddie, has remained fundamentally unchanged throughout its history. The Executive Producer, and the producers, hosts, and production staff under his supervision, decide the program's content, as well as the participants for each program segment.¹²²

The show's production processes ensure that ABC (through the show's Executive Producer and production staff) maintains control over all aspects of the program. With respect to interviews included in the program in particular, as described herein, the Executive Producer and the production staff under his direction control all aspects of the selection of potential interview subjects and the questions asked during interviews in accordance with ABC News standards and practices. The Executive Producer has final review and approval authority over this process. The production process is designed to mitigate the possibility that a candidate can usurp the

¹²⁰ Teta Declaration ¶ 12.

¹²¹ BarWall Productions continues to be credited as a co-producer of the show but, subsequent to Ms. Walter's retirement in 2014 and death in 2022, ABC exercises sole and exclusive responsibility and control over the production.

¹²² *Id.* ¶¶ 8, 17.

functions of the program for his or her own purposes or use *The View* as a soapbox.¹²³ Once taped, the Executive Producer oversees the production process, and interviewees are not provided any opportunity to influence or affect the content of their interview prior to airing during the scheduled timeslot.¹²⁴

iii. Newsworthiness is, as it always has been, the lodestar of programming decisions on *The View*.

The Executive Producer of *The View* bases all decisions related to the format, content, and participants, including interviews of political candidates and other newsmakers, on the good faith judgments of newsworthiness and audience interest and not for the purpose of supporting or opposing any particular candidate or for any other partisan purpose.¹²⁵

It is in ABC's interest to book guests on *The View* who are in the news and who will generate interest among its audience members. Over the past ten years alone, hundreds of elected officials, political candidates, and political commentators from various parties have appeared on *The View*, providing the public with a broad variety of views. Of course, any list of interviewees on *The View* would not reflect individuals who have been invited by the producers but declined to appear. Over the past two seasons, for example, producers have extended

¹²³ *Id.* ¶ 17. As explained above, the seasoned co-hosts of *The View* follow the interview outlines approved by the Executive Producer. While they may deviate from the outline at times, they rely on their experience and judgment to ensure that they, rather than the interview subjects, manage the conduct and flow of each interview. In addition, co-hosts wear earpieces as they conduct interviews that allow producers to communicate directions to the co-hosts during the interviews as needed.

¹²⁴ The results speak for themselves. See e.g., David Rutz, *Kamala Harris' bungled answer on 'The View' about Biden seen as turning point in campaign*, Fox News (Nov. 7, 2024), <https://www.foxnews.com/media/kamala-harris-bungled-answer-the-view-about-biden-seen-turning-point-campaign>.

¹²⁵ Teta Declaration ¶ 20.

invitations to JD Vance, Robert F. Kennedy, Jr., Lindsey Graham, Josh Hawley, Elon Musk, Kevin McCarthy, and Marco Rubio, each of whom declined the invitation to appear on the program.¹²⁶ The critical consideration, however, is not whether the program achieves some government-approved roster of participants but the fact that the producers' decisions are not motivated by partisan purposes and are instead motivated by the desire to interview the most newsworthy and impactful guests.

The February 2, 2026, appearance of Texas primary candidate for Senate James Talarico is a prime example of *The View*'s pursuit of newsworthy material. Following Representative Jasmine Crockett's January 6, 2026, appearance on *The View*, co-hosts Farah Griffin and Goldberg both suggested to Teta that Talarico, Crockett's leading opponent in the Texas Democratic Primary for United States Senate, should be a potential interview guest. Talarico's candidacy at the time was gaining national attention, including on social media, which informed Teta's judgment that Talarico was a newsworthy subject.¹²⁷

A booking staff member on *The View* reached out to Talarico's campaign with an invitation to appear on the program. After Talarico's campaign accepted the invitation, one of *The View*'s veteran producers (who came to *The View* following stints with *Yahoo News with Katie Couric* and *Good Morning America*) prepared the interview outline in accordance with the program's standard processes. The interview outline was reviewed and edited by the co-hosts and other ABC personnel before being finally reviewed and approved by Teta. Neither the interview outline nor any of the questions were provided to Talarico or his representatives prior to the interview, the

¹²⁶ *Id.* ¶ 26.

¹²⁷ *Id.* ¶ 37. As *The View* is an exempt bona fide news interview program, Talarico's appearance was not made in accordance with any request by the Talarico campaign for "equal time" resulting from Crockett's appearance on *The View* or out of any consideration that he might be entitled to such "equal time."

producers provided no assurances to Talarico or his representatives as to the content of the program, and neither Talarico nor his representatives were provided any opportunity to suggest edits or view the final interview before it aired.¹²⁸ Thus, as with all candidate appearances on *The View*, Talarico's appearance was under the control of ABC through the program's Executive Producer and his team. The decision to include Talarico was driven by considerations of newsworthiness and audience interest and not an intent to advance his candidacy.

As that demonstrates, *The View*'s ability to rely on the bona fide news exemption to select interview candidates based on newsworthiness, as it has for over two decades, has advanced Congress's goal of facilitating political discourse on the airwaves. Of course, that may not always mean that *The View* may achieve the Commission's preferred complement of guests or particular views (although, as noted above, any list of interviewees on *The View* would not reflect individuals who have been invited by the producers but declined to appear). But the Commission has expressly disavowed efforts to "second guess broadcasters about the relative newsworthiness of the interviewees or the topics of discussion"¹²⁹—as it must since any effort to evaluate the qualification of *The View* as a bona fide news interview program that centered on the identity of the guests that appeared on the program or the views they expressed would be at odds with Congress's decision to exempt bona fide news interview programs from any equal opportunities rule (not to mention the First Amendment). After all, if a program had to provide equal opportunities to qualify for the exemption, then the exemption would be left with no work to do. *The View* thus readily qualifies for the bona fide news exemption, as the Commission has recognized for decades.

¹²⁸ *Id.* ¶¶ 40-41.

¹²⁹ *ABC Declaratory Ruling*, 15 FCC Rcd at 1358.

IV. SUBJECTING *THE VIEW* TO THE EQUAL OPPORTUNITIES RULE WOULD VIOLATE THE FIRST AMENDMENT.

A. The Equal Opportunities Rule Cannot Be Applied to *The View* Consistent with the First Amendment.

Even if the bona fide news interview exemption were not broad enough to cover *The View*, the Commission could not apply the equal opportunities rule to *The View* consistent with the First Amendment. While *Red Lion* held the “personal attack” and “political editorial” rules constitutional, this petition involves “a different statute” at “a different point in the development” of broadcast regulation, which suffices to merit “plenary consideration” of this “substantial First Amendment challenge.”¹³⁰ And, as explained, whatever may be said of the rule at its inception, at this point in time it is fundamentally incompatible with bedrock First Amendment principles.¹³¹ If the rule applied here, it would seemingly require every station broadcasting *The View* to provide airtime to every legally qualified candidate running for office in a particular race in their service areas, without regard to the newsworthiness of the candidate. In large races, like this year’s California open gubernatorial primary, this could mean the difference between interviewing the leading candidates in a tight race, or interviewing no candidates at all because fulfilling dozens of demands for free time would overburden the local stations airing *The View*. This “chilling” effect is exactly the result Congress sought to avoid when it adopted the bona fide news exemption.¹³² But to the extent Congress failed to provide an exemption broad enough to avoid that result, the rule cannot survive.

¹³⁰ *McCutcheon v. FEC*, 572 U.S. 185, 203 (2014).

¹³¹ See *supra* Part II.

¹³² See *supra* note 55 and accompanying text.

In fact, interpreting the bona fide news interview program exemption to exclude shows like *The View* would exacerbate the constitutional problems with the statutory scheme. Treating *The View* differently from other types of exempt programming is both a content and speaker-based distinction. If the exemption is understood to cover only a small universe of purportedly “neutral” and “newsworthy” broadcasts, wide swaths of programming—perhaps even all programs whose format diverges from the *Meet the Press* format referenced by the 1959 Congress that enacted the exemptions—will be penalized based on nothing more than the content and viewpoint of their speech.

Given the inherent value-laden judgments that the FCC must make when determining whether a particular program is newsworthy, the risk that the FCC will use its authority to suppress disfavored content and viewpoints is overwhelming. What is newsworthy to today’s FCC may not be newsworthy to the FCC in the next Administration. “It is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.”¹³³ That caution carries special weight here, given that the Administration has been open about its disapproval of the viewpoints expressed on *The View*.¹³⁴ But the government has no legitimate interest in declaring some viewpoints more worthy than others. The bona fide news exemptions would fail any form of

¹³³ *Cohen v. California*, 403 U.S. 15, 25 (1971); cf. *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 21-22 (2018) (enforcement of ban on “political” attire in polling places “must be guided by objective, workable standards” because, “[w]ithout them, an election judge’s own politics may shape his views on what counts as ‘political’”).

¹³⁴ See, e.g., Dominick Mastrangelo, *White House targets ‘The View,’ Joy Behar over Trump criticism*, The Hill (July 24, 2025), <https://thehill.com/homenews/media/5418270-white-house-the-view-joy-behar-trump-criticism>; Sean Burch, *FCC Chairman Bashes ‘The View,’ Suggests Show Could Have ‘Issues’*, The Wrap (July 24, 2025), <https://www.thewrap.com/fcc-chairman-bashes-the-view-trump-issues>; Joey Nolfi, *White House rips The View cohosts as ‘Trump-deranged wackos’ over reaction to Jeffrey Epstein files*, Entertainment Weekly (Nov. 20, 2025), <https://ew.com/white-house-responds-the-view-jeffrey-epstein-files-11853293>.

heightened scrutiny if not construed, consistent with decades of Commission practice, to apply to *The View*. That is all the more reason to conclude that *The View* qualifies for the exemption. But ultimately it does not matter, as the Commission could not subject *The View* to the equal opportunities rule consistent with the First Amendment anyway.

B. This Proceeding is Independently Barred by the First Amendment to the Extent it is Based on the Viewpoints Expressed on *The View*.

Even assuming the equal opportunities rule and its exemptions passed First Amendment muster (they do not), any effort to apply it here would violate the First Amendment to the extent adverse action is a response to the viewpoints expressed on *The View*. The Commission may not wield its enforcement authority “in order to punish or suppress [ABC’s] protected expression.”¹³⁵ The Commission’s actions must be based on an objective application of the law and cannot be a response to disfavored content.

“If a coercive campaign is carried out with enough sophistication,” it can be difficult to establish that a government official has wielded authority to punish or suppress disfavored speech.¹³⁶ In this instance, however, it is not so difficult. Although the *Public Notice* and the SLOI ostensibly avoid commenting on specific content, they both heavily emphasize concerns over the potential partisan purposes of programs.¹³⁷ At the same time, numerous statements by senior government officials have singled out *The View* for its allegedly partisan perspective.¹³⁸

¹³⁵ *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 196 (2024).

¹³⁶ *Murthy v. Missouri*, 603 U.S. 43, 80 (2024) (Alito, J., dissenting).

¹³⁷ *Public Notice* at 1, 3-4.

¹³⁸ See, e.g., *NEWS OR NOT? ‘The View’ under SCRUTINY as FCC Chair Says ‘Fake News’ Won’t Qualify for Exemption*, Fox Business, YouTube (Feb. 2026), <https://www.youtube.com/watch?v=nUTgkRmtlpA&t=269s> (statement of FCC Chairman Carr at 5:40-5:51); *FCC chief: These days are OVER*, Fox News Channel, YouTube (Feb. 2026), <https://www.youtube.com/watch?v=gAwYshMVEzw> (statement of Chairman Carr at 6:05).

Those statements highlight the dangers of viewpoint-based targeting inherent in giving government functionaries the power to decide which “ideas and beliefs [are] deserving of expression [and] consideration,”¹³⁹ *i.e.*, what is “newsworthy.” Of course, government officials are free to express their own views about *The View*. But they cannot utilize the coercive powers of the state to punish viewpoints with which they disagree.

Meanwhile, even as the Commission opens formal investigations into *The View*, it has declined to scrutinize other programs or formats, like talk radio. The *Public Notice* was addressed exclusively to daytime and late night talk shows on television, ignoring the landscape of avowedly partisan talk radio shows. It is noteworthy that many stations in KTRK’s market aired interviews with select candidates prior to the recent primary election without provoking any apparent interest or inquiries from the Commission.

For example, both KTBB 97.5 FM, Troup, Texas, and WBAP 820 AM, Fort Worth, Texas, air *The Mark Levin Show*, which, on February 16, 2026, featured an interview with Dan Patrick, who is running for re-election for Lieutenant Governor, although neither KTBB nor WBAP has uploaded any documents concerning Patrick’s appearance into their 2026 online public inspection files.¹⁴⁰ Similarly, KPRC 950 AM, Houston, Texas, broadcast an interview with Texas Attorney General primary candidate Chip Roy as part of *The Glenn Beck Program* on

¹³⁹ *Turner Broad. Sys.*, 512 U.S. at 641.

¹⁴⁰ *Program Schedules*, KTBB, <https://ktbb.com/skeds.php> (last visited May 7, 2026); *Weekday Schedule*, WBAP, <https://www.wbap.com/weekday-schedule> (last visited May 7, 2026); 2/16/26 - *Criminalizing Criticism: The Implications of Virginia’s Islamophobia Legislation*, Mark Levin Podcast (Feb. 17, 2026), <https://podcasts.apple.com/nz/podcast/2-16-26-criminalizing-criticism-the-implications/id209377688?i=1000750065366>. See also Dan Patrick, Facebook (Feb. 17, 2026), <https://www.facebook.com/100044482297495/posts/1469394397886623/?mibextid=wwXlfr&rdid=7s8v5qEcoqrHZAiB#> (posting link to *The Mark Levin Show* appearance from Feb. 16, 2026) (“I joined Mark Levin, one of my favorite Fox hosts, on his radio show last night. He surprised me with his endorsement live on the air. It’s a great honor to have his support.”).

February 18, 2026, without including any documentation of the appearance in its public inspection files.¹⁴¹ Chip Roy also appeared on the *Guy Benson Show* on February 11, 2026, which airs on several Texas radio stations, including KSEV 700 AM, Tomball, Texas.¹⁴² KSEV (which is owned by Texas Lt. Governor Dan Patrick) likewise did not place any information about this appearance in its public inspection files. While *The Mark Levin Show*, *The Glenn Beck Program*, and the *Guy Benson Show* are all popular, long running radio talk shows, there is no indication that any of them has ever received a Declaratory Ruling that it is a bona fide news interview program.

And yet, the Commission has not made any public announcements that it is investigating *The Mark Levin Show*, *The Glenn Beck Program*, the *Guy Benson Show*, or the licensees of KTBB, WBAP, KPRC, or KSEV. Nor should it. But such a clear disparity in the treatment of broadcasters that ought to be subject to the same treatment under law raises serious concerns about viewpoint discrimination and retaliatory targeting.

To be clear, the Bureau's change in policy and apparent focus on the viewpoints presented in a particular program harms not just ABC's First Amendment rights, but the First Amendment rights of all broadcasters, regardless of their perceived viewpoints. Commentators across the political spectrum have warned about the danger of using the power and influence of the federal government to suppress disfavored views. Indeed, a broad range of voices have begun sounding the alarm that any adverse actions by the FCC will be used by future

¹⁴¹ *The Glenn Beck Program*, KPRC, <https://kprcradio.iheart.com/featured/glenn-beck> (last visited May 7, 2026); *The Glenn Beck Program*, Glenn Beck, <https://glennbeck.com/-listen/series/the-glenn-beck-program> (last visited May 7, 2026) (program webpage).

¹⁴² *Guy Benson Show*, KSEV, <https://ksevradio.com/guy-benson-show> (last visited May 7, 2026); 'IT'S ABOUT THEIR POWER': Rep. Chip Roy Breaks down the SAVE America Act, Fox News Radio (Feb. 11, 2026), <https://radio.foxnews.com/2026/02/11/rep-chip-roy-save-america-act>.

administrations to censor and punish speech they dislike.¹⁴³ Simply put (by Senator Ted Cruz), using the threat of FCC action to chill speech is “dangerous as hell.”¹⁴⁴ Similarly, commentator Ben Shapiro opined:

I do not want the FCC in the business of telling local affiliates that their licenses will be removed if they broadcast material that the FCC deems to be false. Why? Because one day the shoe will be on the other foot. ... I know that a lot of people on the Right are saying, “The shoe will never be on the other foot, and if it is, the Left will just do it anyway.” But preemptively breaking things because you believe that the Left is going to break the things still makes the things broken — and you can’t unbreak them.¹⁴⁵

The equal opportunities rule has always imposed a suspect First Amendment burden on broadcasters. While the Commission put off a reckoning of that burden for decades through judicious application of the bona fide news exemptions, this case illustrates that the fundamental conflicts remain. In short, for several independent reasons, the First Amendment does not permit the Commission’s threatened application of Section 315(a) to *The View*.

V. CONCLUSION.

ABC is committed to full compliance with the Communications Act and the Commission’s rules. ABC is likewise committed to serving the public interest by bringing impactful and engaging news and entertainment programming to the communities it serves. That is why ABC sought—and received—a formal determination from the Commission that *The View* is a bona fide news interview program nearly 25 years ago. Even if it had not done so, however,

¹⁴³ See Stephen Battaglio, *FCC chair’s call for ‘equal time’ could have chilling effect on TV and radio*, L.A. Times (Jan. 23, 2026), <https://www.latimes.com/entertainment-arts/business/story/-2026-01-23/fcc-chairs-call-for-equal-time-could-have-chilling-effect-on-tv-radio> (quoting Sean Hannity as stating “We need less government regulation and more freedom. Let the American people decide where to get their information from without any government interference.”).

¹⁴⁴ Koch, *Cruz Warns Conservatives*, *supra* note 6.

¹⁴⁵ Shapiro, *Glad Kimmel’s Gone*, *supra* note 6.

The View currently qualifies as a bona fide news interview program because it manifestly meets every one of the three factors the Commission and Congress established.

The View, and other shows like it, support the public interest, as Congress envisioned when it adopted the bona fide news exemptions. This goal—giving the public the broadest access to news about political races by permitting broadcasters to cover political news without fear of sanction—is especially critical today. As the 2026 election approaches, the American people need more access to political news and more exposure to political candidates, not less. It is therefore imperative that the Commission act quickly to assure broadcasters that it will uphold its long-established standards protecting broadcasters’ good faith news judgment in including political candidates in bona fide news programming. To do anything else—on the eve of an election cycle—would compound the uncertainty and resulting First Amendment chill that the Commission’s recent actions have engendered. ABC therefore respectfully requests that the Commission expeditiously affirm that *The View* continues to qualify for the bona fide news interview exemption under Section 315(a).

Respectfully submitted,

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May 7, 2026

*Counsel for KTRK Television, Inc. and American
Broadcasting Companies, Inc.*

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	)	
	)	
KTRK Television, Inc. and	)	Docket No. _____
American Broadcasting Companies, Inc.	)	
	)	
Petition for Declaratory Ruling Under Section	)	
315(a) of the Communications Act of 1934, as	)	
Amended	)	

DECLARATION OF BRIAN TETA

I, Brian Teta, declare as follows:

1. I am the Executive Producer of *The View*.
2. I have worked as a television producer since 1998.
3. I joined *The View* in 2015 as co-Executive Producer and was named Executive Producer in 2017.
4. Prior to working on *The View*, I was a producer for several other shows, including *The Late Show with David Letterman*, where I was responsible for booking guests for interviews.
5. I am an employee of the ABC News division of American Broadcasting Companies, Inc.
6. I report directly to Almin Karamehmedovic, the President of ABC News.
7. As Executive Producer, I oversee all aspects of the production of *The View* and I am the direct or indirect supervisor of all personnel who work on *The View*, including its producers and co-hosts.

8. With respect to the day-to-day operations of *The View*, I am the final decision maker for all aspects of the production of *The View*, including the format, content, and participants of the program.

9. *The View* is an ABC Television Network program that has regularly aired since August 1997.

10. The general format of *The View* is a live, one-hour talk show with a panel of women of different backgrounds discussing news, politics, entertainment, popular culture, and social issues. Each episode includes the panel's discussion of the day's "hot topics," along with interviews with newsmakers conducted by the co-hosts.

11. *The View* currently is co-hosted by Joy Behar, Alyssa Farah Griffin, Whoopi Goldberg, Sara Haines, Sunny Hostin, and Ana Navarro.

12. *The View* is broadcast by the ABC Network on weekdays, Monday to Friday, from 11:00 a.m. to 12:00 p.m. (EST). It has maintained this scheduling since its premiere. There are no plans to change this scheduling.

13. Most regular season episodes of *The View* are aired live on eastern time zone stations, with a five second delay to help ensure compliance with broadcast standards.

14. The program takes an annual summer production break for the month of August, during which the ABC Network broadcasts selected previously aired episodes of the program. *The View* generally resumes production at the end of August, and a new season begins the Tuesday after Labor Day.

15. *The View* has received more than 30 Daytime Emmy Awards from the National Academy of Television Arts and Sciences.

16. In 2024, *The View* received the DuPont-Columbia Award for journalism for its contributions to the ABC News team's report entitled "The Power of Water."

17. The production process by which interviews are conducted on *The View* is designed to help ensure that I, and the producers, production staff, and co-hosts under my supervision, maintain control over the content of the program in accordance with ABC News standards.

18. Interview subjects for *The View* are selected and invited through a booking process, which I oversee. I hold a twice-weekly meeting with the producers that constitute *The View*'s booking staff to discuss and select potential guests.

19. *The View*'s booking staff make suggestions for interview subjects based on current events in news, entertainment, popular culture, and politics. Publicists and other outside public relations professionals routinely contact *The View*'s booking staff to advocate for the inclusion of their clients (often, book authors with a new book to promote). *The View*'s co-hosts also may suggest potential guests.

20. Based on information provided to me and my own experience and knowledge of television production, I select potential interview subjects on the basis of newsworthiness, anticipated audience interest, and the potential to generate newsworthy programming content.

21. I am the sole decisionmaker with respect to the selection of interviewees.

22. I do not select potential interview subjects with the intent to advance or harm any individual's candidacy for any office or any other partisan purpose.

23. After I select potential interview subjects, I communicate those selections to *The View*'s booking staff.

24. The booking staff is responsible for contacting the interview subjects or their representatives to issue the invitation and discuss scheduling. As part of the booking process, the booking staff are instructed to describe in general terms the topics they expect will be covered in the interview. Booking staff do not provide potential interview guests with any guarantees as to what content will be covered or included in the broadcast of the program.

25. During my time with *The View*, hundreds of elected officials, political candidates, and political commentators from various parties have appeared on the program.

26. Some individuals that are invited to appear on the program decline the invitation. Over the past two years, individuals that have been invited onto the program but declined the invitation included JD Vance, Robert F. Kennedy, Jr., Lindsey Graham, Josh Hawley, Elon Musk, Kevin McCarthy, and Marco Rubio.

27. Booking staff schedule the interview guests who agree to appear on the program based primarily on the guests' availability and the overall balance of each day's program.

28. Once a guest agrees to appear on the program, one of *The View*'s producers prepares an outline of potential interview questions. That segment producer generally conducts a "pre-interview" meeting with the guest or the guest's representatives to discuss the interview, including the general topics that may be covered. The interview outline generally is based on research provided to the segment producer by *The View*'s staff and information obtained through the "pre-interview."

29. The interview outline is reviewed and edited by *The View*'s co-hosts and may be further reviewed and edited by other ABC News personnel.

30. All interview outlines are finally reviewed and approved by me. Interview guests do not review, edit, or approve the interview outline and are not provided with the interview questions in advance of the interview.

31. *The View*'s co-hosts conduct guest interviews based on the interview outlines that I approve. The interviews may deviate from the outline during the course of the interview, particularly based on the guest's responses and the co-hosts' or the audience's reactions. The co-hosts rely on their experience and judgment to ensure that they, rather than the interview subjects, manage the conduct and flow of each interview. In addition, the co-hosts wear in-ear monitors that allow me and other producers to communicate directions to the co-hosts during the interviews as needed. In most cases, I am on set to observe and oversee the interviews.

32. While some interview segments are recorded prior to broadcast, most interviews are conducted before a studio audience and typically are not edited prior to broadcast.

33. Interview subjects are not given any option to edit or otherwise influence or control the broadcast of the interview, and do not see the final interview until it airs.

34. Texas primary candidate for Senate Jasmine Crockett appeared on *The View* on January 6, 2026.

35. Texas primary candidate for Senate James Talarico appeared on *The View* on February 2, 2026.

36. After Ms. Crockett's appearance on the program, *The View* co-hosts Farah Griffin and Goldberg suggested to me that Mr. Talarico should be a potential interview guest.

37. In deciding whether to invite Mr. Talarico to appear on *The View*, I considered the facts that, at that time, Talarico's campaign had been receiving national attention and that Talarico had gained a significant following on social media. These factors, along with the newsworthiness

of the Texas senate primary elections and potential audience interest in Mr. Talarico, informed my judgment that Mr. Talarico was a newsworthy subject. My decision to invite Mr. Talarico to appear on the program was not motivated by any intent to advance or harm any individual's candidacy.

38. A booking staff member on *The View* issued an invitation to the Talarico campaign for Talarico to be interviewed on the program.

39. After the Talarico's campaign accepted the invitation, one of *The View's* producers (who previously worked for *Yahoo News with Katie Couric* and *Good Morning America*) prepared the interview outline in accordance with our standard processes. The interview outline was reviewed and edited by the co-hosts and other ABC News personnel before I reviewed it and gave final approval.

40. Neither I, nor any of the producers or staff under my supervision, provided the interview outline or any of the prepared questions to Mr. Talarico or his representatives prior to the interview. Neither I, nor any of the producers or staff under my supervision, provided any assurances to Mr. Talarico or his representatives as to the content of the program.

41. Neither I, nor any of the producers or staff under my supervision, provided Mr. Talarico or his representatives with any opportunity to suggest edits or view the final interview before it aired.

I declare, under penalty of perjury, that, to the best of my information, knowledge, and belief, which includes knowledge based on information provided to me by others, that the foregoing is true and correct.



Brian Teta

Executed on: May 7, 2026