

The Fairness Doctrine

A Brief History and Perspective

The First Amendment states: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

This was worked out in Colonial and Revolutionary times with the correct assumption that the government would almost never be neutral.

Freedom of Speech has always meant... Absence of Government Control.

The Fairness Doctrine Defined – Government requirement that when a certain position on a controversial issue of public importance is broadcast, the broadcast licensee is required to present the other side of the issue.

Fairness Doctrine History

The Radio Act of **1927** created the Radio Commission (later becoming the Federal Communication Commission or FCC) and its successor the **1934** Communications Act created a government system of granting licenses for publicly owned broadcast frequencies. The major condition attached was to “operate with public interest.” The FCC was charged with enforcement.

Starting in **1929**, the “public interest” condition was interpreted as requiring that a licensee provide “ample play for the free and fair competition of opposing views on all discussions of issues of importance to the public.”

Over the years this developed into the Fairness Doctrine and became an integral part of FCC mandate.

In **1949**, the FCC issued two requirements regarding Editorials on Radio... “Broadcasters must give adequate coverage to public issues and this coverage must accurately reflect opposing views on the issue.”

In **1959**, Congress amended Sec. 315 of the Communication Act with the Equal Time Provision... “The licensee that allows one candidate to use the broadcast station shall afford equal opportunities to all other candidates for that office.” It also stated that “nothing here relieves them of the obligation to offer reasonable time for opposing views of public importance.”

From **1959** to **1981**, The FCC consistently interpreted the 1959 Amendment to Sec. 315 as codifying the Fairness Doctrine. In fact, in the landmark 1969 Red Lion Case the Fairness Doctrine was upheld by the Supreme Court. The Court cited “scarcity of stations and codification of the Fairness Doctrine” as the primary reason for the decision. The Court also stated “the decision could change if it was demonstrated that the Doctrine reduced rather than encouraged discussion of public issues.”

Interestingly in **1974**, a law imposing an obligation of fairness on newspaper editorials was declared invalid as applied to print media in *Miami Herald vs. Tonilla*. Print media has no Fairness Doctrine.

In **1981** the FCC, perceiving changes in the conditions cited by the Supreme Court in Red Lion, asked Congress to repeal the Fairness Doctrine. No action was taken.

1985 – The FCC determined the Fairness Doctrine was not codified in 1959.

In **1986**, the D.C. Circuit Court upheld the FCC by ruling that the 1959 Amendment did not codify the Fairness Doctrine.

1987 – The FCC formally abolished the Fairness Doctrine on grounds that:

1. It did not serving public interest
2. The scarcity of media issue had disappeared
3. It violated The First Amendment

Since **1987**, Broadcasters have operated without the Fairness Doctrine and Talk Radio has flourished. During this time there have been many calls by public figures for reinstatement and bills have been repeatedly introduced in Congress to codify the Fairness Doctrine... all with huge public negative reaction.

In **1988**, Congress overwhelmingly passed a bill reinstating the FD, but it was vetoed by President Reagan.

In **1991**, with massive grass roots support President Bush threatened to veto a similar bill, thus stifling a second attempt on Congress’s part to resurrect the Fairness Doctrine.

1993 – The 8th Circuit Court of Appeals ruled that the FCC had acted in a reasonable manner in abolishing the Fairness Doctrine.

Since the 2006 elections, the almost daily cries from legislators to bring back the Fairness Doctrine has reached high fever pitch... as if something as significant as the 2008 election outcome depended on it. No doubt this will intensify.

There are two ways the Fairness Doctrine could be brought back:

1. The FCC simply reinstates it.

2. Congress codifies it

If the Fairness Doctrine is reinstated, history indicates these things (and more) will happen:

1. The First Amendment, which these days seem to be the number one target, will again be significantly depreciated, further eroding our Freedom of Speech.
2. The political party in power will use the Fairness Doctrine to silence critics as was well documented during the Kennedy and Nixon administrations.
3. Many leading Broadcast Licensees will see their licenses at risk and will play it safe by imposing strict speech control.
4. The national and local robust town hall meetings known as Talk Radio will quickly become mundane, dull and milk-toast-like and mostly disappear.
5. Religious speech will be threatened by new government guidelines regarding what constitutes controversial and public issues... issues like same-sex marriage and abortion.
6. The overwhelming majority of the time the public will hear only the Liberal viewpoint presented as “fair and balanced” by the three major TV Networks, the vast majority of newspapers and the major magazines. Déjà vu!

Media Scarcity:

Media access has dramatically changed since the 1969 Supreme Court Red Lion case. Today there are many more radio stations, even in small communities, satellite radio, internet radio and the internet itself, plus an abundance of FM stations which were few in 1969. Everyone agrees scarcity is no longer an issue.

Conclusion:

The Fairness Doctrine’s frontal assault on Freedom of Speech not only trashes a vital part of our Constitution but does great harm to our country, nationally and locally by stopping a healthy public debate that is essential in our common search for TRUTH.

Preventing the reinstatement of the Fairness Doctrine is... A HILL TO DIE ON!

Submitted by,
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