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October 8, 2025

The Honorable Ted Cruz
Chair

Committee on Commerce, Science, and Transportation
U.S. Senate
Washington, DC 20515

The Honorable Maria Cantwell
Ranking Member

Committee on Commerce, Science, and Transportation
U.S. Senate
Washington, DC 20515

Dear Chair Cruz and Ranking Member Cantwell,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the rights of all persons in the United States, and the undersigned co-chairs of our Media/Telecommunications Task Force, we appreciate the committee's attention to the critical issue of government overreach and threats to free expression guaranteed by the Constitution. The First Amendment serves as the bedrock of American democracy, and vigilance against government overreach is essential to preserving our constitutional freedoms. For these reasons, we respectfully request that you follow this hearing with one conducting oversight of the current Federal Communications Commission (FCC) and its commissioners. We also ask for this letter to be entered into the record of the Senate Committee on Commerce, Science, and Transportation hearing titled "*Shut Your App: How Uncle Sam Jawboned Big Tech Into Silencing Americans.*"

The Supreme Court Recently Rejected Claims of Unconstitutional "Jawboning" by the Prior Administration, Including Allegations Against CISA.

This hearing claims to examine a "censorship campaign conducted in secret by the Biden administration's Cybersecurity and Infrastructure Security Agency (CISA)." Just last year, the Supreme Court examined similar allegations in *Murthy v. Missouri* (2024) and rejected them.

In *Murthy*, plaintiffs—including two states and five social media users—alleged that Biden administration officials, including CISA, the White House, the Surgeon General, and the Center for Disease Control (CDC), pressured social media platforms to censor speech about COVID-19 and election-related topics in violation of the First Amendment. The District Court issued a preliminary injunction against multiple agencies including CISA, and the Fifth Circuit affirmed.

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The Supreme Court reversed 6-3, holding that plaintiffs lacked standing because they failed to establish that their injuries were fairly traceable to government conduct or that an injunction would redress their harms. Writing for the majority, Justice Coney Barrett emphasized that the extensive factual record—spanning over 26,000 pages—did not support the conclusion that government communications actually coerced platforms into content moderation decisions.

The Court made several critical factual findings that undermined plaintiffs’ claims of coercion. First, “the platforms had independent incentives to moderate content and often exercised their own judgment.” Second, and most significantly, “the platforms began to suppress the plaintiffs’ COVID-19 content before the defendants’ challenged communications started.” The Court found that this is timeline undermined any inference that government pressure, rather than platforms’ independent editorial policies, drove moderation decisions. As Justice Coney Barrett explained, this “complicates the plaintiffs’ effort to demonstrate that each platform acted due to ‘government-coerced enforcement’ of its policies, rather than in its own judgment.”

The Court further found that by the time plaintiffs filed suit in August 2022, “the frequent, intense communications that took place in 2021 between the Government defendants and the platforms had considerably subsided.” Without evidence of ongoing pressure, the Court concluded that there was no basis to conclude that future content moderation would be traceable to government action rather than platforms’ independent editorial choices. The Court noted that “the available evidence indicates that the platforms have continued to enforce their policies against COVID-19 misinformation even as the Federal Government has wound down its own pandemic response measures.”

Critically, the *Murthy* decision distinguished between government communications—even strong or critical ones—and unconstitutional coercion. The Court recognized that government officials may express views about misinformation and even “speak with the platforms about COVID-19 and election-related misinformation,” without violating the First Amendment. The core of this analysis is whether such communications cross the line into coercion that transforms private editorial decisions into state action. The Court held that the extensive factual record before it did not meet this standard.

In *Murthy*, the Supreme Court examined claims similar to those at the heart of this hearing. After exhaustive fact-finding, the Court concluded that the evidence did not establish the causal link required to show unconstitutional coercion, finding instead that platforms acted on independent incentives, began content moderation before most government communications occurred, and continued their policies after government engagement ceased.

The Court’s framework makes clear that strong government criticism of platform policies, or even requests for policy changes, do not constitute “jawboning” absent concrete evidence that government pressure, rather than platforms’ own editorial judgment, drove specific moderation decisions.

The First Amendment Protects Content Moderation Decisions by Platforms and Prevents Government Intrusions that Suppress Individual Freedom of Expression.

This hearing’s framing inverts the actual threat of jawboning and the continued undermining of First Amendment rights that people in the U.S. face today. While the committee examines the actions of a previous administration no longer able to jawbone, the current administration is waging an unprecedented campaign of government coercion against private actors’ constitutionally protected rights to engage in content moderation and editorial judgement.

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Since inauguration day, the President has used private lawsuits to extract nearly \$60 million in settlements from social media platforms and over \$30 million from major broadcast media outlets; the administration has simultaneously been attempting to criminalize otherwise protected speech by threatening prosecutions and political retaliation.¹ These actions fall squarely within this Committee’s jurisdiction and demand immediate oversight, investigation, and accountability for these ongoing abuses.

Private companies—including social media platforms, broadcasters, and publishers—possess their own First Amendment rights to establish and enforce community standards, moderate content, and make editorial decisions about what speech to host or amplify on their platforms. The Supreme Court has repeatedly and recently affirmed these principles.

In *Moody v. NetChoice* (2024), the Court held that platforms engage in constitutionally protected speech activity when they exercise editorial discretion, and that the government cannot require platforms to “carry and promote [] speech they would rather discard or downplay.” The Court explicitly rejected arguments that government can dictate platforms’ content moderation to achieve ideological balance, noting that “it is no job for government to decide what counts as the right balance of private expression.”

Similarly, in *National Rifle Association v. Vullo* (2024), the Court unanimously held that government officials cannot use regulatory authority to coerce private entities into suppressing speech, warning that officials cross into impermissible coercion when their conduct “could be reasonably understood to convey a threat of adverse government action in order to punish or suppress speech.”

Recent Activity and Statements by the Trump Administration Constitute a Campaign of Coercive Intrusion and Control that Violate the First Amendment.

The Trump administration's ongoing campaign against companies’ content moderation and editorial decisionmaking runs afoul of the standard for impermissible government coercion set out in *NRA v. Vullo*. In September 2025, YouTube settled with President Trump for \$24.5 million over its decision to suspend his account following January 6, 2021—joining Meta (\$25 million) and X (\$10 million) in paying nearly \$60 million collectively for enforcing their own community standards during a national crisis.²

These settlements represent precisely the chilling effect the First Amendment forbids: private companies’ forced acquiescence in response to a “threat of” (or actual) “adverse government action” that interferes with and punishes private actors for exercising their editorial judgment as permitted by the First Amendment. This chilling effect extends across the entire media ecosystem, from social media platforms to broadcast networks to publishers, creating an environment of threat or undue government pressure in which companies make editorial decisions based on government pressures rather than their own standards, business model, users’ safety, or the public interest.

¹ Charlie Warzel, “YouTube Bends the Knee,” *The Atlantic* (Oct. 1, 2025), https://www.theatlantic.com/technology/2025/10/youtube-trump-settlement/684431/?gift=YyWH8VklYl_6f2ICNsEnCaezGBz2MZZ0fzSx_iY8nfE; Meg James, “After CBS and ABC’s Trump Settlements, Democrats Want to Curb Presidential Library Gifts,” *Los Angeles Times* (July 16, 2025), <https://www.latimes.com/entertainment-arts/business/story/2025-07-16/cbs-abc-trump-payouts-qatar-jet-proposed-curbs-library-gifts>.

² Charlie Warzel, “YouTube Bends the Knee,” *The Atlantic* (Oct. 1, 2025), https://www.theatlantic.com/technology/2025/10/youtube-trump-settlement/684431/?gift=YyWH8VklYl_6f2ICNsEnCaezGBz2MZZ0fzSx_iY8nfE.

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Recent statements by top U.S. Department of Justice (DOJ) officials further showcase how this administration is perpetuating unlawful overreach, violating principles of freedom of expression. After the murder of Charlie Kirk, Attorney General Pam Bondi has threatened to prosecute individuals and even businesses for "hate speech"—speech that is constitutionally protected from government sanction—while simultaneously pressuring companies to abandon their own voluntary efforts to moderate such content.³ This incoherent approach punishes the exercise of free speech by individuals and companies alike, undermining constitutional protections and boundaries while expanding government control and suppressing free expression.

Social media platforms have substantial legitimate interests—indeed, even responsibilities—in moderating hate speech, preventing the organization of violent extremist groups, and limiting the amplification of content that harms users and degrades the quality of discourse. Unlike government actors that are constrained by the First Amendment's prohibition on censoring hate speech, private platforms may permissibly decide not to host or amplify hate speech, inauthentic or misleading content, or extremist organizing. These editorial decisions serve multiple critical purposes: they maintain a platform's information ecosystem, protect users from harm, and prevent platforms from becoming vectors for radicalization and real-world violence.

Coerced Demoderation Extracts Measurable Real-World Costs from Communities, the Marketplace of Ideas, and American Democracy.

The consequences of abandoning content moderation fall disproportionately on communities of color and other marginalized groups. When platforms have reduced appropriate content moderation, unmoderated spaces have become vehicles for real-world voter suppression, orchestrated harassment campaigns, and targeted disinformation that functionally silences already marginalized voices.

As civil rights enforcement offices across federal agencies are eliminated, and nondiscrimination standards are corroded, the absence of platform moderation exacerbates these threats. To be clear, harassment and disinformation do not function as mere expressions of viewpoints: they systematically silence communities that have historically faced discrimination and continue to face barriers to full participation in democratic discourse.

Moreover, content moderation protects consumers from fraud and scams that disproportionately target communities of color. The Federal Trade Commission's data shows that between January 2021 and June 2023, losses from social media-related fraud reached \$2.7 billion, with Black and Latino consumers more than twice as likely as white consumers to lose money to digital scams.⁴ Platform policies that reduce fraud and disinformation serve essential consumer protection functions that align with—rather than contradict—regulatory objectives and First Amendment protections.

The consequences of demoderation have become evident. Users of X (formerly Twitter), following the platform's adoption of minimal content moderation policies and elimination of fact-checking, have experienced widely reported increases in hate speech, harassment, and extremist content. The platform

³ Giselle Ruhyyih Ewing, "'That is Not the Law': Bondi Promised to Target 'Hate Speech.' She's Facing Backlash From All Corners.," Politico (Sept. 16, 2025), <https://www.politico.com/news/2025/09/16/pam-bondi-first-amendment-hate-speech-prosecution-00566424>.

⁴ Emma Fletcher, "Social Media: A Golden Goose for Scammers," Federal Trade Commission (Oct. 6, 2023), <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2023/10/social-media-golden-goose-scammers>.

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has seen significant advertiser departures and user migration to alternative platforms.⁵ This degradation demonstrates why platforms historically invested in content moderation—not because the government forced them to, but because maintaining quality standards is essential to user safety and to product quality and viability.

Government jawboning in its most pernicious form is the current distortion and unlawful weaponization of legal precedent and established constitutional norms to pressure private actors to abandon editorial standards altogether while also attempting to criminalize otherwise protected speech. If this Committee is concerned about government threats to free speech and editorial independence, this administration’s ongoing campaign of corporate and individual intimidation and capitulation-seeking behavior demands immediate oversight and investigation.

FCC Chair Brendan Carr’s Actions Warrant Scrutiny by the Full Commerce Committee.

Much has already been said about FCC Chair Brendan Carr’s comments to American Broadcasting Company (ABC) affiliates urging them to inform ABC that they would not carry Jimmy Kimmel Live and highlighting the power the FCC has over the broadcasting licenses of the affiliates.⁶ First amendment experts pointed to Carr’s rhetoric and the subsequent (temporary) removal of Kimmel’s show as a textbook example of an undue and violative form of pressure,⁷ and highlighted the many ways in which the FCC has attempted to police speech in the name of the public interest (both in the issuance of broadcast licenses and the approval of mergers).⁸

Underlying all of this is also Nexstar’s pending merger before the FCC and the upcoming changes to its existing media ownership rules, necessary for the merger to be permitted under current law.⁹ This recent behavior by the Chair was so egregious that many members of Congress on both sides expressed deep concern,¹⁰ and some even called for Carr’s removal as Chair.¹¹

⁵ Michael Jensen, “Hate Speech on X Surged for at Least 8 Months After Elon Musk Takeover - New Research,” The Conversation (Feb. 12, 2025), <https://theconversation.com/hate-speech-on-x-surged-for-at-least-8-months-after-elon-musk-takeover-new-research-249603>

⁶ Press Release, ACLU, ACLU Responds to Trump Administration Move Censoring Jimmy Kimmel (Sept. 17, 2025), <https://www.aclu.org/press-releases/aclu-responds-to-trump-administration-move-censoring-jimmy-kimmel>.

⁷ Anna Branigin, “How Cancel Culture Came for Everyone,” Washington Post (Oct. 1, 2025), <https://www.washingtonpost.com/style/power/2025/10/01/cancel-culture-kimmel/>.

⁸ Ted Johnson, “Brendan Carr’s Threats On Networks May Be ‘Jawboning,’ And Courts Don’t Like It, Legal Experts Say” Deadline (Sept. 19, 2025),

<https://deadline.com/2025/09/fcc-brendan-carr-jawboning-jimmy-kimmel-1236549243/>; Tom Wheeler, “Trump’s CBS Lawsuit Ties Media Freedom to FCC’s Regulatory Power,” Brookings (Feb. 19, 2025), <https://www.brookings.edu/articles/trumps-cbs-lawsuit-ties-media-freedom-to-fccs-regulatory-power/>.

⁹ Keith Collins and Raj Saha, “How a TV Merger Raised the Pressure on ABC to Suspend Kimmel,” New York Times (Sept. 19, 2025), <https://www.nytimes.com/interactive/2025/09/19/business/media/abc-nexstar-kimmel.html>.

¹⁰ Anthony Adragna, John Hendel, and Gabby Miller, “‘Be Very Careful:’ Some in the GOP Balk at Kicking Kimmel Off TV,” Politico (Sept. 18, 2025), <https://www.politico.com/news/2025/09/18/gop-lawmakers-come-out-against-the-fccs-role-in-kimmel-axing-00572140>.

¹¹ Press Release, Democratic Leader Hakeem Jeffries, Whip Katherine Clark, Caucus Chair Pete Aguilar, Caucus Vice Chair Ted Lieu, Assistant Leader Joe Neguse and DCCC Chair Suzan DelBene, Joint Leadership Statement on the Suspension of Jimmy Kimmel (Sept. 18, 2025), <https://democraticleader.house.gov/media/press-releases/joint-leadership-statement-suspension-jimmy-kimmel>.

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We also have serious concerns about the way in which telecommunications companies have been pressured by FCC leadership into dropping their diversity, equity, and inclusion programs to ensure their mergers are approved.¹² Both T-Mobile and Verizon had pending mergers before the FCC that were approved within days of sending letters to Chair Carr announcing the end of the programs. Despite plain civil rights mandates and an abject failure to meet them, the FCC required many companies to eliminate their programs that aimed to ensure fair treatment of and equal opportunity for women, people of color, people with disabilities, and the LGBTQ community in order for their mergers to be approved.

Chair Carr has shown a pattern of complete disregard for the First Amendment and a willingness to abuse the FCC's authority to further this administration's authoritarian agenda. All of the above actions are part of a larger pattern of behavior at the FCC: disregard for the law and the will of Congress. This warrants further investigation by the Commerce Committee, and we strongly urge you to follow-up this hearing with one conducting oversight of the current FCC and its three commissioners.

We stand ready to work with Congress on policies that will protect civil rights, prevent unlawful discrimination, and advance equal opportunity. Should you require further information or have any questions regarding this issue, please feel free to contact Jonathan Walter, senior policy counsel, at walter@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
UnidosUS
United Church of Christ Media Justice Ministry

¹² Brit Morse, "The FCC Takes on a New Role: DEI Regulator," Fortune (July 17, 2025), <https://fortune.com/2025/07/17/federal-communications-commission-new-role-dei-regulator/>.