

# Fairness Doctrine

Report prepared by the Victory Institute

## What is the Fairness Doctrine?

- The Fairness Doctrine is a government plan to limit free speech
  - Censors Christian and conservative talk radio
- FCC regulation that requires broadcasting stations to air both sides of a controversial issue.
  - Reduces, rather than encourages discussion of controversial issues of public importance
  - While in effect, broadcasters limited controversial programming in fear of government sanction and administrative and legal expenses
- Equal time would be provided free of charge, becoming costly to broadcasting licensees, who would drop popular shows like Rush Limbaugh
  - Bill Ruder, the Assistant Secretary of Commerce under John F. Kennedy, admitted to CBS News producer Fred Friendly that "our massive strategy was to use the Fairness Doctrine to challenge and harass right-wing broadcasters and hope the challenges would be so costly to them that they would be inhibited and decide it was too expensive to continue."<sup>1</sup>
- Christian radio programs would be threatened as Christian beliefs such as sexuality, marriage, parental responsibility, and the sanctity of human life are considered controversial, or even hate speech
  - The FCC made a series of complaints against Christian talk show host Carl McIntire and his radio station, WXUR, for not presenting “contrasting views”
    - FCC refused to renew license, forcing McIntyre off the air in 1973

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<sup>1</sup> Fred W. Friendly, *The Good Guys, the Bad Guys and the First Amendment: Free Speech vs. Fairness in Broadcasting*, (Random House, Inc. 1975)

- In 1990, there were only about 400 talk radio stations<sup>2</sup>
  - Today there are well over 1,400 talk radio stations, numerous satellite radio stations and internet radio streams, and millions of blogs, internet video websites, and podcasts
- Fairness should be left to the free market – equal opportunity, not equal results

## What does the Law say?

- Original version was abolished by the FCC in 1987 because:
  - It didn't serve the public interest
  - There was no longer a scarcity of media
  - It was in violation of the First Amendment
- The FCC's abolishment of the Fairness Doctrine was upheld by the 8th Circuit Court of Appeals in 1993
- Re-institution would be a return to a liberal monopoly of the airwaves, with **no free exchange of ideas**
- The Fairness Doctrine **violates your First Amendment right to free speech**
  - (*Congress shall make no law . . . abridging the freedom of speech, or of the press. . .*)
- Supreme Court Cases
  - In 1974, the Supreme Court found that the Fairness Doctrine inescapably dampens the vigor and limits the variety of public debate in *Miami Herald Publishing Company v. Torino*
  - In 1984, the Court found that the Fairness Doctrine was limiting the breadth of public debate in *FCC v. League of Women Voters*
  - In 1986, the Court held that the constitutional guarantee of free speech protects significant societal interests wholly apart from the speaker's interest in self-expression, including the **public's interest in receiving information** in *Pacific Gas and Elec. Co. v. Public Utilities Comm'n of California*
  - In 2000, the Court ruled that under the First Amendment's free-speech clause, the citizen is

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<sup>2</sup> [http://www.stateofthenewsmedia.org/2007/narrative\\_radio\\_talk\\_radio.asp?cat=8&media=9](http://www.stateofthenewsmedia.org/2007/narrative_radio_talk_radio.asp?cat=8&media=9)

entitled to seek out or reject certain ideas or influences **without government interference or control** in *U.S. v. Playboy Entertainment Group, Inc.*

- Circuit Court Cases
  - In 1999 the 10th Circuit held that the two components of effective speech are a speaker and an audience, and that a restriction on either of these components is a restriction on speech in *U.S. West, Inc. v. F.C.C.*
  - In 2003, the 4th Circuit held that the First Amendment protects the right to receive information and ideas in *Rosignol v. Voorhaar*
  - In 2005, the 5th Circuit found that the right to receive information is just as protected as the right to convey it in *de la O v. Housing Authority of City of El Paso*
- Supporters in Congress are in violation of their Oath of Office
  - *I do solemnly swear (or affirm) that **I will support and defend the Constitution** of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.*

## Why act now?

- House Speaker Nancy Pelosi (D-CA) previously said that the Broadcaster Freedom Act will not receive a vote because “the interest of [her] caucus is in reverse.”
- Senator Tom Harkin (D-IA) said that “We've got to get the Fairness Doctrine back in law again.”<sup>3</sup>
- Senator Debbie Stabenow (D-MI), who is married to a liberal talk radio executive, “I absolutely think it’s time to be bringing accountability to the airwaves... I feel like that's gonna happen.”<sup>4</sup>
- Senator John Kerry (D-MA), said “I think the Fairness Doctrine ought to be there and I also think equal time doctrine ought to come back.”<sup>5</sup>
- Senator Dick Durbin (D-IL) said “It’s time to reinstitute the Fairness Doctrine. I have this old-

3 <http://www.iowapolitics.com/index.html?Article=150094>

4 [http://www.politico.com/blogs/michaelcalderone/0209/Sen\\_Stabenow\\_wants\\_hearings\\_on\\_radio\\_accountability\\_talks\\_fairness\\_doctrine.html?showall](http://www.politico.com/blogs/michaelcalderone/0209/Sen_Stabenow_wants_hearings_on_radio_accountability_talks_fairness_doctrine.html?showall)

5 [http://www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=56398](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=56398)

fashioned attitude that when Americans hear both sides of the story, they're in a better position to make a decision."<sup>6</sup>

- Senator Dianne Feinstein (D-CA) said "Well, I'm looking at it, as a matter of fact ... because I think there ought to be an opportunity to present the other side. And unfortunately, talk radio is overwhelmingly one way."
- Senator Jeff Bingaman (D-NM) said, "For many, many years, we operated under a Fairness Doctrine in this country. I think the country was well-served. I think the public discussion was at a higher level and more intelligent in those days than it has become since."<sup>7</sup>
- Former President Bill Clinton said that the U.S. "ought to have the Fairness Doctrine or we ought to have more balance on the other side."<sup>8</sup>
- Representative Maurice Hinchey (D-NY) said "I think the Fairness Doctrine should be reinstated. The idea of fairness in the media is very important," he said. "We should have a fair and open system."
- Representative Henry Waxman (D-CA) has already met with the FCC to discuss ways to implement the Fairness Doctrine without calling it such (see below)<sup>9</sup>
- Senator Charles Schumer (D-NY) and Representative Anna Eschoo (D-CA) have also recently expressed their support
- Representatives Louise Slaughter (D-NY) and Dennis Kucinich (D-OH) have been actively working to reinstate the Fairness Doctrine
- The Obama Administration has not taken an open position, rather they have deflected comments to the incoming FCC Chairman, Julius Genachowski
  - The FCC could simply reinstate the Fairness Doctrine themselves

## Backdoor Implementation

- FCC Commissioner Robert McDowell (a Bush appointee serving until June 2009) warned of a more stealthy approach
  - Disguised under the terms localism, diversity, and network neutrality

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6 <http://thehill.com/leading-the-news/schumer-defends-fairness-doctrine-as-fair-and-balanced-2008-11-04.html>

7 <http://newsbusters.org/blogs/ken-shepherd/2008/10/23/sen-bingaman-d-n-m-fairness-doctrine-would-help-radio-reach-higher-cal>

8 <http://www.worldnetdaily.com/index.php?fa=PAGE.view&pageId=88823>

9 <http://spectator.org/archives/2009/02/16/in-all-fairness>

- Mandatory community advisor boards would be set up to determine content
- John Podesta, who heads the think tank Center for American Progress and was the co-chairman for the Obama Transition Team, mapped out a strategy<sup>10</sup> in 2007 for clamping down on talk radio
  - The report demonstrates that locally- or minority-owned radio stations are statistically more likely to carry liberal political talk shows
  - The report has since been parroted by both the Obama campaign and the new administration's White House website.<sup>11</sup>
    - Obama's press secretary wrote during the campaign that “Sen. Obama supports media-ownership caps, **network neutrality**, public broadcasting, as well as **increasing minority ownership** of broadcasting and print outlets.”<sup>12</sup>
    - The White House web site says that the President plans to “encourage **diversity in the ownership** of broadcast media, promote the development of new media outlets for expression of diverse viewpoints, and clarify the public interest obligations of broadcasters who occupy the nation's spectrum.”<sup>13</sup>
- Acting FCC Chairman Michael Copps does not support the Fairness Doctrine, but does feel government should enforce diversity in media
  - Including re-examining licensing and other regulations for radio stations to make them more reflective of public interests
  - Copps also has said that the decision rests with Congress<sup>14</sup> despite a D.C. Circuit Court of Appeals decision in 1986 (*Telecommunications Research and Action Center v. FCC*) stating that the imposition of the Fairness Doctrine was at the discretion of the FCC

## Disinformation Campaign

- The press secretary of Senator Dick Durbin (whose support is quoted above) said, “That's a completely made-up issue,” and stressed that Durbin has “no plans, no language, no nothing” to reinstate the Fairness Doctrine.<sup>15</sup>

<sup>10</sup> [http://www.americanprogress.org/issues/2007/06/pdf/talk\\_radio.pdf](http://www.americanprogress.org/issues/2007/06/pdf/talk_radio.pdf)

<sup>11</sup> <http://www.wnd.com/index.php?fa=PAGE.view&pageId=88113>

<sup>12</sup> [http://www.broadcastingcable.com/article/114322-Obama\\_Does\\_Not\\_Support\\_Return\\_of\\_Fairness\\_Doctrine.php](http://www.broadcastingcable.com/article/114322-Obama_Does_Not_Support_Return_of_Fairness_Doctrine.php)

<sup>13</sup> <http://www.whitehouse.gov/agenda/technology/>

<sup>14</sup> <http://www.cnsnews.com/public/content/article.aspx?RsrcID=43414>

<sup>15</sup> <http://www.tnr.com/politics/story.html?id=68d07041-7dbc-451d-a18a-752567145610>

- Senate Majority Leader Harry Reid's secretary said, "We have enough real problems facing this country that we don't need to invent ones that don't exist. This is not even close to being on our radar screen."<sup>16</sup>

## Quotes

- Liberal talk show host Alan Colmes: "Modern day talk radio would not thrive if there were a Fairness Doctrine and the bureaucratic nightmare that's involved in the kind of paperwork you need to do that. The free market should be the arbiter of what flies on talk radio. ... That's where I want to make it, and not because I have government help to do so."
- John F. Kennedy: "We are not afraid to entrust the American people with unpleasant facts, foreign ideas, alien philosophies, and competitive values. For a nation that is afraid to let its people judge the truth and falsehood in an open market is a nation that is afraid of its people."
- Broadcaster Dan Rather: "I can recall newsroom conversations about what the FCC implications of broadcasting a particular report would be. Once a newsperson has to stop and consider what a government agency will think of something he or she wants to put on the air, an invaluable element of freedom has been lost."

## Broadcaster Freedom Amendment

- Senator Jim DeMint (R-SC) introduced an amendment that would ban the Fairness Doctrine
  - Senate passed amendment, which is now attached to a D.C. voting rights bill

## Other Activity

- Senator Dick Durbin (D-IL) introduced an alternative amendment to order FCC to encourage radio ownership diversity
  - DeMint aide: Durbin's amendment would "impose the Fairness Doctrine through the back door by trying to break up radio ownership."<sup>17</sup>

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16 <http://www.washingtontimes.com/news/2009/jan/08/republicans-seek-to-bar-its-return/>

17 <http://www.foxnews.com/politics/2009/02/26/demint-tries-prevent-fairness-doctrine-revival/>

- Breaking up syndication networks like Clear Channel would put local radio stations out of business
- Vague regulation could apply to television, newspapers, and the internet

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