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ESSAY

UNEQUAL ENFORCEMENT OF THE EQUAL TIME RULE: LATE NIGHT, TALK RADIO, AND THE NEWS INTERVIEW EXEMPTION

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INTRODUCTION

It is rare for the head of a regulatory agency like the Federal Communications Commission (“FCC”) to emerge as a central figure in popular and political discourse. But in his short time as FCC chair, Brendan Carr—through his public criticism of television shows and networks,¹ and his threats over entertainment programming² and news

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¹ As an FCC commissioner, two months before becoming chair, Carr falsely accused *Saturday Night Live* of violating the law by including a cameo appearance by Democratic presidential nominee Kamala Harris. See Emma Colton, FCC Commissioner Rips NBC Over Harris’ Last-Minute SNL Appearance: ‘Plainly Designed to Evade’ the Rules, FOX News (Nov. 3, 2024, at 13:53 ET), <https://www.foxnews.com/politics/fcc-commissioner-rips-nbc-over-harris-last-minute-snl-appearance-plainly-designed-evade-rules> [https://perma.cc/57D5-EM63]. NBC offered equal time to Donald Trump, so there was no violation. Stephen Battaglio, Trump Campaign Gets Equal Time from NBC After Harris SNL Appearance, L.A. Times (Nov. 4, 2024, at 13:35 PT), <https://www.latimes.com/entertainment-arts/business/story/2024-11-04/trump-campaign-gets-equal-time-from-nbc-after-harris-snl-appearance> [https://perma.cc/5JBS-F3DV].

coverage³—has become one of the most controversial figures in government.

More consequential than Carr’s rhetoric are the policy decisions he has directed. One of those, the focus of this Essay, is the FCC’s public notice in early 2026⁴ of a change to its interpretation of the Equal Opportunity Rules.⁵ Under § 315(a) of the Communications Act, generally referred to as the Equal Time Rule, when legally qualified candidates for office appear in broadcast programming, the broadcaster must offer the same amount of time to opposing candidates.⁶ But the statute exempts “bona fide news” appearances, including newscasts, news interviews, news documentaries, and news events.⁷ The FCC has historically interpreted the news interview exemption broadly to include programs like *The Tonight Show* and the old *Howard Stern* radio show.⁸

Despite this long-established interpretation, Carr criticized ABC’s daytime talk show *The View*, accusing it of violating the law by platforming Democratic candidates without offering equal time to Republicans.⁹ Then, on January 21, 2026, the Media Bureau released a public notice (hereinafter 2026 Equal Time Notice) asserting that it

² After Jimmy Kimmel joked on air about the assassination of Charlie Kirk, Carr said, “we can do this the easy way or the hard way” while discussing potential regulatory actions against ABC. Benny Johnson, Kash Patel Testifying LIVE Now on Charlie Kirk Assassin | Dark Texts with Trans Boyfriend Released . . . , at 1:30:03 (YouTube, Sep. 17, 2025), <https://www.youtube.com/watch?v=4dNxPINQdcs>. Following Carr’s comments, ABC suspended Kimmel. John Koblin, Michael M. Grynbaum & Brooks Barnes, ABC Pulls Jimmy Kimmel Off Air for Charlie Kirk Comments After F.C.C. Pressure, N.Y. Times (Sep. 17, 2025), <https://www.nytimes.com/2025/09/17/business/media/abc-jimmy-kimmel.html>.

³ Carr threatened to revoke the licenses of broadcasters who aired false or “hoax[]” coverage of the war in Iran, echoing President Donald Trump’s call to target “[u]npatriotic” news organizations. Joseph Stepansky, Threats Over Iran War Bare Trump Efforts to Transform Free Speech: Experts, Al Jazeera (Mar. 23, 2026), <https://www.aljazeera.com/news/2026/3/23/threats-over-iran-war-bare-trump-efforts-to-transform-free-speech-experts> [<https://perma.cc/W44J-3FHS>].

⁴ Fed. Commc’ns Comm’n, DA 26-68, FCC’s Media Bureau Provides Guidance on Political Equal Opportunities Requirement for Broadcast Television Stations (Jan. 21, 2026) [hereinafter 2026 Equal Time Notice], <https://docs.fcc.gov/public/attachments/DA-26-68A1.pdf> [<https://perma.cc/KEG7-7L6L>].

⁵ 47 U.S.C. § 315. Part (a) outlines what is generally referred to as the Equal Time Rule while part (b) outlines rules regarding candidate advertising.

⁶ Id. § 315(a).

⁷ Id. § 315(a)(1)–(4).

⁸ See *infra* notes 68–72 and accompanying text.

⁹ Radhamely De Leon, FCC Head Warns It Could Be “Worthwhile” To “Look Into” Whether ‘The View’ Is Violating FCC Rules, *The Decider* (Sep. 19, 2025, at 10:54 ET), www.decider.com/2025/09/19/fcc-view-violating-rules [<https://perma.cc/3A23-VUZX>].

would no longer presume that late-night and daytime television talk shows qualify for the news interview exemption.¹⁰ Shortly thereafter, Carr acknowledged that the FCC had begun to formally investigate *The View*.¹¹ Conspicuously, the 2026 Equal Time Notice makes no mention of broadcast radio, where conservative talk shows dominate and Republican candidates appear routinely.¹² The notice warns against the platforming of candidates for “partisan purposes”¹³ but directs this and its other admonitions solely at broadcast television.

The controversy over the FCC’s new approach peaked after CBS lawyers told *Late Show* host Stephen Colbert on February 16, 2026, that he had to scrap a planned guest appearance by Democratic U.S. Senate candidate James Talarico, and that he could not mention the ban on the air.¹⁴ Colbert defied them in part by revealing to his audience what had transpired behind the scenes.¹⁵ He then posted his interview with Talarico online,¹⁶ where the equal opportunities laws do not apply.¹⁷

Reaction to the Colbert incident was intense, with people from across the political spectrum suddenly debating about these obscure regulations that have been in force since the Radio Act of 1927¹⁸ but have rarely captured much public attention. Public discussion about the rules has

¹⁰ 2026 Equal Time Notice, *supra* note 4, at 3–4.

¹¹ Fed. Commc’ns Comm’n, February 2026 Open Commission Meeting, at 58:20 (YouTube, Feb. 18, 2026) [hereinafter FCC, February 2026 Meeting], <https://www.youtube.com/watch?v=UW0Tsy97-o>. In May, Disney and some of its local affiliates petitioned the FCC for a declaration that *The View* is a bona fide news interview program, and the FCC responded by opening up a public comment period ending July 6. Fed. Commc’ns Comm’n, Comment on Petition by Disney’s ABC Asking the FCC to Declare That *The View* Qualifies as a *Bona Fide* News Interview Program, MB Docket No. 26-124, DA 26-517 (May 22, 2026), <https://docs.fcc.gov/public/attachments/DA-26-517A1.pdf> [<https://perma.cc/978G-Q37U>]. If the FCC takes even 90 days to respond (a timeline it is not obligated to adhere to), this could leave the matter unresolved through Election Day.

¹² See *infra* Part III.

¹³ 2026 Equal Time Notice, *supra* note 4, at 3.

¹⁴ The Late Show with Stephen Colbert, Why CBS Didn’t Broadcast Stephen Colbert’s Interview with James Talarico, at 01:34 (YouTube, Feb. 16, 2026), <https://www.youtube.com/watch?v=oh7DPSP65JA>.

¹⁵ *Id.*

¹⁶ See generally The Late Show with Stephen Colbert, Rep. James Talarico on Confronting Christian Nationalism, and the Strange Days in the Texas Legislature (YouTube, Feb. 17, 2026), https://www.youtube.com/watch?v=oiTJ7Pz_59A.

¹⁷ See 47 U.S.C. § 315(a)–(b) (imposing obligations solely on “licensee[s]” who allow candidates to appear on their “broadcasting station[s]”).

¹⁸ Radio Act of 1927, 47 U.S.C. §§ 81–119, *repealed by*, Communications Act of 1934, ch. 652, § 602(a), 48 Stat. 1102.

been intense but often uninformed, with some people confusing the equal opportunities provisions with the defunct Fairness Doctrine,¹⁹ or conflating § 315(a), the equal time provisions, with § 315(b), which requires broadcasters to provide equal access and reduced rates for political advertising.²⁰ Grounded debate on this issue is urgently needed.

This Essay seeks to contribute to the conversation in three ways. First, it presents the results of an empirical analysis of some prominent television and radio talk shows, testing some of the assumptions underlying the 2026 Equal Time Notice and Carr's critiques. Second, it offers a critical analysis of the FCC's equal time reversal, concluding that in addition to being bad policy built on false assumptions and imposed through flawed processes, it violates both the First Amendment and the anti-censorship provision of the Communications Act.²¹ The final aim of the Essay is to provide some context for this debate by offering a snapshot history of the Equal Opportunity Rules and the FCC's interpretation and application of them over time.

Although this Essay is about policy, not personality, they cannot easily be separated here. Carr takes direction from President Trump in ways that are unusual for an agency head, and Carr even scrubbed the FCC website of references to its status as an "independent agency."²² Carr also echoes President Trump's pointed rhetoric, railing against the "fake news media,"²³ insulting individuals like "sleepy-eyed Chuck Todd,"²⁴ and accusing mainstream media of having "Trump derangement syndrome."²⁵ On March 27, 2026, Carr told the audience at

¹⁹ Editorializing by Broadcast Licensees, 13 F.C.C. 1246, 1249–50 (1949) (requiring broadcasters to address issues of public significance and air competing points of view on those issues). The Fairness Doctrine was abandoned by the FCC as policy in *Syracuse Peace Council*, 2 FCC Rcd. 5043 (1987).

²⁰ 47 U.S.C. § 315(b)(1)–(2).

²¹ Id. § 326 ("Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.").

²² David Shepardson, FCC Deletes Reference to Agency Independence During US Senate Hearing, Reuters (Dec. 17, 2025, at 17:58 ET), <https://www.reuters.com/business/media-telecom/fcc-deletes-reference-agency-independence-during-us-senate-hearing-2025-12-17> [<https://perma.cc/BB9U-T2AN>].

²³ FCC, February 2026 Meeting, *supra* note 11, at 56:45.

²⁴ PBS NewsHour, WATCH LIVE: FCC Chair Brendan Carr Speaks at CPAC, at 02:38 (YouTube, Mar. 27, 2026), <https://www.youtube.com/watch?v=uP8r6oE2Y5M>.

²⁵ FCC, February 2026 Meeting, *supra* note 11, at 55:55.

the CPAC Convention that Trump is taking on the fake media and he “is winning,”²⁶ even though “we[]”²⁷ have not yet finished the mission. Carr then rattled off the victories: liberal hosts and reporters like Joy Reid, Chuck Todd, and Jim Acosta are no longer on the air; Democratic-leaning shows like *The Late Show with Stephen Colbert* have been cancelled; and funding for public media has been zeroed out.²⁸ Carr also extolled the Paramount takeover of CBS and promised the crowd, “CNN is gonna have new ownership as well.”²⁹ Carr’s public statements mirror his policy moves and the FCC’s enforcement actions, which have largely targeted liberal media while protecting conservative ones.³⁰ To be clear, the new 2026 Equal Time Notice is defective, independent of Carr’s proclivities, but his comments and actions raise questions about his motives that are relevant to assessments of the policy’s legitimacy and constitutionality.³¹

Part I of this Essay addresses the original rationale for the equal opportunities law and shows that—in part because of the broad scope of the bona fide news exceptions—enforcement has focused almost exclusively on appearances by candidates in entertainment programming under § 315(a), and on advertising access under § 315(b). Part II addresses the bona fide news exceptions, their origins, and how they have been applied over time. Part III outlines the results of the empirical analysis of candidate appearances on several daytime and late-night TV talk shows, and on some nationally syndicated and local talk radio

²⁶ PBS NewsHour, *supra* note 24, at 02:30.

²⁷ *Id.* at 02:55 (emphasis added).

²⁸ *Id.*

²⁹ *Id.*

³⁰ For example, after outgoing FCC chair Jessica Rosenworcel dismissed several complaints against broadcast stations because they threatened the stations’ First Amendment rights, Carr reinstated the complaints, but only the ones targeting ABC, CBS, and NBC stations, not the ones targeting FOX affiliates. See Katie Kwasneski, FCC Investigations Under Trump Could Hurt Broadcasters, *Gateway Journalism Rev.* (Feb. 27, 2025), <https://gatewayjr.org/fcc-investigations-under-trump-could-hurt-broadcasters/> [<https://perma.cc/3ZL4-2SKT>].

³¹ See *infra* notes 132–33 and accompanying text. It is also important to note that the FCC only has three sitting commissioners: Carr, fellow Republican Olivia Trusty, and Democrat Anna Gomez. The other two slots are vacant. See Leadership, Fed. Commc’ns Comm’n, <https://www.fcc.gov/about/leadership> [<https://perma.cc/6BZF-DWGU>] (last visited July 16, 2026). This gives Carr even more unchecked discretion, and he also personally directs the Media Bureau, which is driving much of this activity. Brendan Carr, Fed. Commc’ns Comm’n, <https://www.fcc.gov/about/leadership/brendan-carr/staff> [<https://perma.cc/7YBE-42SW>] (last visited July 19, 2026).

shows. This research shows how common candidate appearances are on both broadcast TV and radio, and how stark the differences are, with Republicans getting significantly less attention than Democrats on TV talk shows, but with Democrats entirely absent from leading talk radio shows. Secondary analysis also shows that candidate interviews in all these formats are generally substantive, and there is no reason to remove any of these shows from the news interview exemption. Part IV critiques the FCC's new enforcement notice, arguing that it is an arbitrary and capricious change that also violates the First Amendment.

I. EQUAL TIME IN PRACTICE: ADS AND ENTERTAINMENT

The purpose of § 315 is to ensure that broadcasters, who are required to use their licenses in ways that serve the “public convenience, interest, or necessity,”³² do not engage in favoritism that would contort public opinion and give certain candidates or parties an unfair advantage. Because the exemptions for bona fide news are so sweeping, however, almost all the § 315(a) enforcement activity over the past several decades has focused on candidate appearances in *entertainment* (movies, sitcoms, or variety shows like *Saturday Night Live* (“*SNL*”)) that airs on broadcast television.

Arguably, the most high-profile examples over the past decade or so have involved *SNL*.³³ On November 17, 2015, Donald Trump hosted the show five months after he had announced his candidacy for president.³⁴ Other candidates like Hillary Clinton, Sarah Palin, and Barack Obama also made brief cameos, without triggering much attention from the FCC.³⁵ When Kamala Harris appeared on the show in 2024,³⁶ however, then-Commissioner Carr appeared on *Fox News Digital* to excoriate *SNL* and NBC for a choice that he said was “plainly designed to evade

³² 47 U.S.C. § 307(a).

³³ See generally Christopher Terry, Candidate Appearances, Equal Time, and the FCC's Online Public File Database: Empirical Data on TV Station Compliance During the 2016 Presidential Primary, 25 Cath. U. J.L. & Tech 341 (2017).

³⁴ Ali Vitali, Donald Trump Hosts ‘Saturday Night Live’ Amid Protests, NBC News (Nov. 8, 2015, at 06:44 ET), <https://www.nbcnews.com/politics/2016-election/donald-trump-hosts-saturday-night-live-amid-protests-n459341> [<https://perma.cc/KMW6-LMDW>].

³⁵ Louis Jacobson & Amy Sherman, Kamala Harris’ ‘Saturday Night Live’ Appearance and ‘Equal Time’ for Donald Trump: What to Know, Politifact (Nov. 4, 2024), <https://www.politifact.com/article/2024/nov/04/kamala-harris-snl-appearance-and-equal-time-for-do/> [<https://perma.cc/5LZ6-L5RG>].

³⁶ *Id.*

the FCC's rules" and influence the election.³⁷ Carr's critique was disingenuous, however. NBC had already arranged to make equal time available to Trump, and Carr's emails show that he was aware of this before publicly lambasting the network.³⁸ In all of these cases, NBC offered equal time to opposing candidates, or responded to such requests, so whatever stir these appearances may have caused, they did not violate the rule.

In many other instances over the years, broadcast stations have had to modify their programming to withdraw entertainment content featuring actors or comedians who chose to run for office. Stations faced the prospect of pulling episodes of *Law & Order*, for example, when one of the show's stars, Fred Thompson, ran for President.³⁹ Similarly, TV stations had to avoid airing old movies featuring Arnold Schwarzenegger when he ran for governor in California.⁴⁰ The consequences of compliance mistakes are significant, particularly in states like California where it is relatively easy to become a legally qualified candidate. In 2003, Schwarzenegger, actor Gary Coleman, and comedian Don Novello were three of 135 legally qualified candidates for governor, so any broadcast of their appearances in entertainment

³⁷ See Colton, *supra* note 1.

³⁸ In his email correspondence with FOX producers, just prior to his appearance on the *Ingraham Angle*, Carr wrote, "I see that Comcast [which owns NBC] filed an Equal Time notice with the FCC for the Harris appearance." Email from Brendan Carr to Elisa Cipollone (Nov. 3, 2024, at 17:15 ET), *reproduced in* FCC Carr Equal-Time Documents, The Desk (May 20, 2025), <https://thedesk.net/wp-content/uploads/2025/05/2025-05-20-FCC-Carr-Equ-al-Time.pdf> [<https://perma.cc/US9F-25DA>]. A few minutes later, Carr emailed to FOX producers the links to Comcast/NBC's Equal Time filings for both the appearance by Harris and one by Senator Tim Kaine in the same SNL episode. Email from Brendan Carr to Elisa Cipollone et al. (Nov. 3, 2024, at 17:31 ET), *reproduced in* FCC Carr Equal-Time Documents, *supra*.

³⁹ Michael D. Shear, Fred Thompson's Presidential Hopes Could Put 'Law' Reruns in Lockup, *Wash. Post* (Mar. 30, 2007), <https://www.washingtonpost.com/archive/style/2007/03/30/fred-thompsons-presidential-hopes-could-put-law-reruns-in-lockup/76046757-b162-49aa-be70-bfa2f622c843/>. An NBC spokesperson indicated at the time that the network would shelve *Law & Order* re-runs featuring Thompson if he entered the race, citing concerns about triggering the Equal Time Rule. Matea Gold & Jim Puzzanghera, This Run Could Ruin the Reruns, *L.A. Times* (May 4, 2007, at 00:00 PT), <https://www.latimes.com/archives/la-xpm-2007-may-04-et-thompson4-story.html> [<https://perma.cc/WF8W-48XV>].

⁴⁰ JL, Stations Terminate Schwarzenegger Programming, *Reps. Comm. for Freedom of the Press* (Aug. 15, 2003), <https://www.rcfp.org/stations-terminate-schwarzenegger-programming> [<https://perma.cc/PKB4-KMH5>].

shows or movies would have entitled *hundreds* of competitors to free airtime.⁴¹

Although the entertainment-focused incidents tend to garner the most attention, most § 315 enforcement activity has involved § 315(b), which ensures candidates opportunities to place campaign ads.⁴² Broadcasters are required to offer qualified candidates the lowest unit rate for advertising spots during the forty-five days before a primary or sixty days before a general election.⁴³ Broadcast stations are also not permitted to edit or refuse to carry the advertising, regardless of its content.⁴⁴ This makes election advertising by the candidates relatively inexpensive and accessible.⁴⁵ Stations are not required to offer equal access or lowest unit rates for non-candidate issue advertising,⁴⁶ which is therefore much more lucrative for stations, but § 315(b) ensures some level of candidate access to the public airwaves.

Even the simplest applications of § 315(b) have become controversial in recent years. Third-party electoral candidates, including ones that represent fringe constituencies, have used § 315(b) to access the airwaves and promote their pet causes, even when they are only nominally running for office. During the 2024 presidential election, for example, noted anti-abortion activist Randall Terry ran as the Constitution Party candidate.⁴⁷ He then used his status as a legally qualified candidate to place an ad with several TV stations that

⁴¹ Michael C. Dorf, *Why Federal Law May Keep the Terminator Off the Air Until After California's Recall Election: A Primer*, FindLaw (Aug. 20, 2003), <https://supreme.findlaw.com/legal-commentary/why-federal-law-may-keep-the-terminator-off-the-air-until-after-california-recall-election.html> [<https://perma.cc/3ULX-KU9R>].

⁴² 47 U.S.C. § 315(b)(1).

⁴³ *Id.* (“The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign . . . shall not exceed . . . the lowest unit charge of the station for the same class and amount of time for the same period . . .”). Outside of the forty-five- and sixty-day windows, the broadcaster must charge rates comparable to those of regular advertisers. *Id.*

⁴⁴ *Id.* § 315(a) (“[S]uch licensee shall have no power of censorship over the material broadcast under the provisions of this section.”).

⁴⁵ See David D. Oxenford & David A. O'Connor, Wilkinson Barker Knauer, LLP, *Political Broadcasting 2020: Questions and Answers on the FCC Rules and Policies for Candidate and Issue Advertising 2* (2019), [https://www.wbklaw.com/uploads/file/Articles-%20News/Political%20Broadcasting\(2\).pdf](https://www.wbklaw.com/uploads/file/Articles-%20News/Political%20Broadcasting(2).pdf) [<https://perma.cc/Y5KX-EV4H>].

⁴⁶ *Id.* at 18.

⁴⁷ Giselle Ruhiyyih Ewing, *Constitution Party Nominates Anti-Abortion Activist Randall Terry for President*, Politico (Apr. 27, 2024, at 18:09 ET), <https://www.politico.com/news/2024/04/27/constitution-party-randall-terry-election-2024-00154790> [<https://perma.cc/833F-TSNN>].

contained graphic images of aborted fetuses.⁴⁸ This was essentially an issue ad, which Terry tried to disguise by calling it “Kamala Horror.”⁴⁹ Despite some public outrage, and Terry’s own admission that his aim was not to win the race but to trigger a “crisis of conscience,”⁵⁰ stations were required to air the spots unedited.⁵¹

II. EVOLUTION AND APPLICATION OF THE BONA FIDE NEWS EXCEPTIONS

The main reason § 315 enforcement has centered on advertising and entertainment is that the exemptions in § 315(a) cover most of the ordinary situations in which a legally qualified candidate might appear in a broadcast. In 1959, the FCC held in the *Lar Daly* case⁵² that every appearance by a candidate triggered an equal opportunity obligation. Lar Daly was a perennial candidate for Mayor of Chicago who was often seen wearing an Uncle Sam costume.⁵³ Daly filed a complaint with the FCC arguing that he was entitled to equal time because his opponent, Chicago Mayor Richard J. Daley, regularly appeared in news reports on Chicago TV stations.⁵⁴ The FCC ruled 4-3 for Lar Daly, implying that routine news coverage of a candidate constituted a “use” of the airwaves under the § 315(a) equal time mandate.⁵⁵ Broadcasters argued that this interpretation tied the hands of journalists. That same year, Congress

⁴⁸ Joe Lancaster, *This Activist Uses the FCC to Shoehorn Gruesome Anti-Abortion Ads onto the Air, Reason* (Oct. 21, 2024, at 13:15 ET), <https://reason.com/2024/10/21/this-activist-uses-the-fcc-to-shoehorn-gruesome-anti-abortion-ads-onto-the-air/> [https://perma.cc/K88R-XHB5].

⁴⁹ Randall Terry, *Horror of Kamala Ten States Ad*, at 00:01 (Vimeo, Oct. 28, 2024, at 17:10 ET), <https://vimeo.com/1024141127>.

⁵⁰ See Lancaster, *supra* note 48.

⁵¹ WKOW 27 News, *Why TV Stations Have to Air All Those Political Ads and Yes, the Graphic Ones Too*, at 00:32 (YouTube, Sep. 26, 2024), www.youtube.com/watch?v=Up3nflGHerM. Some stations warned viewers that the ads would soon be appearing. News 8 Now, *Graphic Political Ad to Air Starting Monday* (YouTube, Sep. 30, 2024), <https://www.youtube.com/watch?v=wuD0ZJE1zA>.

⁵² *Columbia Broad. Sys. (Lar Daly)*, 18 Pike & Fischer 238 (1959), *reconsideration denied*, 26 F.C.C. 715 (1959).

⁵³ Lar “America First” Daly: The Don Quixote of American Politics, *Mad Pol.* (Apr. 3, 2024), <https://fascinatingpolitics.com/2024/04/03/lar-america-first-daly-the-don-quixote-of-american-politics/> [https://perma.cc/98G3-74RE].

⁵⁴ *Id.*

⁵⁵ *Id.*

agreed and amended the law to include the four bona fide news exceptions.⁵⁶

The FCC has generally applied the equal time exemptions broadly, despite some short-lived contractions. Initially, the FCC held that appearances in broadcast press conferences triggered equal time, but the agency changed course in 1975, categorizing these as bona fide news events.⁵⁷ Also in the 1970s, the FCC determined that broadcast political debates (produced by non-broadcast entities) are exempt if licensees believe in good faith that they constitute bona fide news events and if there was no evidence of favoritism.⁵⁸ This decision effectively allowed major television networks to air debates between primary candidates without including every minor or third-party candidate. Broadcasters have been afforded wide latitude by the FCC when applying the bona fide news exceptions, and reviewing courts have routinely upheld their decisions.⁵⁹ In 1981, the FCC made clear that it wanted to avoid stepping into the role of content arbiter, second-guessing editorial judgments made by broadcasters.⁶⁰ The Commission therefore explicitly gave broadcasters the freedom to apply the exemptions independently and said it would “disturb such decisions only when they are found to be unreasonable or in bad faith.”⁶¹

With radio and daytime talk shows, the FCC has taken a broad view, and for more than 40 years had consistently held that less conventional interview programs like *The Phil Donahue Show*⁶² fall within the exemption, and that even more infotainment-style programs like *The*

⁵⁶ 47 U.S.C. § 315(a)(1)–(4).

⁵⁷ Aspen Inst. Program on Commc’ns & Soc’y, 55 F.C.C.2d 697, 703 (1975); see also *Kennedy for Pres. Comm. v. FCC*, 636 F.2d 417, 432 (D.C. Cir. 1980) (rejecting Senator Ted Kennedy’s demand for equal time to respond to President Jimmy Carter’s address to the nation, broadcast by all the major networks).

⁵⁸ *Chisholm v. FCC*, 538 F.2d 349, 351 (D.C. Cir. 1976). The United States Supreme Court added in 1998 that even public broadcasters have wide editorial discretion to decide which candidates to include in televised debates. *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 669 (1998) (rejecting argument by third-party candidate that exclusion violated the First Amendment).

⁵⁹ E.g., *Kennedy for Pres.*, 636 F.2d at 420; *Fulani v. FCC*, 49 F.3d 904, 906, 915 (2d Cir. 1995) (rejecting equal time demand by independent presidential candidate after ABC aired live program featuring then-undeclared independent candidate Ross Perot).

⁶⁰ *McGlynn v. N.J. Pub. Broad. Auth.*, 439 A.2d 54, 66 (N.J. 1981) (citing *Ann Klein*, 49 *Pike & Fischer* 1038 (1981)).

⁶¹ *Id.*

⁶² *Multimedia Ent., Inc.*, 56 *Pike & Fischer* 143 (1984).

*Sally Jessy Raphael Show*⁶³ and *The Jerry Springer Show*⁶⁴ satisfy the criteria. The FCC noted that including these types of shows within the exemption aligns with the broader congressional intent to foster public examination of campaigns and candidates, and excluding these shows would discourage broadcasters from exploring new coverage strategies and formats.⁶⁵ The FCC has taken a similarly broad approach with late-night programming, ruling in 1999 that the bona fide news exemption applied to ABC's *Politically Incorrect*,⁶⁶ a topics-based roundtable show hosted by Bill Maher. In 2006, after actor Arnold Schwarzenegger had appeared multiple times on *The Tonight Show with Jay Leno*, the FCC held that the interview portions of that show were also exempt.⁶⁷

The breadth of the news interview exemption is probably best illustrated by the FCC's 2003 decision to include *The Howard Stern Show*, which at the time was a syndicated broadcast radio program.⁶⁸ Stern's show was often an FCC target.⁶⁹ Nevertheless, the Commission held in 2003 that candidate interviews on Stern's shows met the criteria, in particular that the guests were selected based on their newsworthiness, and not to "advance their candidacies."⁷⁰ The FCC emphasized again that broadcasters need not "seek [a] formal declaration from the Commission that . . . such programs qualify as news exempt programming."⁷¹ This mirrored the guidance the Commission provided two decades earlier.⁷² On this point, and in nearly every way noted above, the 2026 Equal Time Notice marks a radical turn.

III. EMPIRICAL ANALYSIS: WHAT THE EVIDENCE REVEALS

There are several explicit or implicit assumptions underlying the FCC's shift on equal time that this Essay examines: 1) the notion that

⁶³ Multimedia Ent., Inc., 6 FCC Rcd. 1798, 1798 (1991).

⁶⁴ Multimedia Ent., Inc., 9 FCC Rcd. 2811, 2811 (1994).

⁶⁵ Multimedia Ent., Inc., 56 Pike & Fischer 143, ¶ 11 (1984).

⁶⁶ ABC, Inc., 15 FCC Rcd. 1355, 1355 (1999).

⁶⁷ Angelides for Governor Campaign, 21 FCC Rcd. 11919 (2006).

⁶⁸ Infinity Broad. Operations Inc., 18 FCC Rcd. 18603 (2003).

⁶⁹ See Christopher Terry & Kyla P. Garrett Wagner, Super Bowl Halftime Shows, Wardrobe Malfunctions, Stripper Poles, and the Never-Ending Saga of Indecency Enforcement by the FCC, 10 J. Media L. & Ethics 18, 24 (2022).

⁷⁰ Infinity Broad. Operations, Inc., 18 FCC Rcd. 18603 ¶ 4 (2003).

⁷¹ Id. ¶ 5.

⁷² See McGlynn v. N.J. Pub. Broad. Auth., 439 A.2d 54, 66 (N.J. 1981).

candidate appearances on daytime or late-night television talk shows are historically uncommon and that this is an escalating practice; 2) that Democratic candidates are more commonly featured than Republicans; 3) that the problems the FCC has identified are uniquely applicable to television; 4) that the candidate interviews on television talk shows are not substantive; and 5) that television talk shows—but not radio talk shows—appear to be platforming candidates for “partisan political purposes.”⁷³

Regarding the first assumption, the FCC’s shift is a surprise, because it throws into doubt decades of precedent and practice. It dismisses the value of some of that precedent because parts of it came from staff-level determinations by the Media Bureau and not from the full Commission, and it notes that it is unaware of any information that would confirm that the shows “presently” on the air qualify for the news interview exemption.⁷⁴ It adds, puzzlingly, that the *Angelides* decision,⁷⁵ which recognized the *Tonight Show* as exempt, is not instructive because Jay Leno is no longer the host.⁷⁶

To get a clearer picture of the practices of shows *presently* on the air, and to see if they have a history of doing candidate interviews, the authors started by collecting two sets of data. The first was a complete list of political guests appearing on *The View*—the show that Carr criticized and that is now being investigated. We started our initial data collection to correspond to the time Carr began serving as an FCC commissioner in 2017. Our initial data set included many appearances by former politicians and political pundits, whose appearances previously triggered equal time under the Zapple Doctrine.⁷⁷ Because that doctrine is no longer in effect, we eliminated those appearances and focused solely on appearances by federal candidates who were current officeholders. Using the IMDb database, guests for each day of the

⁷³ 2026 Equal Time Notice, *supra* note 4, at 1. This is the language the FCC has used for years as a rationale for the Equal Time Rule. The FCC reiterates the phrase “partisan purposes” throughout the 2026 Equal Time Notice and implies that TV talk shows might be operating with this motive.

⁷⁴ *Id.* at 4.

⁷⁵ See *supra* note 67 and accompanying text.

⁷⁶ 2026 Equal Time Notice, *supra* note 4, at 4 n.20.

⁷⁷ The Zapple Doctrine extended § 315 to cover appearances by official supporters of legally qualified candidates. See *Nicholas Zapple*, 23 F.C.C.2d 707, 707–08 (1970). The Zapple Doctrine was not widely enforced and was repealed in 2014. *Capstar TX LLC*, 29 FCC Rcd. 5010, 5012 (2014).

program were collected and federal elected officials coded, eliminating those who appeared in repeated episodes. We then used Ballotpedia.com to confirm the political party affiliation of each of those guests.

Although the initial inquiry focused solely on *The View* in response to Carr's comments about the show and the 2026 Equal Time Notice, the analysis was expanded to develop a second set of data focused on *The Late Show with Stephen Colbert* and *Jimmy Kimmel Live!*, given that those shows had also been in the FCC's crosshairs. For the latter shows, the authors focused on all candidate appearances (not just current officeholders) between January 1 and Election Day in the election years of 2018, 2020, 2022, and 2024. This included all House candidates, plus Senate candidates in years when the incumbent was up for reelection. The original data on *The View* was then recoded to enable the cross-show comparisons in Table 2 below. The first set of data was focused on elected officials and is not limited to election years, because it was gathered to address Carr's broader assumption that *The View* is not a bona fide news interview program. With the second set of data, the focus was on appearances by all candidates (not just elected officials), and targeted election-year appearances when the Equal Time Rule would be most salient.

Table 1 summarizes the frequency of federal elected official appearances on *The View* between 2018 and 2025, with partial data from 2017 and 2026. It also breaks this down by party affiliation.

Table 1: Elected Officials on *The View* (Aug. 2017–Feb. 2026)

Year	Democrat	Republican	Total
2017*	1	2	3
2018	11	7	18
2019	12	5	17
2020	15	6	21
2021	18	2	20
2022	9	1	10
2023	7	2	9
2024	13	0	13
2025	11	2	13
2026**	2	0	2
Totals	99	27	126
Percent	(78.6)	(21.4)	(100)

* Start: Aug. 11, 2017 (Carr Joins FCC); ** End: Feb. 28, 2026 (Last Data Available).

There were 126 federal elected official appearances on *The View* during the study period.⁷⁸ The balance leaned heavily Democratic, although there were some Republican candidate appearances. In addition, there were many appearances by Republicans who were no longer in office—including former Congressman Newt Gingrich and former New Jersey Governor Chris Christie—that are not reflected in the totals.

⁷⁸ Senator Bernie Sanders, who is formally an independent, was coded as a Democratic candidate when his appearances were tied to his campaigns for the Democratic Party nomination for President.

Table 2: Federal Candidate Appearances on TV Talk Shows in Election Years (2018–2024)

Year	Program	Democrat	Republican	Total
2018	The View	7	1	8
2018	Jimmy Kimmel	3	0	3
2018	Stephen Colbert	6	0	6
2020	The View	17	4	21
2020	Jimmy Kimmel	4	0	4
2020	Stephen Colbert	13	0	13
2022	The View	7	0	7
2022	Jimmy Kimmel	1	0	1
2022	Stephen Colbert	7	0	7
2024	The View	9	1	10
2024	Jimmy Kimmel	4	0	4
2024	Stephen Colbert	7	0	7
Totals		85	6	91
Percent of Total		(93.4)	(6.6)	(100)

Table 3: Federal Candidate Appearances on TV Talk Shows in Election Years (2018–2024)

Year	Programs	Dem.	Percent	Rep.	Percent	Total
2018	View, Kimmel, Colbert	16	(94.1)	1	(5.9)	17
2020	View, Kimmel, Colbert	34	(89.5)	4	(10.5)	38
2022	View, Kimmel, Colbert	15	(100.0)	0	(0.0)	15
2024	View, Kimmel, Colbert	20	(95.2)	1	(4.8)	21
Totals		85	(93.4)	6	(6.6)	91

Tables 2 and 3 focus on federal candidate election-year appearances for all three shows. Overall, candidate appearances were less common on late-night shows than on *The View*, and much more common on *The Late Show with Stephen Colbert* than on *Jimmy Kimmel Live!* Across all years, Colbert interviewed thirty-three candidates to Kimmel's twelve. All of the candidates appearing on those two shows were Democrats,

and about ninety-three percent of all candidates on the three shows combined were Democrats.

The data in Tables 1, 2, and 3 suggests two key things. First, they contradict the assumption that candidate appearances on these talk shows are either a rare or growing practice. They have been a common feature on *The View* since the start of Carr's tenure on the FCC in 2017, yet he did not express concerns about this until 2025. Second, the data confirms Carr's assumption that the talk shows give more airtime to Democrats than Republicans. The disparities are pronounced, although less so with *The View* than with Colbert and Kimmel.

If these party disparities are the reason for the FCC's new approach, then this raises another question: Is the Commission's focus on television, and not radio, warranted? To help inform that question, the authors catalogued appearances by federal elected officials and candidates on the highest-rated and most influential talk radio program, *The Sean Hannity Show*, from January 1 to Election Day in election years 2018, 2020, 2022, and 2024.⁷⁹ Table 4 shows the extent to which elected officials and candidates are featured on Hannity's show and the fact that they are exclusively Republican. The authors also compiled parallel data for the same types of appearances on two of the other top five syndicated talk radio programs, *The Clay Travis and Buck Sexton Show* and *The Mark Levin Show*.⁸⁰ These results are shown in Table 5. The year 2024 was selected because it was the most recent election year and the only one for which data on all three shows was available.

⁷⁹ Only partial data was available for 2018. Show summaries were obtained from the Podchaser database, at www.podchaser.com. The podcast versions of Hannity's show are just repackaged versions of his broadcast radio shows. The same source was used to collect data on *The Clay Travis and Buck Sexton Show* and *The Mark Levin Show*, addressed *infra*.

⁸⁰ The top five syndicated hosts are all conservative talkers: Hannity, Clay & Buck, Glenn Beck, Mike Gallagher, and Mark Levin. See Top Talk Audiences, Talkers, <https://talkers.com/top-talk-audiences/> [<https://perma.cc/SZ3G-4R6C>] (last visited July 12, 2026). No data was available for Beck or Gallagher in the years studied. This top five excludes *The Ramsey Show* (host Dave Ramsey), which is second overall but is focused on financial advice and is not principally political.

Table 4: Federal Elected Official and Candidate Appearances on *Hannity* (Jan. 1–Election Day)

Year	Program	Democrat	Republican	Total
2018*	The Sean Hannity Show	0	6	6
2020	The Sean Hannity Show	0	66	66
2022	The Sean Hannity Show	0	131	131
2024	The Sean Hannity Show	0	119	119
Totals		0	322	322

*Only partial year data available (begins Aug. 18).

Table 5: Federal Elected Official and Candidate Appearances in 2024 on *Hannity*, *Clay & Buck*, and *Levin* (Jan. 1–Election Day)

Year	Program	Democrat	Republican	Total
2024	The Sean Hannity Show	0	119	119
2024	The Clay & Buck Show	0	106	106
2024	The Mark Levin Show	0	67	67
Totals		0	292	292
Percent of Total		(0.0)	(100.0)	(100)

The results in Table 4 show that candidate appearances on *Hannity*'s show are routine and a central feature. Only Republicans appeared on the show in the years analyzed. Perfect comparisons between *Hannity* and the television shows are not possible because the criteria are not identical, but appearances on *Hannity*'s show are more frequent than on any of the television shows. Although only one year of data was analyzed for *The Clay Travis and Buck Sexton Show* and *The Mark Levin Show*, the overall pattern is the same. All their candidate guests were Republicans.

Another contextual factor to consider is audience reach. People continue to underestimate the enduring influence of radio relative to television.⁸¹ The average daily audience for the television talk shows is

⁸¹ Nielsen, Audio Today 2026: How America Listens 2 (2026), <https://www.nielsen.com/wp-content/uploads/sites/2/2026/03/Nielsen-2026-Audio-Today-How-America-Listens-Mar>

large: 2.6 million for *The View*,⁸² 2.4 million for Colbert, 1.8 million for Kimmel.⁸³ Yet *The Sean Hannity Show* reaches more people than any of those shows, attracting about 3.4 million listeners per day.⁸⁴ Clay and Buck reach about 1.95 million per day, and Levin reaches about 1.65 million.⁸⁵ And these are just a few of the more prominent programs. On commercial radio, there are at least twenty-eight syndicated talk shows that reach one million or more listeners per week.⁸⁶ Of those, just one is liberal (Thom Hartmann), three are non-political, and the other twenty-four are conservative.⁸⁷

Even accounting for the limited scope of the data presented here, there is no justification for the FCC's selective scrutiny of television talk shows. To the extent that there are imbalances in the platforming of political candidates in broadcast media, they appear to be even more extreme on broadcast radio. The FCC, therefore, is either unduly focused on television and should broaden the scope of its guidance, or it is intentionally targeting television to serve its own "partisan political purposes." The latter seems even more plausible when considering conservative domination of talk radio at the local level, for which there is no television equivalent. There are an estimated 1,500 stations airing conservative talk shows,⁸⁸ and many of those stations are wholly devoted to conservative programming.

Local and state candidates routinely appear on these shows, and the partisan imbalances are stark. For example, WISN in Milwaukee, the

26.pdf [https://perma.cc/4ZVF-9J2N]. Approximate daily numbers are calculated by taking the weekly numbers and dividing by the shows per week.

⁸² Loree Seitz, 'The View' Wraps Up First Quarter of 2025 with 2.62 Million Viewers, Up 4% from Last Year, *The Wrap* (Apr. 2, 2025 at 10:00 ET), https://www.thewrap.com/the-view-first-quarter-2025-ratings [https://perma.cc/X3TH-7DME].

⁸³ Jed Rosenzweig, Here Are Final Late Night Ratings for Q2 2025, *LateNighter* (July 14, 2025, at 10:27 ET), https://latenighter.com/news/ratings/late-night-tv-ratings-q2-2025 [https://perma.cc/G8XS-MK4R].

⁸⁴ See Top Talk Audiences, *supra* note 80.

⁸⁵ *Id.* There are two other major television talk shows on which candidates have appeared but that are not included in the analysis: *The Tonight Show Starring Jimmy Fallon* and *Late Night with Seth Myers*, both on NBC. The authors made a practical choice to limit the analysis to the three shows studied here, which had all been targets of the FCC or President Trump for one reason or another. See *supra* notes 2, 11 and 14.

⁸⁶ Top Talk Audiences, *supra* note 80.

⁸⁷ See *id.*; Why Is Talk Radio So Right-Wing? (And How Can the Left Compete?), *Current Affs.* (Oct. 6, 2021), https://www.currentaffairs.org/news/2021/10/why-is-talk-radio-so-right-wing-and-how-can-the-left-compete? [https://perma.cc/9E84-NEAG].

⁸⁸ Why Is Talk Radio So Right-Wing?, *supra* note 87.

authors' home city, has a full lineup of conservative talk shows—both syndicated and local.⁸⁹ The conservative members of Wisconsin's congressional delegation routinely appear on the locally produced shows. Senator Ron Johnson appeared on WISN at least six times in 2022 alone.⁹⁰ The only comprehensive data the authors could locate was from 2018 and 2019.⁹¹ It is a bit old but still revealing. In those two years, all 132 candidate guests on WISN radio were Republicans.

Table 6: State and Federal Legislative and Judicial Candidate Appearances on WISN-Milwaukee (2018–2019)

Year	Federal Democrat	State Democrat	Sup. Court Democrat	Federal Republican	State Republican	Sup. Court Republican	Total
2018	0	0	0	32	37	6	75
2019	0	0	0	38	16	3	57
Subtotals	0	0	0	70	53	9	132
Totals	0 (0.0)			132 (100.0)			(100)

This is a model that we see in nearly every part of the country. Local talk radio is dominated by conservatives.⁹² This has been the case at both the national and local levels for years,⁹³ and accelerated after the repeal of the Fairness Doctrine in 1987.⁹⁴ Conservative talk radio has become a vital part of the Republican communication strategy and is

⁸⁹ On-Air Schedule, News/Talk 1130 WISN, <https://newstalk1130.iheart.com/schedule/> [<https://perma.cc/WP8N-3QLA>] (last visited July 7, 2026).

⁹⁰ Data was obtained from quarterly issue reports in the FCC public file of WISN-AM. WISN, FCC: Public Inspection Files, <https://publicfiles.fcc.gov/am-profile/WISN/Issues%20and%20Programs%20Lists/263f4f60-3d1e-e5e4-6fe5-1ddab079e3c7>.

⁹¹ Id. The forms were changed in 2020 and now contain less comprehensive data than what had been required in previous years.

⁹² John Halpin et al., *The Structural Imbalance of Political Talk Radio 1* (2007), https://cdn.americanprogress.org/wp-content/uploads/issues/2007/06/pdf/talk_radio.pdf [<https://perma.cc/CW4P-XY95>].

⁹³ Id. (noting in its 2007 analysis of the 257 stations owned by the top five commercial station owners, ninety-one percent of the talk radio content was conservative, and just nine percent progressive).

⁹⁴ Liam Scott, *The Repeal of the Fairness Doctrine Accelerated the Polarization of US Media*, Poynter Inst. (Apr. 22, 2025), <https://www.poynter.org/reporting-editing/2025/poynter-50-repeal-fairness-doctrine-rush-limbaugh-conservative-talk-radio> [<https://perma.cc/42HQ-GK4B>].

“the heart of Trumpism,”⁹⁵ according to Cato Institute scholar Paul Matzko. All of this raises legitimate suspicion about whether Carr and the FCC are acting in good faith on equal time.

Another assumption Carr and the FCC seem to make is that appearances by candidates on shows with more entertainment features are not substantive. Why else would Carr be questioning whether TV talk shows fit the exemption—an issue that has been settled for two decades? The reality is that when candidates are guests on these shows, the purpose and tenor change. Candidates are not appearing on these shows to do cooking segments or chat about pop culture. The conversations can include some lighthearted banter, but most questions are serious. In Talarico’s interview on *The View*, which triggered the FCC’s investigation, every question posed to him was about policy, government, religion, or about his path to politics.⁹⁶ Two of the questions directly challenged him by restating accusations that were made by his critics.⁹⁷

The whole premise of *The View* is to bring women from different backgrounds together to discuss important social or political issues, so it should not be surprising that the hosts’ interactions with guests are generally substantive, particularly, but not exclusively, when those guests are political candidates. We did not attempt a content analysis of these shows, but even an impressionistic review of random show transcripts suggests that this is the case. In 2018, for example, when Senator Cory Booker appeared on the program, the hosts engaged him in a conversation about President Trump’s social media messaging and its impact on political discourse, before turning to a discussion of the Mueller investigation and the firing of FBI Deputy Director Andrew McCabe.⁹⁸ Later that same year, Republican Senator Tim Scott and Republican Representative Trey Gowdy were guests on the program to discuss their book about political division and were also asked about other pressing issues in politics.⁹⁹

⁹⁵ Paul Matzko, Talk Radio Is Turning Millions of Americans into Conservatives, Cato Inst. (Oct. 9, 2020), <https://www.cato.org/commentary/talk-radio-turning-millions-americans-conservatives> [https://perma.cc/QHJ8-26TS].

⁹⁶ The View, Texas Lawmaker James Talarico Discusses His Primary Run for Senate, (YouTube, Feb. 2, 2026), <https://www.youtube.com/watch?v=hi2hy9kAOIA>.

⁹⁷ Id. at 04:50.

⁹⁸ The View (ABC, aired Mar. 19, 2018).

⁹⁹ The View (ABC, aired Apr. 12, 2018).

In 2020, *The View* hosted a series of candidates running in the Democratic presidential primary, including Senators Elizabeth Warren and Amy Klobuchar, who discussed their policy positions on issues like consumer protection, taxes, and internet regulation.¹⁰⁰ In other appearances, Klobuchar was asked about the abortion ban in Alabama,¹⁰¹ the impact of COVID-19 on the country,¹⁰² and her questioning of Brett Kavanaugh during his Supreme Court confirmation hearing.¹⁰³ Non-candidate political newsmakers also regularly appear, including people like former White House Press Secretary Jen Psaki¹⁰⁴ and former Governor Chris Christie, who appeared at least ten times between 2017 and 2024.¹⁰⁵ Newt Gingrich has also made many appearances—in 2018 discussing Trump’s conflict with Senator John McCain,¹⁰⁶ in 2019 discussing the San Diego synagogue shooting,¹⁰⁷ and in 2020 to address COVID-19 lockdowns.¹⁰⁸ Journalists and political pundits, like former GOP media consultant Tara Setmayer¹⁰⁹ and current CBS news chief Bari Weiss,¹¹⁰ are also regularly invited on the show. In an earlier period, Donald Trump was also a regular guest, appearing at least eighteen times prior to becoming a presidential candidate.¹¹¹ All these guests generally offer the same kind of analysis and opinion they would contribute if appearing on *Face the Nation* or *Meet the Press*. Lighthearted banter and comedic asides on *The View*, when they occur, are exceptions to the overwhelmingly substantive focus of these appearances.

The same is true of candidate interviews on late-night talk shows, except that those tend to be pocketed segments that stand apart from

¹⁰⁰ The View (ABC, aired Feb. 11, 2020); The View (ABC, aired Jan. 7, 2020).

¹⁰¹ The View (ABC, aired May 17, 2019).

¹⁰² The View (ABC, aired Mar. 18, 2020).

¹⁰³ The View (ABC, aired Oct. 18, 2018).

¹⁰⁴ The View (ABC, aired Feb. 25, 2021).

¹⁰⁵ This data was gleaned from the same IMDb show summaries referenced throughout this Part. Episode citations are omitted for brevity.

¹⁰⁶ The View (ABC, aired June 5, 2018).

¹⁰⁷ The View (ABC, aired Apr. 29, 2019).

¹⁰⁸ The View (ABC, aired Mar. 26, 2020).

¹⁰⁹ See The View (ABC, aired Feb. 1, 2022); The View (ABC, aired June 1, 2022).

¹¹⁰ See The View (ABC, aired Mar. 4, 2019); The View (ABC, aired Dec. 5, 2019); The View (ABC, aired Feb. 11, 2020); The View (ABC, aired Oct. 27, 2020).

¹¹¹ This was the figure cited on air by host Whoopi Goldberg. The View (ABC, aired Feb. 19, 2018). For a video of the segment, see IdolxNews, Trump Appeared 18 Times on The View—Collage of Clips (The View), at 00:09 (YouTube, Feb. 19, 2018), <https://www.youtube.com/watch?v=PWOIEKa1K2c>.

other show content. Still, the interviews themselves, which should be the FCC's focus, are akin to those on *The View*, albeit with just one interlocutor. If a candidate appeared on *The Tonight Show Starring Jimmy Fallon* to do a lip sync battle or play celebrity Pictionary, the news interview exception would arguably not apply.¹¹² But that does not happen. Political guests get political questions. In his unaired interview with James Talarico, for example, Stephen Colbert asked Talarico about the FCC policy that supposedly triggered the canceled segment, the changing political dynamics for Democrats in Texas, the ways in which Talarico is seeking to connect with Trump voters, the separation of church and state (Talarico is a Presbyterian seminarian), and the effect of conspiracy theories on policy.¹¹³ Colbert also challenged Talarico to respond to the accusation that he made a derogatory comment about an opponent.¹¹⁴ No part of the interview was frivolous. Colbert, like most hosts, occasionally injects some humor into these interviews, but so did former *Meet the Press* host Tim Russert when he would banter with his guests about college football or his beloved Buffalo Bills. Those friendly or humorous sidebars, by Russert or Colbert or Whoopi Goldberg, do not alter the overall purpose and effect of the interviews. If the FCC intends to use show *category* as a proxy for episode-specific show *content*, it would be misplaced, because candidate interviews on all these shows provide useful engagement that serves the purposes of the exemption. The fact that some shows—in other segments or on other episodes—are more entertainment-driven does not change this.

A final assumption that Carr and the FCC seem to be making is that the television talk shows are hosting political guests to advance their candidacies. Carr's critiques have focused solely on television, and the 2026 Equal Time Notice warns only television broadcasters, with no parallel warning to radio broadcasters, that guests must be chosen because of their "newsworthiness, rather than [to serve] partisan purposes."¹¹⁵ At the FCC's February 2026 meeting, Carr was asked what criteria the Commission would use as evidence of a partisan

¹¹² Appearances like these would be more akin to the entertainment examples noted earlier, see *supra* notes 39–41 and accompanying text, where the candidate is offered friendly exposure, not substantive questioning.

¹¹³ The Late Show with Stephen Colbert, Rep. James Talarico on Confronting Christian Nationalism, and Strange Days in the Texas Legislature (YouTube, Feb. 17, 2026), https://www.youtube.com/watch?v=oiTJ7Pz_59A.

¹¹⁴ *Id.* at 10:11.

¹¹⁵ 2026 Equal Time Notice, *supra* note 4, at 3.

purpose.¹¹⁶ He did not offer any examples but said simply that “this is something that, you know, will be explored as part of the FCC case law.”¹¹⁷ Whether or not the FCC has a partisan objective, the evidence clearly shows that its singular focus on television talk shows is unwarranted in light of the pervasive platforming of candidates on local and national broadcast radio.

IV. ADMINISTRATIVE, STATUTORY, AND CONSTITUTIONAL DEFECTS

The policy shift reflected by Carr’s statements and in the 2026 Equal Time Notice is not a minor interpretive tweak. It is a problematic reversal that should be challenged on several levels. As a matter of administrative law, the agency’s notice is inadequate for a policy change that warps and ultimately dismisses decades of FCC rulings and staff guidance. The agency should have issued a notice of inquiry, sought comment, and built a more persuasive rationale and a stronger factual record. If any adverse action¹¹⁸ is taken against a broadcast station based on the new guidance, it should be challenged in court as arbitrary and capricious under the Administrative Procedure Act.¹¹⁹

The Supreme Court has held that agency actions violate the Administrative Procedure Act when there is no “rational connection between the facts found and the choice made,”¹²⁰ when the agency “failed to consider an important aspect of the problem,”¹²¹ or “offered an explanation for its decision that runs counter to the evidence.”¹²² The 2026 Equal Time Notice offers no data to support its policy change, and it leans on specious arguments like the *Tonight Show* precedent being inapposite because Jay Leno is no longer the host.¹²³ The FCC also does not account for the inevitably counterproductive effect of the policy shift, which will likely discourage television broadcasters from airing *any* interviews with legally qualified candidates, either out of fear of violating the law, or because of the logistics of accommodating every

¹¹⁶ FCC, February 2026 Meeting, *supra* note 11.

¹¹⁷ *Id.* at 1:03:05.

¹¹⁸ It is not certain that a reviewing court would treat the new guidance as “final” under the Administrative Procedure Act, but this would change if it was used as the basis of an enforced penalty.

¹¹⁹ 5 U.S.C. § 706(2)(A).

¹²⁰ *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962).

¹²¹ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

¹²² *Id.*

¹²³ See 2026 Equal Time Notice, *supra* note 4, at 4 n.20.

qualified competitor. Most importantly, the notice provides no explanation for the exclusion of radio from its guidance, creating disparate and arbitrary distinctions between similarly situated broadcasters. When asked about this during the FCC’s February 2026 open commission meeting, Carr said television programmers “were either overreading or misreading some of the case law” and that “we haven’t seen the same issues on the radio side.”¹²⁴ He did not elaborate or offer examples, except to refer people back to the 2026 Equal Time Notice. Yet the word “radio” does not appear anywhere in that document.¹²⁵ Carr added that television programmers are welcome to petition the FCC for a declaration that they satisfy the news interview exception.¹²⁶ But considering the investigation of *The View*, Carr’s public criticism of late-night TV, and his dismissal of the merits of TV talk show interviews—“Colbert is no David Muir,” Carr insists¹²⁷—it is not hard to predict how those petitions would be treated.

The FCC’s investigation of *The View*, if a penalty is ultimately imposed, would also clearly violate the due process standards articulated by the Supreme Court in its 2012 decision in *FCC v. Fox Television Stations, Inc.*¹²⁸ In that case, the Court set aside indecency-related sanctions against FOX broadcast stations because the agency used an enforcement standard adopted *after* the broadcasts occurred. It violates due process, the Court held, if “regulated parties . . . [do not] know what is required of them,” or if the guidelines are so imprecise that it invites “arbitrary or discriminatory” enforcement.¹²⁹ The Court added that these standards must be applied with special rigor when “sensitive areas of basic First Amendment freedoms” are involved.¹³⁰ Any penalty springing from the FCC’s investigation of *The View* would be unjustifiably retroactive and a Fifth Amendment due process violation. Furthermore, given the targeted nature of the investigation, and the fact that the investigation itself—even before any sanction is imposed—will likely chill editorial choices, the affected parties could seek injunctive

¹²⁴ See FCC, February 2026 Meeting, *supra* note 116, at 1:02:02–1:02:14.

¹²⁵ See 2026 Equal Time Notice, *supra* note 4.

¹²⁶ See FCC, February 2026 Meeting, *supra* note 11, at 59:55.

¹²⁷ *Id.* at 59:26 (referring to ABC reporter and anchor David Muir).

¹²⁸ 567 U.S. 239 (2012).

¹²⁹ *Id.* at 253.

¹³⁰ *Id.* at 254 (quoting *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964)).

relief. In any case, a reviewing court¹³¹ should ultimately have no difficulty finding that any penalties flowing from *The View* investigation would be unconstitutionally retroactive, and that the broader scheme laid out in the 2026 Equal Time Notice is arbitrary and capricious.

The FCC's new approach to equal time is also a violation of the First Amendment, both as viewpoint discrimination and because it establishes a de facto prior restraint scheme. It is viewpoint discriminatory on its face because it targets broadcast television, which Carr has explicitly accused of favoring Democrats, while ignoring commercial talk radio, which is dominated by conservative hosts¹³² who routinely platform Republican candidates to the near exclusion of Democrats.¹³³ The FCC has offered no justification for this disparate treatment. The new policy is also viewpoint discriminatory as applied against the targets of *The View* investigation, who have been unduly singled out. The same would be true if the FCC takes any action against other TV broadcasters moving forward, at least where there is no parallel enforcement against talk radio. The FCC's one-directional warning to TV broadcasters is clearly not a good faith reminder; it is a threat designed to coerce action by *certain* broadcasters who seek to interview *certain* candidates.

There is little room left for plausible deniability. Just about every action Carr has taken since ascending to the Chair position has targeted Democrats or liberal-leaning media and protected Republicans or conservative-leaning media. And each new action leaves less doubt about the legitimacy of the ones before. In addition to the actions noted earlier in this Essay, Carr has also dusted off old and ambiguous doctrines, like the News Distortion Rule and the rule against hoaxes, to use as ammunition against television broadcasters.¹³⁴ Meanwhile, commercial talk radio, despite its one-party platforming of candidates, its ideological uniformity, and the party boosterism and political

¹³¹ Reviewing courts are no longer required to give deference to agency interpretations of statutory provisions. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024), *overruling* *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

¹³² See *supra* Tables 4–6.

¹³³ *Id.*

¹³⁴ Both of those rules are based on the Commission's broader statutory mandate to ensure that licensees operate in the public interest. They are not codified regulations, and the FCC has for decades eschewed enforcement, because, as it still says on the FCC website, it would "be inconsistent with the First Amendment" to "replace the journalistic judgment of licensees with our own." Fed. Comm'n's Comm'n, *The Public and Broadcasting*, <https://www.fcc.gov/media/radio/public-and-broadcasting#DISTORT> [https://perma.cc/658B-B8VD] (last visited July 7, 2026).

involvements of its hosts,¹³⁵ was conspicuously spared from the FCC's "partisan political purposes" warning.¹³⁶

Aside from its viewpoint-based aims, the new FCC guidance functions as a prior restraint scheme by effectively requiring broadcasters and programmers to go through an approval process before airing certain content. Prior restraints of expression are presumptively unconstitutional,¹³⁷ and the Communications Act expressly prohibits FCC censorship of licensees.¹³⁸ Although the FCC has substantial latitude to impose content-based restrictions that are linked to its public interest mandate, this does not include prior review.¹³⁹ This is why the FCC previously told broadcasters that they need not seek FCC approval before relying on the bona fide news exceptions, and that the FCC would only act against bad faith violators, and only after the fact.¹⁴⁰

In the current scheme, it is not clear what criteria will be used to determine what qualifies as a bona fide news interview. It is not even certain whether the Commission will make these evaluations at the show level, the episode level, or the interview level. The only way a programmer or broadcaster could be sure, given that the FCC has now cast doubt on the utility of all previous precedent and guidance, is to seek prior FCC approval. They could do this by responding to the FCC's invitation in its 2026 Equal Time Notice to "obtain formal assurance that the equal opportunities requirement does not apply" by filing a "petition for [a] declaratory ruling."¹⁴¹ Because this evaluation would presumably be at the show level, it might be sufficiently broad to survive prior restraint scrutiny. But it is almost certainly a phony offer. Given everything Carr and the FCC has recently communicated, it is inconceivable that the Commission would declare any late-night talk show to be categorically exempt, especially because candidate

¹³⁵ Sean Hannity, for example, appeared on stage at a Trump rally in 2018 and praised the President, just one day before the midterm elections. Meredith McGraw, Fox News Calls Sean Hannity's Appearance at Trump Rally an 'Unfortunate Distraction,' ABC News (Nov. 6, 2018, at 15:30 ET), <https://abcnews.com/Politics/fox-news-calls-sean-hannitys-appearance-trump-rally/story?id=59002981> [<https://perma.cc/W4PX-G9K5>]. Carr, an FCC commissioner at the time, said nothing.

¹³⁶ 2026 Equal Time Notice, *supra* note 4, at 1.

¹³⁷ *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)).

¹³⁸ 47 U.S.C. § 326.

¹³⁹ See *FCC v. Pacifica Found.*, 438 U.S. 726, 735 (1978).

¹⁴⁰ See *supra* notes 60–61 and accompanying text.

¹⁴¹ 2026 Equal Time Notice, *supra* note 4, at 4.

interviews on those shows are sandwiched between entertainment content. Even *The View* might be rejected because its interviews are more often with entertainers than politicians. Without a show-level declaration, then, and with all the preexisting criteria now in flux or out the window, the only way programmers and broadcasters could be sure of avoiding penalty would be to seek prior review of specific episodes or interviews. That would clearly cross a line, putting the FCC in the role of content arbiter, enabling it to make the kind of fine-grained, program-related decisions that the agency has historically avoided.¹⁴² It would also violate § 326¹⁴³ and the First Amendment by functioning as a government-imposed system of prior restraint.¹⁴⁴

CONCLUSION

Despite decades of settled practice, the FCC now claims it is uncertain whether candidate interviews on daytime or late-night talk shows qualify as news interviews. The 2026 Equal Time Notice has upended established interpretations and has already chilled candidate appearances. This Essay sought to provide context for the ongoing debate, and to test some of the stated or implicit assumptions that undergird the agency's abrupt shift. The data shows that candidate interviews on television talk shows are common and substantive, even when embedded in entertainment formats. During Brendan Carr's time on the Commission, hundreds of candidates have appeared on the three television shows studied here (*The View*, Colbert, and Kimmel), despite Carr's attempt to frame this as an emergent practice, or to suggest that these interviews are qualitatively different than those of past eras.

The most conspicuous and revealing omission in the 2026 Equal Time Notice is any reference to broadcast radio. Neither Carr nor the FCC has offered a clear explanation for this. As a matter of policy and

¹⁴² For example, the FCC repealed the Fairness Doctrine, see *supra* note 19, and the political editorial and personal attack rules, *Radio-Television News Dirs. Ass'n v. FCC*, 229 F.3d 269, 272 (D.C. Cir. 2000), in part because of their impact on the First Amendment rights of broadcasters. Also, until reviving it this year, the Commission had largely abandoned the News Distortion Rule because of the First Amendment problems it presents. See *supra* note 134 and accompanying text.

¹⁴³ See 47 U.S.C. § 326.

¹⁴⁴ See, e.g., *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 721 (1931) (holding that a regulation "cannot be justified by reason of the fact that the publisher is permitted to show, before [penalty] issues, that the matter published is true and is published with good motives and for justifiable ends").

enforcement it makes no sense. The analysis in Part III shows that talk radio shows like *The Sean Hannity Show* and *The Mark Levin Show* regularly host Republican political candidates to the exclusion of Democrats, and they are responsible for far more appearances overall than the television shows that have been targeted by the FCC. They are also just two of twenty-four conservative radio shows in syndication with a million or more daily listeners. Candidates appear on many of these shows, and this model is then duplicated locally on the more than 1,500 stations airing conservative content. Considering all of this, the FCC's exclusive focus on television talk shows, and its suggestion that they are serving partisan political purposes, is, at the very least, bad policy. But it is more than that.

Carr and the FCC appear to be targeting what they perceive as Democratic-friendly shows. Nearly every mass media-related statement or action from Carr since January 2025 has been aimed at the interests of more liberal media while exonerating conservative media or leaving them undisturbed. The pattern is so clear that it eliminates all doubt about motive and compounds the problem. The equal time shift is not just bad policy—arbitrary, counterproductive, misdirected, built on a flimsy factual record, and proclaimed without a Commission vote—it is also unconstitutional. It creates a viewpoint-based enforcement structure and a de facto prior restraint scheme that violates both the First Amendment and § 326.

The FCC could deflect some of these concerns by vowing to apply the new equal time guidance equally across all media. But investigating *The Sean Hannity Show* to balance the investigation of *The View* is not a solution. Both clearly fit the news interview exception. Carr and the FCC should retract the 2026 Equal Time Notice and reaffirm the standards that have prevailed for the past two decades.