

THE FAIRNESS DOCTRINE AND LOCALISM

WHAT IS THE FAIRNESS DOCTRINE?

The Fairness Doctrine began as a 1949 policy adopted by the Federal Communications Commission (FCC) requiring broadcasters to “provide coverage of vitally important controversial issues of interest in the community served by the station; and afford a reasonable opportunity for the presentation of contrasting viewpoints” (2). The policy originated in the 1929 Great Lakes Broadcasting decision, which denied licenses to union-dominated radio stations on the basis that “the public interest requires ample play for the free and fair competition of opposing views” (3).

In August 1987, after acknowledging the doctrine’s potential “chilling effect” on free speech, the FCC dissolved the doctrine. Democrats reacted by proposing legislation to make the Fairness Doctrine law, but President Ronald Reagan vetoed it (4). Since that time, restoring the Fairness Doctrine has been a consistent topic of discussion. Particularly in the years surrounding the 2008 presidential election, politicians such as Nancy Pelosi spoke in favor of restoring the policy (5).

THE FAIRNESS DOCTRINE: OPPOSITION AND ELIMINATION

Critics of the Fairness Doctrine describe the policy as censorship and an affront to the First Amendment. Further critiques highlight that the Fairness Doctrine is based on a highly subjective notion of “fairness” – a luxury that Founding Fathers actually thought best promoted by protecting free speech (6).

Many also see the Fairness Doctrine as a regulatory overreach, fundamentally at odds with free market principles. Like all media operations, radio broadcasting is an enterprise. If the federal government seizes the reins of broadcasting, radio becomes an arm of the bureaucracy rather than a vibrant marketplace of ideas. Moreover, popular radio products may become less viable with onerous “fairness” requirements tacked on. Talk shows that specifically target a conservative or liberal audience, for example, may seem “watered down” to loyal listeners if the shows had to meet “balance” requirements imposed by federal bureaucrats. This power can be abused by regulators as well, as evidenced by actions of the Nixon and Kennedy Administrations using the Fairness Doctrine to curtail opposing viewpoints (7).

Since voters restored Republican control of the House in 2011, fear of a Fairness Doctrine resurrection has somewhat subsided. Encouraged by persistent conservative legislators and constituents, FCC Chairman Genachowski oversaw the official elimination of the Fairness Doctrine from the rulebooks in August 2011. In a statement he declared, “The Fairness Doctrine holds the potential to chill free speech and the free flow of ideas

QUICK FACTS

- A February 2009 Rasmussen Poll reports that:
 - Only 38 percent of Americans are in favor of the government regulations forcing broadcasters to present both a liberal and conservative viewpoint.
 - Only 26 percent of voters believe conservatives have an unfair advantage in the media (1).

NOTABLE & QUOTABLE

“For if Men are to be precluded from offering their Sentiments on a matter. . . reason is of no use to us; the freedom of Speech may be taken away and dumb and silent we may be led, like sheep, to the Slaughter.”

-George Washington

“For several decades in America, the aim of much of the jurisprudential thought about the First Amendment’s free-speech provision has been to justify contracting its protections. . . As a result, it is whittled down, often by seemingly innocuous increments, to a minor constitutional afterthought.”

-George Will

and was properly abandoned over two decades ago.” However, Genachowski also acknowledged that, regarding eliminating all rules that encroach upon free speech, “Our work is not done” (8). FCC Adviser Steven Waldman echoes the Chairman’s concerns and reminds Americans that though the Fairness Doctrine is declared dead, its influence remains on the FCC’s books.

Americans must remain aware that the Fairness Doctrine’s remnants live on in FCC rule books and in the “localism” philosophy of many of today’s prominent political figures.

LOCALISM: THE FAIRNESS DOCTRINE REVISITED

In August 2011, FCC Commissioner Robert McDowell warned that the spirit of the Fairness Doctrine is alive in localism. This philosophy intends to advance “the local” by the federal government demanding that broadcasters’ content be deemed “relevant” to their designated communities. If applied, this would mean that a federally-appointed board or “community panel” would oversee each broadcaster’s programming and could restrict or eliminate a broadcaster’s license if compliance was not exacted. Commenting on the potential effects of localism on broadcasting, the Manhattan Institute’s Brian Anderson writes, “What seems all too likely is that groups of professional activists would colonize these community panels and demand that their preferred issues be covered” (9).

Although President Obama has not voiced support for the Fairness Doctrine, in 2007 he issued a statement opposing loosening media ownership rules that implies support for localism: “Instead of greater consolidation, I fully endorse a call for new rules promoting greater coverage of local issues, greater responsiveness of broadcasters to the communities they operate in. I also believe that broadcasters’ license renewal requests . . . should require greater FCC scrutiny and public input should occur more frequently” (10).

Public figures such as former President Bill Clinton, former House Speaker Nancy Pelosi, Senators John Kerry and Harry Reid have signaled support for localism and a return of the Fairness Doctrine; it’s plain that the push for more federal radio regulations remains alive and well.

In an age when the Constitution and the free market seem to be under constant attack, U.S. politicians and the FCC have taken the proverbial high road and secured the elimination of the Fairness Doctrine. However, Americans must remain aware that the policy’s remnants live on in FCC rule books and in the “localism” philosophy of many of today’s prominent political figures.

Endnotes:

1. RASMUSSEN REPORTS, 47% Oppose Fairness Doctrine, But 51% Think Congress is Likely to Bring it Back (February 15, 2009) (online at http://www.rasmussenreports.com/public_content/politics/general_politics/february_2009/47_oppose_fairness_doctrine_but_51_think_congress_likely_to_bring_it_back).
2. Steven Waldman, The Information Needs of Communities, FEDERAL COMMUNICATIONS COMMISSION, at 277 (July 2011) (online at <http://www.fcc.gov/document/information-needs-communities>).
3. Great Lakes Broadcasting, 3 F. R. C. Ann. Rep. 32 (1929), rev'd on other prior to the airing of the matter.
4. Val E. Limburg, Fairness Doctrine, THE MUSEUM OF BROADCAST COMMUNICATIONS (online at <http://www.museum.tv/eotvsection.php?entrycode=fairnessdoct>) (accessed November 18, 2011).
5. John Gizzi, Pelosi Supports 'Fairness Doctrine,' HUMAN EVENTS (June 25, 2008) (online at <http://www.humanevents.com/article.php?id=27185&s=rcme>).
6. James Gattuso, Back to Muzak? Congress and the Un-Fairness Doctrine, HERITAGE FOUNDATION (May 23, 2007) (<http://www.heritage.org/Research/Reports/2007/05/Back-to-Muzak-Congress-and-the-Un-Fairness-Doctrine>).
7. Adam Thierer, Why the Fairness Doctrine Is Anything But Fair, HERITAGE FOUNDATION (October 29, 1993) (online at <http://www.heritage.org/research/reports/1993/10/em368-why-the-fairness-doctrine-is-anything-but-fair>).
8. FEDERAL COMMUNICATIONS COMMISSION, Genachowski Announces Elimination of 83 Outdated Media Rules (Aug. 22, 2011) (online at <http://www.fcc.gov/document/genachowski-announces-elimination-83-outdatedmedia-rules>).
9. Brian C. Anderson, Mush Labels -- 'Fairness,' 'Localism' -- Can't Mask the Fact, MANHATTAN INSTITUTE (March 5, 2009) (<http://www.manhattan-institute.org/html/miarticle.htm?id=4152>).
10. FEDERAL COMMUNICATIONS COMMISSION, Public Hearing on Media Ownership (September 20, 2007) (online at <http://fjallfoss.fcc.gov/ecfs/document.view?id=6519743685>).

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