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Maxwell Myerson April 6, 2023

Fairness Deregulated: The 1987 Abolishment of the FCC Fairness Doctrine and the Rise of Reagan-era Deregulation

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Abstract

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By Maxwell Myerson

Understanding the partisan media landscape of the twenty first century requires explanation of the regulatory developments that preceded it. In 1949, the Federal Communications Commission (FCC) sought to streamline their regulation of radio by adopting a fairness doctrine. Its two provisions mandated that broadcasters allow differing perspectives to express their views on important issues and dedicate time to discussing matters important to the general public. Despite pushback from a variety of stations in the 1950s and 60s, the doctrine faced little threat of deregulation until the dawn of the Reagan administration. Upon being elected to office, Reagan led a series of efforts in Congress and the FCC that ultimately resulted in its 1987 abolishment.

In this thesis, I argue the demise of the FCC fairness doctrine to have been an explicit product of Reagan-era deregulation. I begin with an introduction; beyond laying out my claims, this section provides clarifications on sources and key events referenced in the body. Following this is a context section, where the history of the fairness doctrine is explored from 1910 to the early 2010s. Through analysis of Reagan's own radio broadcasts, as well as regulatory developments in the FCC and Congress, I show how closely the abolishment of the doctrine was intertwined with the agendum of Reagan-era Republicans. Next is a section that narrows in on 1987, exploring a hearing before the House of Representatives, along with interviews featuring FCC chairmen Mark S. Fowler and Dennis R. Patrick. These sources further prove how discussions surrounding the doctrine in the 1980s were centered on benefits and drawbacks of deregulation. Second to last is a section explaining the state of historiography in regards to the doctrine's demise. I find three existing writings to have lacked proper emphasis on Reagan in their arguments, choosing instead to focus on the rise of conservative radio or on the decline in progressives present at the FCC. Finally, a conclusion examines continued efforts by Congresspeople to return the doctrine to enforcement, as well as retrospective opinions regarding how its abolishment has paved the way for the partisan media of today.

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Table of Contents

Introduction

On August 5th, 1987, Ronald Reagan succeeded in abolishing a fairness doctrine that the Federal Communications Commission (FCC) had imposed on American radio broadcasters. For the past thirty-eight years, the doctrine served to ensure the following:

1. that every licensee devote a reasonable portion of broadcast time to the discussion and consideration of controversial issues of public importance; and[1]
2. that in doing so, [the broadcaster must be] fair – that is, [the broadcaster] must affirmatively endeavor to make ... facilities available for the expression of contrasting viewpoints held by responsible elements with respect to the controversial issues presented.[2]

In the decades leading to its demise, the fairness doctrine managed to draw support from Democrats, who found it integral to a reliable and productive media, and opposition from conservative libertarians, who believed it endangered Americans' First Amendment rights. Debates grew under the Kennedy and Johnson administrations but climaxed at a moment in which conservatism was rapidly rising in popularity across the country. By the late 1970s, troubling inflation, tense relations with lawmakers over North Korea and the USSR, and the Iran Hostage Crisis brought turbulence to Jimmy Carter's presidency, and the door was left open for a Republican to campaign on the principles of stability, hope, and optimism. To millions of Americans, Ronald Reagan had potential to fit the bill; he was culturally and politically well-

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[1] Kathleen Ann Ruane, "Fairness Doctrine: History and Constitutional Issues" (Washington, DC: Congressional Research Service, 2011), https://sgp.fas.org/crs/misc/R40009.pdf, 2.

[2] Ann Ruane, "Fairness Doctrine: History and Constitutional Issues," 2.

integrated, and his suave, articulate vocal cadence brought confidence to those seeking a fresh start from Carter's 70s. Reagan's communication skills were refined over decades of experience in Hollywood acting as well as sports and political radio broadcasting. In the years leading up to his campaign, Reagan disseminated his opinions on social, political, and economic issues for tens of millions to hear over radio. His shows *Viewpoint* (1975-76) and *Ronald Reagan Radio Commentary* (1977-78) were outlets for inspiring American patriotism, dispelling threats of communism or socialism, and rallying support for conservative agendum like resistance of tax reforms, economic regulations, and gun control. The purpose of these broadcasts was twofold; they boosted approval in Republicans' approaches to domestic and foreign policy, and they began centering the conservative movement around Reagan himself. Through relatively tame monologues, Reagan built a following of Americans who shared his vision for a deregulatory future, and by the time he began his 1980 campaign, his ambitions for abolishing the fairness doctrine had become clear. Upon taking office in 1981, Reagan appointed leadership in the FCC who not only backed his deregulatory ambitions, but were willing to act on them by leading the charge against the doctrine.

In this thesis, I will argue that the 1987 abolishment of the fairness doctrine was a direct consequence of Reagan-era deregulation. The first chapter will cover a complete context of the doctrine's rise and fall, from the introduction of radio regulations in the 1910s, to Reagan's veto of the doctrine in 1987, to its formal revocation in 2011. It will demonstrate how the story of the fairness doctrine coincided with the proliferation of American radio, and how its enforcement by the FCC was largely defended as constitutional until the dawn of the Reagan administration. It will also show how Reagan-era abolishment efforts centered on uniting Democrats with Republicans through nonpartisan themes like constitutionality and free speech. Their arguments

lacked the focus on left-wing censorship and liberal bias that dominates conservatives' criticisms of mass media today. The second chapter will dig deeper into Reagan-era deregulation and explain how the abolishment of the fairness doctrine was an explicit consequence of it. I will highlight a 1987 Congressional hearing where proponents and critics of the fairness doctrine made their case for its future, arguing regulation as either the saving grace or a dangerous enemy of the First Amendment. In addition to covering FCC Chairman Mark S. Fowler, who was present at the hearing, his successor under Reagan, Dennis R. Patrick, will be considered. Trends in rhetoric will be established to show how each chairman directly served and publicly advocated for Reagan's interests. A final chapter will consider how the role of deregulation has been portrayed in historiography. With little emphasis on it amongst scholars covering the doctrine, analysis will be conducted to understand where academia has succeeded in constructing a timeline for its abolishment, and where it has fallen short. A conclusion will contextualize the consequences of Reagan's deregulation on twenty-first century media, including its developments under the George H. W. Bush, Obama, and Trump administrations.

The fairness doctrine is a common topic in political discourse surrounding party polarization. In a climate where the Internet and television have largely overtaken radio in everyday usage, and where news viewership has concentrated itself towards partisan networks like Fox News, One America News Network, and MSNBC, the doctrine's commitments to defending the public interest and imposing equal time requirements seem astonishing to imagine. For instance, might Fox News's efforts to spread conspiracy theories surrounding the 2020 election have been impeded if the FCC demanded they offer equal time to a representative from Dominion Voting Systems? Technically speaking, this would have been impossible, as cable news was always outside the doctrine's jurisdiction. Yet the fact that the biggest commentators

in politics were once regulated under the doctrine has encouraged Americans to revisit the idea of broadcasters solely existing to serve the public interest. Would America's political climate become less polarized if corporate media players were prevented from reporting with a partisan slant? Could a fairness doctrine for today's broadcast mediums lead to increased representation of marginalized peoples, and more frequent reporting on injustices they experience? Is it possible for America to unite in deciding a public interest it wishes to be served, and to rely on its officials to ensure it stays protected? Unfortunately, I am unable to answer these questions directly. However, throughout this thesis, I will provide a comprehensive overview of the fairness doctrine's highs and lows. Where the FCC succeeded, where they failed, who sought to defend the doctrine, and who sought to abolish it, and for what reasons, will be documented to as thorough an extent as I can provide. Overall, I believe this information will help show why the fairness doctrine came as a result of Reagan-era deregulatory efforts, and how the fairness doctrine's abolishment paved the way for the polarized media of today.

Understanding Secondary Historiography

I am not the first to establish connections between either Reagan and conservative radio, or Reagan-era deregulation and the proliferation of today's media partisanship. However, connections between Reagan's deregulatory efforts and the abolishment of the fairness doctrine remain largely unexplored. What's more, scholars have rarely made attempts to pinpoint precise causes for the fairness doctrine's demise at all, instead either mentioning the rule in passing as they explain the broader history of radio, or focusing on how it was enforced in the decades prior to the Reagan administration. Because of this, there is an extremely small amount of secondary historiography for me to consider. I hope to inspire further discussion around the doctrine's 1980s demise through this thesis.

Paul Matzko's *The Radio Right* makes a connection between conservative radio and the fairness doctrine, but only through analysis of the Kennedy administration. To Matzko, the relationship between John F. Kennedy and the fairness doctrine was antithetical to that of Reagan's. Whereas Reagan recognized a potential for radio to thrive in a deregulated market, the Kennedy administration sought to keep the doctrine in place as means of "combatting right-wing access to the airwaves."[3] Matzko explored the doctrine's inconsistent enforcement under Kennedy-appointed FCC leadership, not only describing developments in its verbiage as "clearly targeting right-wing broadcasters"[4] and "designed to advance liberal speech,"[5] but arguing that further regulation only created "ambiguity"[6] and disproportionate targeting of independent licensees over corporate ones. Matzko defended Reagan's deregulation by arguing that the FCC failed to perfect applications of the doctrine while Democrats were in office. As a result, Republicans felt obligated to operate with the intent of combatting right-wing censorship, and Reagan led the final charge to the doctrine's abolishment. Meanwhile, Princeton professor Julian Zelizer took an antithetical point of view, finding that the fairness doctrine had only failed thanks to its inability to contain the proliferation of right-wing radio. To them, conservative broadcasting viewership soared in open opposition to the fairness doctrine, with hosts ignoring the FCC's conditions without facing consequences. With partisan radio growing at such a rapid

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[3] Paul Matzko, *The Radio Right: How a Band of Broadcasters Took on the Federal Government and Built the Modern Conservative Movement* (Oxford: Oxford University Press, 2020), 79.

[4] Matzko, *The Radio Right*, 112.

[5] Matzko, *The Radio Right,* 112.

[6] Matzko, *The Radio Right*, 113.

pace, the medium quickly became an influential extension of the Republican Party. In sum, Zelizer found that Reagan's abolishing of the doctrine came primarily in response to the threat of the FCC censoring the radio right. Lastly is Victor Pickard, who unlike Matzko and Zelizer, believed the death of the fairness doctrine was ensured prior to even the beginning of the conservative radio boom. They found that Democrat FCC Commissioner Clifford Durr was the final bastion of progressives' defense against the rise of corporate media. When they left the FCC in 1948, an increasingly right-wing Commission took control of the doctrine's enforcement and grew lenient in regulating broadcasters until the Reagan administration dismissed it completely. In this sense, Pickard did not find the doctrine's abolishment to be a consequence of Reagan specifically. Instead, he was the final part of a trend towards deregulation that had preceded him for decades.

Though each writer contributes valuable insight to the death of the doctrine, they may prove misleading if read in isolation. In Matzko's case, it was not the FCC's censorship of the right that sealed its fate. Instead, it was bipartisan arguments of it being excessive and unconstitutional that ensured its fate through Reagan's veto. Similar issues arise for Zelizer, as although Reagan may certainly have benefited from spreading conservative ideals over radio, his administration's campaign to end the doctrine avoided issues of bias in favor of those surrounding First Amendment freedoms. Lastly, though Pickard succeeded in identifying the death of the fairness doctrine as a product of deregulation, the numerous victories that it boasted under Democrat leadership, as well as the inherently critical nature of Reagan's role, make Durr's resignation seem like only a single part of a much longer story.

Primary Sources

In terms of primary material, the roles of radio and deregulation in the fairness doctrine's demise are most clearly demonstrated through recordings of Reagan himself, a 1987 Congressional hearing, and an interview of Reagan's second FCC commissioner Dennis R. Patrick. The former has been well archived in *Reagan's Path to Victory*, a compilation of his radio commentaries between 1975 and 1979. This was a pivotal time for Reagan; fresh out of the governor's seat, he used radio as a means of building support for the policies that helped cement his presidential victory in 1980. Compiled by historians Kiron K. Skinner, Annelise Anderson, and Martin Anderson, the commentaries show how he diffused his rhetoric to an audience of millions. A broadcast of particular interest will be in regards to equal time; the fairness doctrine mandated that for coverage of one side of a particular political issue, an alternative view must be represented in equal capacity. In a regulatory battle involving oil company Texaco and environmental advocacy group Energy Action Committee, Reagan took issue with the FCC's enforcement of the doctrine, and his rhetoric makes crystal clear his commitments to deregulating the commission during his presidency. Beyond Reagan himself was the focus of chapter 2: a convening of the House Subcommittee on Telecommunications and Finance on April 7th, 1987. The purpose of this hearing was simple: allow as many of the diverse views surrounding the fairness doctrine as possible to be argued before Congress. The hearing's transcript offers stunning insight into the rhetoric and reasoning behind FCC Chairman Mark S. Fowler, who began leading the Commission's efforts to abolish the doctrine, as well as those who opposed him, such as Carter's FCC Chairman Charles Ferris and consumer advocate Ralph Nader. Lastly is an interview by *The New York Times* of Dennis R. Patrick, who was appointed by Reagan to succeed Fowler as FCC chairman just eleven days after the hearing (April 18,

1987). The interview is tremendously helpful in showing how Patrick continued to guide the FCC by acting as an extension of Reagan's deregulatory interests.

Final Clarifications

Firstly, it is important to note the legal status of the fairness doctrine. Though there were several points in its history when it was argued to have been codified, or when codification efforts were made, the doctrine was never formally signed into law. Instead, the FCC enforced it internally as a rule for broadcasters, which laws such as the *1934 Communications Act* gave them permission to regulate. The Commission made the fairness doctrine permanent by entering it into the *Federal Register*, a weekly journal published by the United States government to keep track of rules mandated by the FCC and other federal organizations. The doctrine's archival in the *Register* birthed an interesting complication to its demise. When Reagan vetoed the *Fairness in Broadcast Act* in 1987, he made it so the Commission no longer needed to enforce the doctrine unless it wanted to. However, neither he nor then-chairman Dennis R. Patrick elected to remove the language of the doctrine from the *Federal Register*. For this reason, the doctrine was not formally revoked until such removals occurred on August 22, 2011.

Given that no efforts to reinstate the doctrine were successful between Reagan's veto and its final revocation, I will regard the 1987 abolishment as the formal end to the doctrine's enforcement. However, the distinction between it and the 2011 revocation will be important to keep in mind throughout this thesis. Additional context regarding the 1987 veto and the 2011 revocation will be provided in chapter 1.

In addition, it is crucial to keep in mind that the fairness doctrine solely regulated radio broadcasts. It never applied to television, the Internet, print journalism, or any other communications medium. Though I discuss television providers throughout this thesis, such as

NBC, CBS, and ABC, I am only referring to the radio networks they operated. In addition, there is a section in this thesis where I analyze Reagan's critiques of commercials that aired as a result of FCC regulation. Much of Reagan's frustrations will be geared towards the visuals of the ads, which appeared on television in addition to radio. However, this does not change the fact that television was outside the fairness doctrine's jurisdiction. His criticisms of the TV ads are only included to show how the FCC's enforcement of the doctrine informed his deregulatory agenda when he took office.

A final note should be made regarding the relevance of radio from the 1960s to the 1980s. It may at first seem bizarre to focus on radio at a time when television viewership was booming. However, despite any concerns of obsolescence, radio continued to serve as a powerful cultural and political tool in the United States. For instance, a powerful phenomenon on its side was suburbanization. A survey by the New York Department of Labor found that "between 1960 and 1970, the number of state workers who lived in one county and worked in another increased by 52 percent."[7] In addition, workers from out of state areas like Connecticut grew from approximately 17,000 in 1960 to 23,000 in 1970.[8] The patterns were not unique to New York; as suburban housing soared in demand, Americans became increasingly bound to their automobiles as a means of commuting. A television couldn't fit in a car during a long trip, and even if it could, it would severely impair one's ability to drive. An antenna, meanwhile, allowed the voice

[7] Frederick C. Klein, "So Stop Whining: For Some Americans, The Commute to Work Is Almost a Job in Itself," *The Wall Street Journal*, June 27, 1973.

[8] Klein, "So Stop Whining: For Some Americans, The Commute to Work Is Almost a Job in Itself."

of radio to be heard loud and clear without posing a big enough distraction to the driver. Thus, radio had transcended beyond just being a tool of the household, now exploiting television's weaknesses by occupying spaces where it couldn't exist. The result was a continued interest in radio across the American public, and a maintained relevance for the fairness doctrine.

Context

Pre-1949

The story of the fairness doctrine coincides with the story of radio, both of which commenced at the dawn of the twentieth century. The doctrine's earliest predecessor was the *Wireless Ship Act of 1910*, a legislation submitted by then-Commerce Committee chairman and Senator William P. Frye. Under the Republican Taft administration, the law required that ships carrying fifty or more people be equipped with a radio reachable from at least 100 miles away.[9] In addition, although the law did not introduce any licensing requirements for radio, it mandated that ships' radio equipment only be managed by "a person skilled in the use of such apparatus."[10] Though the measure did little to elaborate on what constituted a "skilled"[11] operator, radio was a scarce enough tool at the time that the Department of Commerce and Labor, who enforced the law in absence of an FCC-like body, could assign inspectors to ports housing radio-equipped

[9] Bureau of Ships and Office of Naval History, *History of Communications-Electronics in the United States Navy* (Washington, D.C: United States Government Printing Office, 1963), 156.

[10] Bureau of Ships and Office of Naval History, *History of Communications-Electronics in the United States* Navy, 158.

[11] Bureau of Ships and Office of Naval History, *History of Communications-Electronics in the United States* Navy, 158.

ships.[12] The law proved effective for its first year of enforcement. However, cracks began to show by 1912. For one, amateur operators on land had not only begun to pick up on radio's potential, but were harassing ship operators with "vituperation and obscenity."[13] This is an important turning point in the evolution of American radio, as it presents the first threat of the medium being abused in absence of regulation. Making matters worse, the sudden growth of commercial and amateur interest meant a rise in interference, as without a licensing system, any operator could occupy a frequency without consequence. The ensuing chaos, combined with devastating communications failures seen in the sinking of the RMS Titanic, prompted reform through the *Radio Act of 1912*.[14] On top of authorizing safety procedures like Morse Code SOS, it was the first law to require a licensing system for radio broadcasting. Decisions regarding who received a license were made entirely by the Department of Commerce in Labor. After accepting an application from an operator, where "the purpose of the station"[15] needed to be stated among other aspects of the individual's or business's credentials, the department not only assigned

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[12] Annual Report of the Commissioner of Navigation to the Secretary of Commerce and Labor for the Fiscal Year Ended June 30, 1911 (Washington, D.C: Government Printing Office, 1911), 43.

[13] Bureau of Ships and Office of Naval History, *History of Communications-Electronics in the United States* Navy, 158.

[14] Bureau of Ships and Office of Naval History, *History of Communications-Electronics in the United States* Navy, 160.

[15] Radio Act of 1912, Sixty-Second Congress, Session II, Chapters 285-287 (1912), 303.

"definite wave lengths"[16] to minimize interference, but mandated that the licensee be "in charge or under the supervision of a person or persons licensed for that purpose by the Secretary of Commerce and Labor."[17] The measures not only ushered in an era of strict government oversight, of which the fairness doctrine would soon be a product, but ensured that the Secretary at the time – Herbert Hoover – gained tremendous leverage over the expansion of American radio. That being said, however, given radio's continued low usage amongst the public, the concentration of authority brought by the Act had solely been intended to help protect ships from interference and bad actors. Neither Congressional dialogue surrounding the law nor the law itself had granted the Secretary "discretionary power to regulate stations in the public interest, much less to affect radio program content via balanced public affairs presentation."[18] Because of radio's nicheness, the *Radio Act of 1912* largely sufficed in maintaining order throughout the 1910s. By the dawn of the roaring twenties, however, public adoption soared to such an extent that regulators were sent scrambling once again.

Between 1920 and 1925, the number of regularly-broadcasting radio stations grew from 3 to 578.[19] Driving the growth was radio's acceptance by new demographics, including Americans interested in news, politics, entertainment, and whichever other categories operators could attract audiences with. As public interest grew, developments at the federal and consumer levels made

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[16] Radio Act of 1912, 303.

[17] Radio Act of 1912, 303.

[18] Steven J. Simmons, *The Fairness Doctrine and the Media* (Berkeley: University of California Press, 1978), 16.

[19] Simmons, *The Fairness Doctrine and the Media*, 17.

radio nearly impossible to regulate. For one, radio's sudden rise spawned legal action against the control Secretary Hoover had over broadcasting regulation. Despite the *Radio Act of 1912* having only been passed to ensure safe maritime broadcasting, Hoover was now using it to regulate broadcasts from the general public. In 1923, the District of Columbia Court of Appeals "held that the Secretary had no discretion to refuse a license to a radio applicant within the designated classifications."[20] In 1926, when Hoover accused Chicago-based broadcasting company Zenith Radio Corporation of "operating [a] radio apparatus contrary to the license issued to the corporation's station,"[21] the United States District Court for the Northern District of Illinois ruled that "he could not penalize [Zenith] for broadcasting on an unauthorized frequency."[22] Also in 1926 came the nail in the coffin for Hoover's leverage, and for 1910s-era regulation more broadly, via a ruling by Acting Attorney General William J. Donovan. Donovan not only declared that Hoover lacked the authority to "assign wavelengths to broadcasting stations, fix times for broadcast station operation, or limit amounts of station wattage,"[23] but asserted that the *Radio Act of 1912* was "inadequate to cover the art of broadcasting."[24] These were the first federal rejections to regulation over radio broadcasting. They marked the beginning of an important transition amongst regulators towards prioritizing and ensuring adherence to the public interest.

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[20] District of Columbia Court of Appeals in Simmons, *The Fairness Doctrine and the Media*, 17.

[21] Simmons, *The Fairness Doctrine and the Media*, 17.

[22] Simmons, *The Fairness Doctrine and the Media*, 17.

[23] William J. Donovan in Simmons, *The Fairness Doctrine and the Media*, 17.

[24] William J. Donovan in Simmons, *The Fairness Doctrine and the Media*, 17.

Hoover sensed a struggle in regulating radio through the *1912 Act* and had tried to remedy the situation before Donovan's ruling. Among his biggest problems were growing "listening complaints"[25] over "fraudulent get-rich-quick schemes and claims on behalf of "medical" cures,"[26] as well as overwhelming interference "often making programs unintelligible."[27] Between 1922 and 1925, after failed attempts to convince radio operators to self-regulate,[28] Hoover sought to quell the concerns of critics by hosting national radio conferences.[29] Requirements for attendance were simple yet vague; one needed to be identifiable as a "radio expert"[30] in the civilian or government sectors. Despite "competing [commercial and political] factions"[31] creating tensions at first, the conferences became the first events to demonstrate the government's commitment to satisfying public interest through radio regulation. Moreover, they established a dialogue between conference participants and the Department of Commerce, who often formally implemented ideas that were presented. Addressing the first conference in 1922, Hoover not only demanded that the airwaves "be considered a public resource, not private property,"[32] but that radio not be "exploited by "uncontrolled" entities –

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[25] Simmons, *The Fairness Doctrine and the Media*, 18.

[26] Simmons, *The Fairness Doctrine and the Media*, 18.

[27] Simmons, *The Fairness Doctrine and the Media*, 18.

[28] Simmons, *The Fairness Doctrine and the Media*, 18.

[29] Simmons, *The Fairness Doctrine and the Media*, 19.

[30] Simmons, *The Fairness Doctrine and the Media*, 19.

[31] Simmons, *The Fairness Doctrine and the Media*, 19.

[32] Herbert Hoover in Simmons, *The Fairness Doctrine and the Media*, 19.

whether large numbers of small stations or powerful monopolies attempting to push their private viewpoints over the air."[33] The following three conferences saw advancements in this rhetoric, with renewed calls for "discretion in the granting of licenses"[34] accompanied by increasingly intense concerns over monopolistic radio practices. Republican President Calvin Coolidge stated that although government control of "the distribution of information"[35] would be unfortunate,[36] "it would be still more unfortunate if its control should come under the arbitrary power of any person or group of persons."[37] This statement is crucial; despite referring to the government in a lesser of two evils scenario, Coolidge argued that the public interest needed to be ensured at all costs, even if it meant constant federal oversight in the broadcasting industry.

Coolidge's, Hoover's, Donovan's, and conference participants' words helped pave the way for the *Radio Act of 1927*. Passed under Coolidge himself, the law not only repealed the *Radio Act of 1912*, but replaced its enforcing body with a new organization: the Federal Radio Commission (FRC). Effectively the FCC's predecessor, it consisted of five commissioners appointed by Coolidge who each represented a regional zone in the continental United States. The commission was first granted "full powers to grant and revoke licenses, assign frequencies, and determine station power and location."[38] In addition, it was declared that they must regulate

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[33] Herbert Hoover in Simmons, *The Fairness Doctrine and the Media*, 19.

[34] Simmons, *The Fairness Doctrine and the Media*, 20.

[35] Calvin Coolidge in Simmons, *The Fairness Doctrine and the Media*, 20.

[36] Calvin Coolidge in Simmons, *The Fairness Doctrine and the Media*, 20.

[37] Calvin Coolidge in Simmons, *The Fairness Doctrine and the Media*, 20.

[38] Simmons, *The Fairness Doctrine and the Media*, 22.

broadcasters "as public convenience, interest, or necessity require;"[39] grant licenses only if "public convenience, interest, or necessity"[40] would be served; never commit "censorship or interference with the right of free speech by means of radio communication;"[41] and ensure "equal opportunities for legal qualified candidates."[42] These are the first formal commitments by the government to serving the public interest in radio. The FRC chose to report their progress in maintaining such standards through annual reports. In 1928, their report noted that due to "the number of persons wishing to broadcast [being] far greater than the number of channels available,"[43] their decision-making for licensing placed "the emphasis first and foremost on the interest, the convenience, and the necessity of the listening public and not on the interest, convenience, or necessity of the individual broadcaster or the advertiser."[44] The firmness of this

[39] Federal Radio Commission in Simmons, *The Fairness Doctrine and the Media*, 22.

[40] Federal Radio Commission in Simmons, *The Fairness Doctrine and the Media*, 22.

[41] Federal Radio Commission in Simmons, *The Fairness Doctrine and the Media*, 22.

[42] Federal Radio Commission in Simmons, *The Fairness Doctrine and the Media*, 22.

[43] Ira E. Robinson, Eugene O. Sykes, Sam Pickard, Orestes H. Caldwell, Harold A. LaFount, and Carl H. Butman, *Second Annual Report of the Federal Radio Commission to the Congress of the United States For the Year Ended June 309 1928* (Washington, D.C: United States Government Printing Office, 1928), 170.

[44] Robinson, Sykes, Pickard, Caldwell, LaFount, and Butman, *Second Annual Report of the Federal Radio Commission to the Congress of the United States For the Year Ended June 309 1928*, 170.

ideal not only defined FRC enforcement of the Act throughout the late 1920s and early 1930s, but made way for more explicit reference to the language used in the fairness doctrine.

A landmark case in the FRC's defense of the public interest was *Great Lakes Broadcasting v. Fed. Radio Comm*. Argued on October, 10, 1929, broadcasting company Great Lakes claimed that changes to its frequency licensing agreement had resulted in too little time being allocated to WCBD, a station "operated in the interest of the religious denomination of [its] city, and [including] programs based upon the religious exercises in the Zion Temple."[45] In turn, they sought a revised agreement where WCBD would receive approximately double the amount of time it had previously to broadcast on the frequency it was licensed. The FRC denied this request; its reasoning not only showed progress towards the fairness doctrine in terms of regulatory behavior, but emphasized an intolerance for broadcasts done solely in the interest of institutions. For one, the FRC stated that "public interest requires ample play for the free and fair competition of opposing views, not only [in regards to] political candidates but to all discussion of issues of importance to the public."[46] Rhetoric in this sentence alone bears shockingly close resemblance to the fairness doctrine. They went on, however, to note that "there is not room in the broadcast band for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether."[47] In light of this scarcity, valuable frequency space could not be allotted to "propaganda stations,"[48] who "favor the

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[45] *Great Lakes Broadcasting v. Fed. Radio Comm*, 37 F.2d 993 (D.C. Cir. 1930).

[46] Federal Radio Commission in Simmons, *The Fairness Doctrine and the Media*, 32.

[47] Federal Radio Commission in Simmons, *The Fairness Doctrine and the Media*, 32.

[48] Federal Radio Commission in Simmons, *The Fairness Doctrine and the Media*, 32.

interests and desires of a portion of the listening public at the expense of the rest."[49] Interestingly, the FRC did not force Great Lakes Broadcasting to cease operations of WCBD. However, in shutting down their attempt at growth on their frequency, the FRC delivered a decision that discouraged one-sided discussions of religion, politics, and other social and economic issues. Their views would serve as the basis of broadcast regulation for decades to come.

Progress towards the fairness doctrine accelerated as the FRC strengthened their commitments to the public interest, particularly between the mid-1930s and early 1940s. With the Great Depression presenting a firm need for public interests to continue being represented, the Republican Hoover and Democrat Roosevelt administrations oversaw the early formations and codifying of, respectively, the *1934 Communications Act*. Unlike the *Radio Act of 1927*, this Act sought only to build on its predecessor rather than to repeal and replace it. Government oversight expanded from radio to the telephone and telegraph,[50] and enforcement shifted to another new organization called the Federal Communications Commission.[51] Two FRC commissioners – Republican lawyer Thad H. Brown and Democrat Mississippi Supreme Court justice Eugene O. Sykes - were appointed to the FCC by Roosevelt, with the latter becoming the first FCC chairman. Though little development in radio regulation occurred under Sykes, it is notable that at its inception, Roosevelt began the trend of appointing FCC chairmen who aligned with the values of his party. Furthermore, thanks to a string of Democrat chairmen from

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[49] Federal Radio Commission in Simmons, *The Fairness Doctrine and the Media*, 32.

[50] Simmons, *The Fairness Doctrine and the Media*, 28.

[51] Simmons, *The Fairness Doctrine and the Media*, 28.

Roosevelt to Truman, the party - apart from an Independent who served from November to December 1944 - led the FCC for its first nineteen years of existence. When it came time for Reagan to choose their FCC chairmen, he followed Roosevelt's trend by picking individuals with proven commitment to their political agenda.

The Roosevelt administration's passing of the *1934 Act* proved critical as the FCC took on its first landmark cases in 1939. At issue were two applications – one for a new radio station permit and one for a license renewal – submitted at approximately the same time that year. The former was from radio company Mayflower Broadcasting Corporation; they sought to build a new radio station using a frequency that the FCC had already "allocated to WAAB, a licensee of the Yankee Network, Inc."[52] The latter was from another broadcasting corporation - Yankee Network themselves – who applied to renew WAAB's license. The FCC denied Mayflower's application out of concern for their financial state. Yet they'd become the naming inspiration for the Mayflower doctrine thanks to their contention with Yankee, whose issues proved much more complicated. In investigating WAAB's behavior, the FCC found that the station had "broadcast editorials in favor of various political candidates"[53] and "[supported] one side or another of various questions in public controversy [without any pretense of] objective, impartial reporting."[54] The FCC grew concerned that the WAAB was violating their commitment to the public interest, declaring that "a truly free radio cannot be used to advocate the causes of the licensee, support the candidacies of his friends, [or] devote [itself] to the support of principles he

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[52] Simmons, *The Fairness Doctrine and the Media*, 37

[53] Simmons, *The Fairness Doctrine and the Media*, 37.

[54] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 37.

happens to regard most favorably."[55] Ultimately, the FCC chose to renew Yankee Network's license, but in doing so, it imposed a ban on editorialized broadcasting under the principle that "the broadcaster cannot be an advocate."[56] This was soon dubbed the Mayflower doctrine.

It is important to note that the Mayflower doctrine was created and enforced separately from Congress; it was not codified for the duration of its existence, nor can it even be found in the *Federal Register's* digital archives today. However, its staying power over the 1940s meant that the FCC could regulate its licensees even more stringently than before, with the goal of ensuring they "present different sides fairly"[57] on important public matters.[58] In sum, the Mayflower doctrine not only helped the FCC justify the eventual need for the fairness doctrine, but established the commission as the single decisionmaker over whether or not any of the country's radio operators were serving the public interest.

The Mayflower doctrine's effective ban on editorializing in broadcasting quickly resulted in pushback from members of the public. Negotiations and compromises between them and the FCC would result in the creation of the fairness doctrine. From March 1-5 and April 19-21, 1948, the FCC sought to clarify and reform the Mayflower doctrine through public hearings. Unlike the specialist conferences hosted by Hoover decades prior, these hearings were open to witnesses from a wide range of backgrounds, including "some 49 witnesses representing the

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[55] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 37.

[56] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 37.

[57] Simmons, *The Fairness Doctrine and the Media*, 38.

[58] Simmons, *The Fairness Doctrine and the Media*, 38.

broadcasting industry and various interested organizations and members of the public."[59] The groups' complaints were near identical; they feared the Mayflower doctrine could infringe on their First Amendment rights, and they demanded transparency from the FCC on how they were enforcing it. The Commission's response not only led to a reversal of the Mayflower doctrine, but a set of conditions that would be formalized the following year as the fairness doctrine. In a report prompted by the hearings, the Commission recognized "the paramount right of the public in a free society to be informed and to have presented to it for acceptance or rejection the different attitudes and viewpoints concerning vital and often controversial issues."[60] While the Mayflower doctrine might have once prohibited advocacy at the broadcaster level, this statement served to acknowledge the importance of editorialization and to begin talks of restoring editorial freedoms over radio. Such liberties, however, would not come in absence of conditions. The FCC also recognized "the necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest in the community served by the particular station."[61] In essence, the Commission proposed a compromise. Editorialization could exist in radio, but only

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[59] Federal Communications Commission, "In the Matter of Editorializing by Broadcast Licensees," in *Federal Communications Commission Reports* (Washington, D.C: United States Government Printing Office, 1965): 1246.

[60] Federal Communications Commission, *In the Matter of Editorializing by Broadcast Licensees*, 1249.

[61] Federal Communications Commission, *In the Matter of Editorializing by Broadcast Licensees*, 1249.

as long as broadcast stations, in the eyes of the FCC, remained reliable sources for learning about issues of public interest. Adding to their proposal, the FCC declared that "in such presentation of news and comment the public interest requires that the licensee must operate on a basis of overall fairness, making his facilities available for the expression of the contrasting views of all responsible elements in the community on the various issues which arise."[62] At first, these conditions, both in the 1949 report and in the formal creation of the fairness doctrine, seem littered with ambiguities. What a "reasonable percentage"[63] of broadcast time was, how "overall fairness"[64] could be measured, and how "public issues of interest in the community"[65] should be decided, seem to have been left for broadcasters to decide. To minimize confusion, the FCC laid out adherence instructions to licensees:

1. The licensee cannot delegate his fairness doctrine responsibility to a network or other party.[66]

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[62] Federal Communications Commission, *In the Matter of Editorializing by Broadcast Licensees*, 1250.

[63] Federal Communications Commission, *In the Matter of Editorializing by Broadcast Licensees*, 1249.

[64] Federal Communications Commission, *In the Matter of Editorializing by Broadcast Licensees*, 1249.

[65] Federal Communications Commission, *In the Matter of Editorializing by Broadcast Licensees*, 1249.

[66] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 44.

2. It is the licensee who decides what issues are to be presented, the spokesman who will present them, and the format in which they will appear.[67]
3. Fairness balancing must be obtained in a licensee's overall programming as opposed to any one show.[68]
4. A broadcast discussion originally thought not to be controversial may arouse opposition and require balancing.[69]
5. An attack on a specific individual or group may require response time for the attacked party.[70]
6. A licensee cannot "stack the cards" by selecting spokesmen of one view at the expense of another.[71]
7. The news cannot be deliberately slanted or distorted.[72]
8. Licensees are protected from arbitrary action by procedural safeguards in the Communications Act and Administrative Procedure Act and by appeal to the courts.[73]

[67] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 44.

[68] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 44.

[69] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 44.

[70] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 44.

[71] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 44.

[72] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 44.

[73] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 44.

9. The public issues to be aired are variously described as ""controversial," "public" and "of interest and importance to the community.""[74]

Though the FCC acknowledged that there was no "all embracing formula"[75] for perfect adherence, they expected licensees to follow the instructions as closely as possible at all times. They also refused to elaborate on them until one-off cases began appearing in court. The instructions were not formally published outside of the report; however, the below two conditions were entered into the *Federal Register*, becoming the fairness doctrine in 1949:

1. that every licensee devote a reasonable portion of broadcast time to the discussion and consideration of controversial issues of public importance; and[76]
2. that in doing so, [the broadcaster must be] fair – that is, [the broadcaster] must affirmatively endeavor to make ... facilities available for the expression of contrasting viewpoints held by responsible elements with respect to the controversial issues presented[77]

Post-1949

Upon entering formal effect, the fairness doctrine faced little resistance from presidential administrations until the Reagan era. However, in a trend that defined its evolution through the 1950s and 1960s, its enforcement was repeatedly challenged by members of the public. The bulk

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[74] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 44.

[75] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 44.

[76] Kathleen Ann Ruane, "Fairness Doctrine: History and Constitutional Issues" (Washington, DC: Congressional Research Service, 2011), https://sgp.fas.org/crs/misc/R40009.pdf, 2.

[77] Ann Ruane, "Fairness Doctrine: History and Constitutional Issues," 2.

of contention surrounding the doctrine in the 50s came through an FCC ruling against Republican Chicago mayor candidate Lar Daly. Daly "demanded equal time on a Chicago TV station, claiming that the station had allowed [his opponent] Mayor Daley to use its facilities, including exposure in a newsreel to the Mayor greeting the President of Argentina at the Chicago airport."[78] Though the matter had occurred on television, it was also broadcasted over radio, thus putting it under fairness doctrine jurisdiction. Given its focus on politicians, the case not only had implications for the fairness doctrine, but also Section 315 of the *1934 Communications Act*. The section mandated that "if any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station."[79] The FCC found the newsreel used by the station to be under the authority of Section 315, and ordered them to give Daly equal time.

The precedent being set was concerning. Would all broadcast stations now have to give equal time to candidates when playing media as simple as newsreels? For the first time in history, Congress stepped in to answer this very question. In June 1959, the Senate Committee on Interstate and Foreign Commerce unveiled their recommendation for S. 2424, an amendment to Section 315 that "exempted various kinds of news programs, such as the one Mayor Daley had appeared on, from equal time requirements."[80] At first, this might seem like a decisive blow to FCC authority. Yet Congress also noted that "in recommending this legislation, the Committee

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[78] Simmons, *The Fairness Doctrine and the Media*, 47.

[79] *Communications Act of 1934*, Sec. 315 [47 U.S.C. 315] (1934), 167.

[80] Simmons, *The Fairness Doctrine and the Media*, 47.

does not diminish or affect in any way Federal Communications Commission policy or existing law which holds that a licensee's statutory obligation to serve the public interest is to include the broad encompassing duty of providing a fair cross section of opinion in the station's coverage of public affairs and matters of public controversy."[81] This statement is significant for two reasons. Firstly, it demonstrated approval from the Senate of FCC policy, and made clear their intent to not overstep the Commission's authority. Though the Lar Daly case might not have been in violation of Section 315 under the new amendment, the FCC could still find the station guilty of violating the fairness doctrine themselves, and demand reform. In addition, the statement was the first of several to recognize conditions of the fairness doctrine in federal legislation. While deliberating the amendment, Democrat Senator and Committee Chairman John Pastore stated that they "understand the amendment to be a statement or codification of the standards of fairness."[82] They also acknowledged that "the Commission is now obliged by existing law and policy to abide by the standards of fairness."[83] Unanimous agreement amongst the Committee of Pastore's remarks, combined with multiple explicit references to fairness in their writing, birthed the possibility of the fairness doctrine being codified. Upon the amendment reaching the House, Republican Representative Mathew Harris Ellsworth shared similar thoughts to Pastore, proclaiming that "The *Communications Act* places the responsibility for fairness upon the

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[81] Senate Committee on Interstate and Foreign Commerce in Simmons, *The Fairness Doctrine and the Media*, 47.

[82] John Pastore in Simmons, *The Fairness Doctrine and the Media*, 48.

[83] John Pastore in Simmons, *The Fairness Doctrine and the Media*, 48.

broadcaster."[84] The final step was to directly reference the conditions of the doctrine in the amendment itself. A House-Senate conference resulted in the following language being added: "Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for discussion of conflicting views on issues of public importance."[85]

Neither in discussion nor in the amendment itself did Congress mention the fairness doctrine by name. Because of this, it became unclear whether the doctrine was under federal protection, and if abolishment would thereby require Congressional approval. It was not until 1986 that through an investigation initiated by Reagan-appointed FCC chairman Mark S. Fowler, the District of Columbia Court of Appeals "held that Congress had not codified the Fairness Doctrine."[86] Until then, however, Congress's implied approval of the doctrine led the FCC to continue enforcing it throughout the 1960s and 70s.

Development of the doctrine in the 1960s was largely defined by revisions in the FCC's approach to personal attacks. This was prompted by a case brought to the FCC over partisan coverage of the 1962 California gubernatorial election. Over the span of twenty broadcasts, the FCC found KTTV, a Los Angeles radio and television station owned by Times-Mirror

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[84] Mathew Harris Ellsworth in Simmons, *The Fairness Doctrine and the Media*, 49.

[85] United States Senate and United States House of Representatives in Simmons, *The Fairness Doctrine and the Media*, 49.

[86] Ann Ruane, "Fairness Doctrine: History and Constitutional Issues," 6.

Broadcasting Company, to have spoken "either against incumbent Governor Brown and the Democratic Party or in favor of challenger Richard Nixon and Republicans."[87] They discovered personal attacks throughout, such as one describing Brown as "one of the greatest ignoramuses on Communism that ever lived or he is soft on it."[88] The FCC argued that KTTV failed to ensure "the right of the public to a fair presentation of views,"[89] and was thus in violation of the fairness doctrine. Once the case concluded, the FCC sought to minimize the chance of similar situations occurring by enforcing clearer provisions surrounding personal attacks on the air.

On July 10, 1967, the FCC unveiled "specific rules"[90] regarding how they would handle personal attacks on broadcasting stations. The following explains them in sum:

"When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than 1 week after the attack, transmit to the person or group attack:

(1) Notification of the date, time and identification of the broadcast;

(2) A script or tape (or an accurate summary if a script or tape is not available) of the attack; and

(3) An offer of reasonable opportunity to respond over the licensee's facilities."[91]

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[87] Simmons, *The Fairness Doctrine and the Media*, 74.

[88] Simmons, *The Fairness Doctrine and the Media*, 74.

[89] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 74.

[90] Simmons, *The Fairness Doctrine and the Media*, 76.

[91] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 76.

At first, exceptions were only made for attacks on "foreign groups or foreign public figures,"[92] or where "personal attacks are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesman, or persons associated with the candidates in the campaign."[93] However, shortly after the release of the rule revisions, the FCC added "bona fide newscasts, on-the-spot coverage of bona fide news, bona fide news interviews, and news commentary or analysis contained in any newscast, news interview, or on-the-spot news coverage"[94] to the exceptions, arguing personal attack regulations "might be impractical and impede the news functions of licensees."[95]

Challenging the FCC's new rules was *Red Lion Broadcasting Co. v. FCC*, a 1969 Supreme Court ruling where enforcement of the doctrine was argued to have been unconstitutional. The plaintiffs were a radio owner called Red Lion Broadcasting Company; on November 27, 1964, their Pennsylvania station WGCB "carried a 15-minute broadcast by the Reverend Billy James Hargis as part of a "Christian Crusade" series."[96] During the show, Hargis accused journalist and academic Fred J. Cook of writing a book for the purpose of smearing his reputation.[97] This came in addition to claims of Cook supporting a Communist sympathizer,

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[92] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 76.

[93] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 76.

[94] Simmons, *The Fairness Doctrine and the Media*, 78.

[95] Simmons, *The Fairness Doctrine and the Media*, 78.

[96] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)," Justia, accessed February 9, 2023, https://supreme.justia.com/cases/federal/us/395/367/#390.

[97] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)."

working for a Communist news outlet, criticizing the CIA, and filing false charges against city officials.[98] Cook viewed Hargis's statements as personal attacks and requested time on air to reply.[99] Red Lion refused.[100] When the FCC found them to have violated their personal attack rules, Red Lion took the case to the Supreme Court, "challenging the fairness doctrine and its specific manifestations in the personal attack and political editorial rules on conventional First Amendment grounds."[101] Alleging that "the rules abridge their freedom of speech and press,"[102] Red Lion claimed that the First Amendment "protects their desire to use their allotted frequencies continuously to broadcast whatever they choose, and to exclude whomever they choose from ever using that frequency."[103] In response, the Supreme Court asserted that "as far as the First Amendment is concerned, those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens."[104] Moreover, defending the FCC's ability to enforce the doctrine, they noted that "there is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with

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[98] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)."

[99] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)."

[100] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)."

[101] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)."

[102] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)."

[103] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)."

[104] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)."

obligations to present those views and voice which are representative of his community and which would otherwise, by necessity, be barred from the airwaves."[105] Lastly, they bluntly proclaimed that "no one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because "the public interest" requires it "is not a denial of free speech.""[106] In essence, the Supreme Court found that the FCC's defense of the public interest was constitutional, and that the fairness doctrine was a legitimate tool of broadcasting regulation. For those under Reagan who wished to abolish it, the Court had created a substantial hurdle to overcome.

The 1970s saw the fairness doctrine face scrutiny over a new type of broadcasting: advertising. A category Reagan took issue with in his own radio broadcasts, advertising was different from talk-show hosting in the sense that an ad was often not modifiable to include a balance of perspectives. Instead, if an advertisement was found to be one-sided on an issue relevant to the public interest, it was up to the station to balance it with advertising from an alternative point of view. Several complaints by broadcasting companies and public interest groups built growing tensions between station owners and the FCC. In 1971, the National Broadcasting Company (NBC) faced criticism from environmentalist group Friends of the Earth over ads it aired by the Standard Oil Company of New Jersey (known today as ExxonMobil Corporation). Regulatory scrutiny came as a result of NBC's radio broadcasting, which it operated until 1999, and not its television network. By promoting its oil drilling operations in

[105] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)."

[106] "Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969)."

Alaska, the company was found by the FCC to have "cognizable bearing"[107] with a controversial issue: the Trans-Alaska Pipeline System. Though the commercial didn't mention the pipeline explicitly, the FCC found it relevant enough for NBC to be violating the fairness doctrine. As a result, NBC needed to cooperate with the FCC on "reasonably presenting viewpoints contrasting with those expressed in the advertisements."[108] In this case, the FCC had made its reasoning for enforcement clear, although Reagan would take issue years later with a similar case involving Texaco ads. Trouble arrived soon after, when military advertisements encouraged enlistment during the Vietnam War. In three different commercials, the United States Army and Marines were admitted by the FCC themselves to have "sought to present the attractive, positive, and advantageous side of military service,"[109] reeling viewers in with promises of "educational opportunities, travel, good pay, and the opportunity to make a really worthwhile contribution to the security of your country."[110] Antiwar petitioners issued requests to "twenty-seven radio and television stations in the San Francisco area,"[111] asking for the ability to broadcast their views "in opposition to the military recruitment announcements."[112] Licensees refused; one argued that

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[107] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 107.

[108] Simmons, *The Fairness Doctrine and the Media*, 107.

[109] Simmons, *The Fairness Doctrine and the Media*, 107.

[110] "Green v. FCC, 447 F.2D 323 (1971)," Casetext, accessed February 9, 2023, https://casetext.com/case/green-v-fcc.

[111] "Green v. FCC, 447 F.2D 323 (1971)."

[112] "Green v. FCC, 447 F.2D 323 (1971)."

"the only issues raised by the recruitment advertisements were whether the United States at this time should maintain armed forces and have voluntary recruitment,"[113] neither of which were as much a subject of debate at the time as the Vietnam War. The FCC sided with this conclusion, viewing it as "not unreasonable."[114] Though they found "the war and the draft"[115] to be controversial, they "contended that [those issues] were not raised by the advertisements and that, in any case, no evidence had been produced indicating that the stations had failed in their general obligation to serve community needs by presenting contrasting sides of these issues."[116] The verdict was curious; NBC wasn't allowed to let Standard Oil of New Jersey promote Alaskan oil drilling, despite the lack of reference to a public interest issue. Yet when the military promoted recruitment amidst a highly controversial military conflict, licensees were permitted to reject requests for sharing public opposition. The inconsistencies in cases like these spawned frustration amongst the public, leading the FCC to clarify its approach to advertising in a new report.

On July 12, 1974, the FCC released a revised framework for its approach to commercial advertising. It categorized all broadcast media advertisements as either being editorial, institutional, or product commercials, and included changes in the regulations of each. For

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[113] Simmons, *The Fairness Doctrine and the Media*, 107.

[114] Simmons, *The Fairness Doctrine and the Media*, 107.

[115] Simmons, *The Fairness Doctrine and the Media*, 107.

[116] Simmons, *The Fairness Doctrine and the Media*, 107.

editorial advertising, the FCC recognized a subcategory of the genre: "overt editorials."[117] Consisting of "direct and substantial commentary on important public issues,"[118] the FCC argued that such ads no longer required fairness balancing as they were simply "editorials paid for by the sponsor."[119] This would not have changed the outcome of NBC's case with Standard Oil of New Jersey, but it encouraged broadcasters to empower non-corporate interests with advertisements surrounding public interest causes. For institutional advertising, the Commission recognized NBC's case under new language: "implicit advocacy."[120] The FCC used the term to describe "advertising designed to present a favorable public image of a particular corporation or industry rather than to sell a product."[121] It found that although "the advocacy in such advertisements may be particularly difficult to identify, fairness doctrine obligations [still] accrue."[122] Beyond clarifying implicit advocacy, the FCC encouraged licensees "to do nothing

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[117] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 114.

[118] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 114.

[119] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 114.

[120] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 114.

[121] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 114.

[122] Simmons, *The Fairness Doctrine and the Media*, 114.

more than to make a reasonable, common sense judgment as to whether the "advertisement" presents a meaningful statement which obviously addresses, and advocates a point of view on, a controversial issue of public importance."[123] They also made an indirect reference to controversy surrounding military recruitment ads, affirming that "if the ad bears only a tenuous relationship to that debate, or one drawn by unnecessary inference, the fairness doctrine would clearly not be applicable."[124] Though it is certainly debatable whether inference of the ads being related to the Vietnam War was "unnecessary,"[125] the FCC had ultimately clarified a framework where its past decisions were justified.

The latter half of the 1970s was significant for its attacks on the fairness doctrine by politicians. For one, on October 18, 1977, the soon-to-be presidential candidate Ronald Reagan took to the airwaves and condemned the FCC for its usage of the doctrine on advertising. Fresh out of his position as governor of California, Reagan had used radio to not only build his following of soon-to-be-voters in the 1980 election, but to share his passion for political and economic deregulation with the world. Originally called *Viewpoint* and later known as *Reagan Radio Commentary*, the show laid the framework for Reagan's restructuring of the FCC, and reveals the abolishment of the fairness doctrine to have strictly been a product of his

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[123] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 115.

[124] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 115.

[125] Federal Communications Commission in Simmons, *The Fairness Doctrine and the Media*, 115.

deregulatory agenda. To avoid being subjected to the doctrine himself, he operated as a syndicated radio host, authorizing his voice to be replayed on different radio stations instead of maintaining one on his own. This move killed two birds with one stone; he transferred any responsibilities entailed by the doctrine to the broadcast stations hosting him, and he maximized the reach of his ideas to their audiences. Though viewership statistics for specific radio broadcasts are largely unavailable, Michael Deaver, a media adviser to Reagan, told the *Los Angeles Times* that between 1975 and 1980, Reagan's radio broadcasts were heard by "50 million people a week."[126] In critiquing the fairness doctrine, Reagan began by addressing a presiding view: that the equal time provisions of the doctrine functioned like "the recipe for mule & rabbit stew."[127] In other words, for every one piece of mule, there'd be one piece of rabbit, and an equal amount of ingredients would create a tasty final product.[128] Delivering such a puzzling statement before going on a short break meant that listeners were left on a cliffhanger, already challenging them to question what could possibly be wrong with the measure. Upon return, he wasted no time getting to the meat of the issue. He made their distaste for the doctrine relevant by referencing an urgent matter of policy at the time: divestiture of oil companies.[129] The issue

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[126] Michael Deaver in Joe Foote and Kevin Curran, *Ronald Reagan Radio Broadcasts (1976-1979)* (Washington, D.C: National Registry, 2007), 3.

[127] Ronald Reagan in *Reagan's Path to Victory: The Shaping of Ronald Reagan's Vision: Selected Writings*, ed. Kiron K. Skinner, Annelise Anderson, and Martin Anderson (New York City: Free Press, 2004), 215.

[128] Reagan in *Reagan's Path to Victory*, 215.

[129] Reagan in *Reagan's Path to Victory*, 215.

had grown inherently political, as Democrat Senator Birch Bayh, among other regulators in Congress, had expressed a desire for America's largest oil conglomerates to be broken up. Although Reagan made clear that legislation was not the subject of that day's commentary, he intentionally let his bias slip by noting that "[divestitures] wouldn't produce any more oil or make us less dependent on the Arabs."[130] Already making a deregulatory stance clear, he connected the dots with the fairness doctrine by highlighting an FCC ruling involving news station WTOP and oil company Texaco. After running approximately fifty three advertisements by Texaco, in which Reagan claimed the word "divestiture" was never mentioned, the commission faced protest from the Energy Action Committee, a group Reagan described as "liberal (make that really anti-business)."[131] The committee's claims that the ads were "against divestiture"[132] were recognized by the FCC, and through the fairness doctrine, they mandated that WTOP include more pro-divestiture material in its advertising. WTOP's response was to force Texaco to "tone down"[133] its existing ad, and to make available "a total of thirty spot ads – sixteen 60-second spots and fourteen 30-second spots"[134] – for the Energy Action Committee. Reagan was furious. He felt Texaco had been censored, and that the Energy Action Committee's free advertising was unfair. Texaco's ads were "bland,"[135] he said, "with no mention that

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[130] Reagan in *Reagan's Path to Victory*, 215.

[131] Reagan in *Reagan's Path to Victory*, 215.

[132] Reagan in *Reagan's Path to Victory*, 215.

[133] Reagan in *Reagan's Path to Victory*, 215.

[134] Reagan in *Reagan's Path to Victory*, 215.

[135] Reagan in *Reagan's Path to Victory*, 215.

Congress was even considering anything called divestiture."[136] In addition, "Texaco paid the regular price for such commercials."[137] Meanwhile, the Energy Action Committee "will get its ads free, and we've learned they won't be censored even a little bit."[138] As their explanation unfolds, it becomes clear that Reagan's commentary is more than a defense of Texaco; it's a condemnation of the FCC in favoring "anti-business"[139] interests, and a warning for what could come next if the fairness doctrine remained in place.

Reagan went on to describe two of the Energy Action Committee's ads that went public on WTOP. The first was "a dramatic little epic called "Mugging.""[140] In it, an innocent bystander is robbed by someone meant to appear like an Arab, who holds a gas nozzle as a weapon.[141] Once they run away with the victim's wallet, the robber removes the clothing made to disguise them as an Arab, and is revealed to be an American oil executive.[142] A voiceover closes the ad, warning, "We'd better break up the oil monopoly before it breaks us."[143] According to Reagan, the second ad shared a similar message; a pair of hands squeezes a sponge resembling the 48

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[136] Reagan in *Reagan's Path to Victory*, 215.

[137] Reagan in *Reagan's Path to Victory*, 215.

[138] Reagan in *Reagan's Path to Victory*, 215.

[139] Reagan in *Reagan's Path to Victory*, 215.

[140] Reagan in *Reagan's Path to Victory*, 215.

[141] Reagan in *Reagan's Path to Victory*, 215.

[142] Reagan in *Reagan's Path to Victory*, 215.

[143] Reagan in *Reagan's Path to Victory*, 215.

mainland states of America, while *America the Beautiful* plays in the background.[144] A pile of money accumulates underneath the sponge, and another voiceover explains that the hands are those of the oil industry.[145]

In Reagan's view, the Texaco ads that sparked the controversy were moderate and just. They did little to influence the consumer's view on antitrust law and were not meant to inspire a stance against divestiture. Yet as a result of the fairness doctrine's enforcement came the empowerment of a radical left-wing viewpoint. In the name of "equal time,"[146] this perspective gained access to a wealth of viewers for free, and could spread a narrative significantly more partisan than anything Reagan found Texaco to have pushed. The FCC had not only punished an actor Reagan believed was innocent; they assisted in the spread of political and economic values that by the dawn of his presidency would prove to go entirely against his own. Indeed, Reagan found nothing about the fairness doctrine to be fair; he ended his broadcast that day by asserting that the FCC ought to be "ashamed of itself."[147]

Upon Reagan entering office, deregulatory policymakers largely ignored his censorship narrative in favor of more nonpartisan plays on the First Amendment and free markets. To be sure, the latter were certainly fundamental aspects of Reagan's ideology. They played a significant role in his 1980 election, and the single biggest role in rallying Congress around the doctrine's demise. Yet Reagan's pre-presidency critiques of the fairness doctrine also reveal an

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[144] Reagan in *Reagan's Path to Victory*, 215.

[145] Reagan in *Reagan's Path to Victory*, 215.

[146] Reagan in *Reagan's Path to Victory*, 215.

[147] Reagan in *Reagan's Path to Victory*, 215.

emotional frustration with FCC regulation. A cherry on top of his deregulatory agenda, this discontent helped ensure that given the chance, Reagan would abolish the fairness doctrine without hesitation.

In addition to Reagan's radio efforts, the 1970s saw a more unexpected threat to the fairness doctrine take shape in Congress. Senator William Proxmire, a Democrat who had supported the implied codification of the doctrine in 1959, became the first politician in history to attempt to repeal it. His change of heart came as a result of the FCC's inconsistencies in enforcement; he felt that "rather than increasing diversity of opinion,"[148] the doctrine was intimidating broadcasters and inhibiting their freedom of speech. He sought to amend this through the *First Amendment Clarification Act of 1977*, which proposed that the terms "public interest, convenience, and necessity"[149] not be "construed to give the Federal Communications Commission jurisdiction to require the provision of broadcast time to any person for the expression of any viewpoint or otherwise to exercise any power, supervision, or review, over the content or schedule of any program broadcast by licensees, except where the broadcast of such material is otherwise prohibited by law."[150] Additionally, the bill proposed the following:

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[148] Craig R. Smith, "The Campaign to Repeal the Fairness Doctrine," *Rhetoric and Public Affairs* 2, no. 3 (1999), 483.

[149] "S.22 – First Amendment Clarification Act," Congress.gov, accessed March 12, 2023, https://www.congress.gov/bill/95th-congress/senate-bill/22?s=1&r=99.

[150] "S.22 – First Amendment Clarification Act."

1. That the FCC could not "revoke a station license for willful or repeated failure of a station to grant or sell broadcast time to a candidate for Federal elective office."[151]
2. That the requirement of "a licensee granting equal opportunities to all political candidates to use the licensee's broadcasting station" be repealed.[152]

In effect, the bill would have prevented the FCC from regulating on the basis of defending the public interest. It also would have removed requirements of balance in the time offered to political candidates on air.

Despite Proxmire's attempts, the law never passed. His biggest supporter in getting the bill to the House was Congressman Lionel Van Deerlin, a Democrat who chaired the Telecommunication Subcommittee. Once he lost their seat in Reagan's 1980 election and could no longer back it,[153] Proxmire's momentum crashed and their Act fell apart. Regardless, though, critical takeaways are to be had from his efforts. For one, despite the law not progressing beyond an introduction to the Senate, it garnered support from high-profile politicians like Democrat New York governor Mario Cuomo and President Reagan himself. Although the law also faced opposition from progressives like Senator Edward Kennedy, the fact that the bill was birthed and backed by Democrats gave it, as well as continued efforts to repeal the doctrine, a degree of bipartisan credibility. With an advocate for the doctrine's demise in the presidency, it was now time for Reagan and his proponents to finish the fight that Democrats had started.

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[151] "S.22 – First Amendment Clarification Act."

[152] "S.22 – First Amendment Clarification Act."

[153] Smith, "The Campaign to Repeal the Fairness Doctrine," 483.

In addition to yielding a presidential win for Reagan, the 1980 election "produced a Republican majority in the Senate,"[154] sparking the beginning of the administration's formal efforts towards abolishing the fairness doctrine. Chairing the Commerce Committee in January 1981 was Republican Senator Robert Packwood, a lawyer who had previously garnered a reputation in the House of Representatives for voting moderately on matters like Watergate (supporting Nixon's impeachment), abortion (pro-choice), and environmentalism (favoring renewable energy). Packwood embodied a moderacy that proved crucial to gathering bipartisan support for the fairness doctrine's abolishment. First on Packwood's list was to rally support amongst the Senate and the public. He attempted this through a speech in September 1982, where he advocated for a Constitutional amendment that would strip the FCC of its doctrine enforcement powers.[155] This, Packwood believed, "would be easier to pass than fighting for repeal of the fairness doctrine in the courts and Congress."[156] The move backfired, as "opinion leaders in the print community"[157] feared that changes to the First Amendment could compromise their freedom of speech.[158] In light of this, Packwood chose to change his approach; rather than advocating for the doctrine's demise himself, he would have some of the biggest names in broadcasting do it for him. Over a series of hearings, he brought in CBS news anchor Dan Rather, NBC *Meet the Press* journalist Bill Monroe, and representatives from American

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[154] Smith, "The Campaign to Repeal the Fairness Doctrine," 481.

[155] Smith, "The Campaign to Repeal the Fairness Doctrine," 484.

[156] Smith, "The Campaign to Repeal the Fairness Doctrine," 484.

[157] Smith, "The Campaign to Repeal the Fairness Doctrine," 484.

[158] Smith, "The Campaign to Repeal the Fairness Doctrine," 484.

Women in Radio and Television, Women in Communication, the National Association of Broadcasters, the Association of American Advertising Agencies, and the Reporters Committee for Freedom of the Press.[159] Importantly, as was the case when NBC came under FCC scrutiny over its advertising, the news network representatives were only present to speak on behalf of their experiences in radio broadcasting. With their testimonies as evidence, the FCC was crafting a case suggesting that the doctrine had only restricted the public interest rather than defended it. Also part of Packwood's playbook was the creation of a nonprofit foundation "which would coordinate the repeal effort using non-public funds and which could provide lobbyist, editorialists, and other opinion leaders with needed arguments and evidence."[160] Named the Freedom of Expression Foundation in December of 1982, the group was nonpartisan, and although it wasn't used to issue direct statements in support of abolishing the doctrine, it served to accumulate further evidence that deregulators could use in their case.[161] The foundation attracted support from some of the biggest names in broadcasting, including station owners like the Times-Mirror Company, who had been subjected to fairness doctrine enforcement decades prior, and at least one chairman or president from CBS, NBC, and ABC.[162] Their "lobbying and legal apparatuses"[163] provided "a conduit of research and arguments in favor of repeal of the

[159] Smith, "The Campaign to Repeal the Fairness Doctrine," 488.

[160] Smith, "The Campaign to Repeal the Fairness Doctrine," 481.

[161] Smith, "The Campaign to Repeal the Fairness Doctrine," 485.

[162] Smith, "The Campaign to Repeal the Fairness Doctrine," 481, 485.

[163] Smith, "The Campaign to Repeal the Fairness Doctrine," 485.

doctrine,"[164] which materialized in late 1983 through regular releases of "articles, pamphlets, books, and newsletters about congressional, court, and agency actions."[165] For every argument Packwood brought to the Senate floor, he could provide evidence backed by highly credible names in the broadcasting industry.

On the surface, Packwood's efforts seemed easily capable of uniting legislators in a push against the doctrine. However, he not only failed to convince a majority of Democrats to vote alongside Republicans, but also ran out of time to fully execute his plans. By 1987, Democrats had gained control of the Senate and replaced the pro-repeal Packwood with Democrat Senator Ernest Hollings. An "ardent defender"[166] of the doctrine, Hollings saw Packwood's abolishment efforts as a dire threat, thus leading him to quickly begin efforts towards codifying it. His urgency also came in part from a decision made by the District of Columbia Court of Appeals a year prior, which stated the following:

"We do not believe that language adopted in 1959 made the fairness doctrine a binding statutory obligation; rather, it ratified the Commission's longstanding position that the public interest standard authorizes the fairness doctrine… It is unclear why [scarcity] justifies content regulation of broadcasting in a way that would be intolerable if applied to the editorial process of the print media."[167]

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[164] Smith, "The Campaign to Repeal the Fairness Doctrine," 485.

[165] Smith, "The Campaign to Repeal the Fairness Doctrine," 488.

[166] Smith, "The Campaign to Repeal the Fairness Doctrine," 494.

[167] Robert Bork in Smith, "The Campaign to Repeal the Fairness Doctrine," 493.

Codification appeared as a saving grace for the doctrine; it would be an act of legitimacy that none of Reagan's FCC appointees, nor anyone else advocating for deregulation in broadcasting, could combat. Yet if Democrats didn't have the support of the Court of Appeals, they needed to act on their own. Thus came the *Freedom in Broadcasting Act of 1987*. The Act sought to amend the *1934 Communications Act* by "requiring broadcast licensees to provide a reasonable opportunity for the discussion of conflicting views on issues of public importance,"[168] and mandating "enforcement and application of such requirement to be consistent with the rules and policies of the Federal Communications Commission in effect on January 1, 1987."[169] The potential consequences appeared devastating for those in favor of deregulation. Exact conditions from the doctrine were proposed to be set in legislative stone, and the FCC would be prohibited from deviating in how they enforced them. Deregulators needed a keen strategy to ensure the fairness doctrine's ultimate fate.

On April 7, 1987 came a hearing I will analyze later in this thesis. It was among the final opportunities anti-abolishment Democrats had to convince the House Subcommittee on Telecommunications and Finance to pass the *Fairness in Broadcasting Act*. Their efforts mounted substantial support in the House, yet they failed to stop abolishment thanks to Packwood's success in the Senate. Two weeks after the hearing, judgement day had arrived; the Senate "took up Senator Hollings' bill to codify the fairness doctrine."[170] Packwood was

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[168] "H.R.2905 – Broadcaster Freedom Act of 2007," Congress.gov, accessed March 13, 2023, https://www.congress.gov/bill/110th-congress/house-bill/2905/text.

[169] "H.R.2905 – Broadcaster Freedom Act of 2007."

[170] Smith, "The Campaign to Repeal the Fairness Doctrine," 496.

permitted to give a speech, in which he reminded the Senate of his extensive experience in researching and in handling debates over the fairness doctrine. He also unveiled a surprise revelation: "the Justice Department had just recommended to the president that he veto the codification legislation if it were passed."[171] Though the Justice Department could not force Reagan to make the decision, his Attorney General at the time was Edwin Meese, a man who had worked as part of Reagan's staff since his California governorship. Described by Reagan advisor David Gergen as "a tremendously influential and highly valued adviser to the President,"[172] Meese was viewed as "almost an alter ego of Ronald Reagan."[173] His close relationship with the President was known throughout the Senate, thus making Packwood's inclusion of their decision in his speech all the more impactful. With the threat of a veto, Packwood's strategy was becoming clear; all he needed was for "one-third plus one of those present and voting"[174] to decide against codification. This was the minimum number of votes needed to ensure that Reagan's veto could not be overridden. The final vote was 59 in favor of codification, and 31 against.[175] Packwood's quorum was met, and despite an "overwhelming 302 to 102 victory"[176] for codification in the House, the Act was destined to fail upon reaching Reagan's desk.

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[171] Smith, "The Campaign to Repeal the Fairness Doctrine," 496.

[172] Louise Sweeney, "Presidential counselor Ed Meese," *The Christian Science Monitor*, August 26, 1982.

[173] Sweeney, "Presidential counselor Ed Meese."

[174] Smith, "The Campaign to Repeal the Fairness Doctrine," 496.

[175] Smith, "The Campaign to Repeal the Fairness Doctrine," 497.

[176] Smith, "The Campaign to Repeal the Fairness Doctrine," 498.

I will examine the verbiage of Reagan's veto later in this thesis. However, two points regarding his decision should be recognized. For one, the veto not only shot down the *Fairness in Broadcasting Act*, but also made the FCC "free to "cease" enforcement of the doctrine."[177] With the District of Columbia Court of Appeals finding the doctrine to have not been codified in 1959, and more recent codification efforts having failed, the doctrine was confirmed to be nothing more than a rule in the *Federal Register* that fell entirely under the Commission's jurisdiction. Backed by extensive evidence from its own findings as well as those of the Freedom of Expression Foundation, the FCC unanimously abolished the doctrine on August, 4, 1987. The D.C. Court of Appeals approved their decision, noting that "although the Commission somewhat entangled its public interest and constitutional findings, we find that the Commission's public interest determination was an independent basis for its decision and was supported by the record. We uphold that determination without reaching the constitutional issue."[178] Additionally, Reagan set a precedent for how future Republicans could handle attempts at restoring the fairness doctrine. If an Act like the *Fairness in Broadcasting Act* was brought forth, even the threat of a veto could put it in jeopardy. Republican control of the presidency, and, in turn, the FCC, meant little resistance to Reagan's decision throughout the remainder of the twentieth century.

The twenty first century has failed to birth a formal return to the fairness doctrine. However, various attempts at codifying it have been undertaken by Democrat legislators. In 2005, the *Fairness and Accountability in Broadcasting Act* was brought to a Republican

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[177] Smith, "The Campaign to Repeal the Fairness Doctrine," 498.

[178] "Syracuse Peace Council v. F.C.C, 867 F.2d 654," Casetext, accessed March 15, 2023, https://casetext.com/case/syracuse-peace-council-v-fcc.

controlled Congress by Democrat Representative Louise Slaughter. Citing "a proliferation of highly partisan networks, news outlets, and ownership groups that disseminate unbalanced news coverage and broadcast content,"[179] the Act sought to amend the *1934 Communications Act* with an "implementation of public interest standard,"[180] including "restoring fairness in broadcasting, ensuring that broadcasters meet their public interest obligations, promoting diversity, localism, and competition in American media, and ensuring that all radio and television broadcasters are (i) accountable to the local communities they are licensed to serve; (ii) offering diverse views on issues of public importance, including local issues; and (iii) providing regular opportunities for meaningful public dialogue among listeners, viewers, station personnel, and licensees."[181] That same year, Democrat Representative Maurice Hinchey introduced the *Media Ownership Reform Act of 2005*, which similarly sought to amend the *1934 Communications Act*, "restore the fairness doctrine,"[182] and "explicitly require broadcast licensees to provide a reasonable opportunity for the discussion of conflicting views on issues of public importance."[183] The fact that neither Act progressed beyond being referred to a committee may very well have been a product of continued Republican leadership. However, the proposals' faithfulness to the fairness

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[179] "H.4. 501 (109th): Fairness and Accountability in Broadcasting Act," Govtrack, accessed March 17, 2023, https://www.govtrack.us/congress/bills/109/hr501/text.

[180] "H.4. 501 (109th): Fairness and Accountability in Broadcasting Act."

[181] "H.4. 501 (109th): Fairness and Accountability in Broadcasting Act."

[182] "Media Ownership Reform Act (MORA)," House.gov, accessed March 16, 2023, https://web.archive.org/web/20070902141115/http://www.house.gov/hinchey/issues/mora.shtml.

[183] "Media Ownership Reform Act (MORA)."

doctrine reveals continued trust in it amongst Democrats to regulate broadcasters and defend the public interest.

Up until 2011, the FCC had chosen not to enforce the fairness doctrine. However, the rule still existed in the *Federal Register* and could technically be revisited if it garnered enough support within the Commission. This changed when President Obama directed a "government-wide review"[184] to "eliminate unnecessary regulations,"[185] and Democrat FCC chairman Julius Genachowski "agreed to erase"[186] the fairness doctrine from the *Register* on August 22, 2011. Though it may seem astonishing that the language of the doctrine faced its final demise under a Democrat president and a Democrat-led FCC, it is important to note that Obama's view of the doctrine as "unnecessary"[187] may have largely had to do with the role of radio broadcasting in the 2010s. The Obama era was largely defined by regulatory controversies over new media technologies, most notably net neutrality on the Internet. With television and social media dominating public viewership, radio had become a shadow of what it was in the latter half of the twentieth century. Though the medium is still far from dead in the present day, the rise and fall of the fairness doctrine was undeniably coincided by that of radio as a tool for defending the public interest. Though vetoed by Reagan at a high point in radio viewership, the doctrine's story has formally ended with the rise of mediums it was never intended to regulate.

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[184] Barack Obama in Brooks Boliek, "FCC finally kills off fairness doctrine," *Politico*, August 22, 2011.

[185] Obama in Boliek, "FCC finally kills off fairness doctrine."

[186] Boliek, "FCC finally kills off fairness doctrine."

[187] Obama in Boliek, "FCC finally kills off fairness doctrine."

Why Deregulation?

On April 7, 1987, just two weeks before the *Fairness in Broadcasting Act* was put to vote, Congress's Subcommittee on Telecommunications and Finance converged in a hearing for debate over the fairness doctrine. The hearing's transcript offers insight into how connected the doctrine's demise was with Reagan's deregulatory vision. Present at the time were some of its most ardent supporters, like former FCC chairman Mark S. Fowler, and its fiercest critics, like consumer advocate Ralph Nader. Combined, each perspective reveals a trend towards deregulation that had reached its climax under the Reagan administration.

Appointed by Reagan in 1981, FCC Chairman Mark S. Fowler was a symbol of hope for those who disproved of the fairness doctrine. Prior to heading the FCC, Fowler worked as a senior partner at D.C. law firm Fowler & Meyers, specializing in "representing radio, television, domestic and private radio stations throughout the United States before the Federal Communications Commission."[188] He had also worked under Reagan during his presidential campaign, serving as the FCC communications counsel for two of his fundraising committees.[189] After taking office, Fowler worked closely with Packwood to abolish the fairness doctrine. In

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[188] "Nomination of Mark S. Fowler To Be a Member of the Federal Communications Commission, and Designation as Chairman," The American Presidency Project, accessed March 16, 2023, https://www.presidency.ucsb.edu/documents/nomination-mark-s-fowler-be-member-the-federal-communications-commission-and-designation-0.

[189] "Nomination of Mark S. Fowler To Be a Member of the Federal Communications Commission, and Designation as Chairman."

1985, he referenced the doctrine as "Government censorship,"[190] and published an FCC report stating that it was "no longer appropriate as a matter of policy,"[191] that it "may no longer be permissible as a matter of constitutional law,"[192] and that it "disserves the public interest."[193] Before the Subcommittee, Fowler sought only to advance these views. He began by appealing to patriotism; at a time when Americans were celebrating "the Bicentennial of the Constitution,"[194] Fowler found it "fitting that we focus on that most essential of democratic rights: liberty of

[190] Reginald Stuart, "Q&A: Mark S. Fowler; An F.C.C. for the Common Man," *The New York Times*, May 25, 1985.

[191] Federal Communications Commission, "In the Matter of Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees" (Public Domain, 1985), 148.

[192] Federal Communications Commission, "In the Matter of Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees," 148.

[193] Federal Communications Commission, "In the Matter of Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees," 148.

[194] *Hearing Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce House of Representatives,* 100th Cong. First Session on H.R. 1934 (1987) (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

expression."[195] Without explicit mention to it, Fowler had already made the fairness doctrine relevant to the First Amendment. Noting that "men and women have fought, suffered, and died in the name of free speech,"[196] Fowler argued that a common goal in America's revolutionary history had been for "no law [to abridge] the freedom of speech or of the press,"[197] and that such duties now rested on Congress to protect. Fowler's words emerged at a moment in which Congress was still conflicted on whether to codify the fairness doctrine. As the hearing unfolded, though, his urgency on the matter proved to only exacerbate the divisions progressives and conservatives held. In their next statement, Fowler made their commitment to Reagan's ideals even clearer: "we are once again challenged to make no law, to free broadcast journalists and the electronic media from the dangerous chill of government-imposed content regulation."[198] From this point forward, Fowler's story was one of David versus Goliath, where a monstrous governmental authority was unfairly scrutinizing broadcasters and compromising First Amendment rights. To him, the only way to balance this dynamic was through the doctrine's

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[195] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

[196] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

[197] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

[198] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

abolishment. "Well-intentioned though it may be,"[199] Fowler affirmed, "the fairness doctrine is an enemy of free speech, time and again silencing informed debate by encouraging broadcasters not to air controversial issues of public importance."[200] In fact, Fowler went so far as to view the doctrine as authoritarian, putting a "Federal saddle on broadcast licensees agreeable to the traditions of nations that have never known freedom of the press."[201] Everything about Fowler's rhetoric suggested that Congress must act fast, and that time was running out before First Amendment freedoms deteriorated altogether. He shifted to explain how the fairness doctrine was compromising the press, noting that while America "prides itself on a free and independent press, we tolerate a government policy that gives a handful of political appointees the power to decide what the entire Nation can and cannot watch on television every day."[202] In other words, while the doctrine may have been conceived as a tool to ensure a diversity of viewpoints in American media, freedom in the press and the private sector had been stripped by an overbearing bureaucracy. "Letting Federal regulators correct and improve viewpoints is absolute

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[199] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

[200] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

[201] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 54.

[202] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

unfairness,"[203] said Fowler, and the government "has no business second-guessing the editorial discretion of journalists."[204] With the fairness doctrine posing risks to First Amendment rights, deregulation was the key to ensuring that every broadcast outlet had equal opportunity to prosper.

Beyond condemning regulators in infringing on constitutional freedoms, Fowler questioned the relevancy of a variety of FCC principles. Firstly, he homed in on a factor he considered integral to the fairness doctrine's origins: scarcity. Fowler dismissed the scarcity narrative, which suggested that given a small number of available frequencies, government regulation was necessary to prevent a concentration of corporate power over broadcasting.[205] He not only offered his own insight, suggesting that a "dramatic surge"[206] in the number and diversity of telecommunication sources had made the narrative obsolete, but referenced work done under his own FCC, which found it to be "unclear why scarcity alone justifies content

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[203] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

[204] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

[205] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 54.

[206] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 53.

regulation of broadcasting."[207] Fowler then combined this attack with increased emphasis on the exceptionalism of the 1980s. He described America as "leading the world into a vast Information Age,"[208] where radio, television, and paper news presented greater access to knowledge than ever before. Fowler insisted "the time [was] long overdue to make print and broadcast journalists coequals in freedom."[209] This is a curious assertion; Fowler noted that although newspapers "sometimes make mistakes,"[210] their lack of regulatory oversight through measures like the fairness doctrine made them a standard for radio broadcasting to strive for. The fact that print journalism had boasted over a century of commercial success served to make Fowler's calls for deregulation more rational. If it yielded economic prosper for print publications, it could do the same for radio broadcasters. Fowler continued to push this narrative by pointing out the lack of a "Federal Newspaper Commission,"[211] arguing that the creation of such an organization would be

[207] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 54.

[208] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 54.

[209] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 54.

[210] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 54.

[211] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 54.

"unconscionable."[212] Fowler did little to elaborate on this claim, but their passion for deregulation may have gone so far as to question whether the FCC needed to exist at all given print news's success. Lastly, Fowler referenced a recent walk-out of journalists from the British Broadcasting Corporation. Fowler cited the strike as being over journalists' freedom to "cover a controversial issue of public importance in the manner they saw it."[213] Referencing matters from abroad accomplished two goals in Fowler's statement: it warned of regulation's consequences on the future of the free press, and yet with previous statements in mind regarding America's leadership in the Information Age, it showed optimism, as acts of deregulation by Congress had the potential to inspire greater journalist freedoms elsewhere.

Ultimately, Fowler's calls to "head ballistically toward liberty of the press for radio and television"[214] were a well-rounded encapsulation of Reagan's deregulatory values. Appointed as chairman to reverse the harsher FCC enforcement of progressive administrations, Fowler had offered a stance with little to no compromise for Democrats to work with. Unrelenting from start to finish, his statements before Congress were a development of Reagan's when he criticized the Texaco – Energy Action Committee scandal a decade earlier.

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[212] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 54.

[213] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 55.

[214] (Statements of Honorable Mark S. Fowler, Chairman Federal Communications Commission), 55.

Fowler's statement was immediately followed by an individual perfectly suited to counter him. Former FCC Chairman Charles D. Ferris was the immediate predecessor to Fowler, having served under the Carter administration from 1977 to 1981.[215] A Democrat in leadership during the Texaco – Energy Action Committee controversy, among other incidents criticized by Reagan, Ferris was not only an advocate for the fairness doctrine, but a cautious critic of the new administration's deregulatory agenda. Ferris began by dismissing much of what Fowler argued to have made the fairness doctrine obsolete. They explicitly suggested that "debate over the fairness doctrine [was] not about censorship, and not about scarcity or the number of new media technologies."[216] Instead, it surrounded a single question: "What obligations should broadcasters have to the public?"[217] To Ferris, the doctrine was not a means for the government to have its hand in deciding what information was shared over the airwaves. Instead, it was a broadly applicable tool used to ensure that broadcasters were acting in favor of the public interest. Moreover, Ferris argued that broadcasters had "a special trust"[218] bestowed to them upon gaining exclusive access to a frequency, thus distinguishing them from dynamics present in paper news or other information mediums. Describing the present day as an "era of deregulation,"[219] Ferris

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[215] *Hearing Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce House of Representatives,* 100th Cong. First Session on H.R. 1934 (1987) (Statement of Charles D. Ferris), 60.

[216] (Statement of Charles D. Ferris), 60.

[217] (Statement of Charles D. Ferris), 60.

[218] (Statement of Charles D. Ferris), 60.

[219] (Statement of Charles D. Ferris), 60.

viewed the doctrine as "the only remaining safety net left for the public interest standard,"[220] a stark contrast from the Fowler narrative suggesting the opposite. Ferris then shifted to a direct critique of Reagan's FCC, the first to occur in the hearing. He argued that the only way Fowler had determined the fairness doctrine to be unnecessary was by simply counting the number of broadcasters in the information sector and determining the result to be a high enough number for the doctrine to no longer be needed. With enough competition in the information market, he had found that the views of broadcasters could naturally balance themselves without government intervention. Yet Ferris believed this approach was based on a false premise[221] and was "legally misguided."[222] To them, determining whether broadcasters were operating in the public interest not only depended on the amount of them present in "some overall system,"[223] but also on standards enforced by Congress to make them "public trustees with unique public responsibilities."[224] Indeed, the difference between Ferris's and Fowler's views on radio was the degree to which regulation should enforce how they behave. While Fowler battled for the prospect of broadcasters fulfilling the public interest on their own, Ferris was not as willing to trust them to do so. Like Reagan, Ferris drove home his point with reference to a single case that put enforcement of the fairness doctrine to the test. When Judge Warren Burger sat on the District of Columbia Court of Appeals in the 1960s, they found station WLBT to have

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[220] (Statement of Charles D. Ferris), 60.

[221] (Statement of Charles D. Ferris), 60.

[222] (Statement of Charles D. Ferris), 60.

[223] (Statement of Charles D. Ferris), 60.

[224] (Statement of Charles D. Ferris), 60.

broadcasted "exclusively racist views"[225] in the decade leading up to the Civil Rights Movement.[226] Burger decided that broadcasters were "temporary permittees – fiduciaries of a great public resource,"[227] and that by not only being one-sided, but acting in a manner that discouraged progress in civil rights, WLBT had failed in fulfilling the public interest. The racist actor could be punished because of the fairness doctrine, which Burger found to have played a "very large role in assuring the public resource granted to licensees at no cost will be used in the public interest."[228] A notoriously conservative justice admired by Reagan, Burger had offered Ferris a powerful example of how regulation bettered the media market, and how the story of the fairness doctrine's enforcement was one of regulating for the sake of integrity. In absence of it, Ferris argued that "there is nothing to prevent a broadcaster from grossly abusing the public trust embodied in a broadcast license, just as WLBT abused its public trust."[229] Moreover, they went so far as to suggest that the media, a "precious and valuable tool of democracy,"[230] "could be turned against itself, as there would at best be no counter weight to broadcasters' purely economic incentives to avoid controversial issues in favor of game shows and sitcoms."[231]

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[225] (Statement of Charles D. Ferris), 60.

[226] (Statement of Charles D. Ferris), 60.

[227] (Statement of Charles D. Ferris), 60.

[228] (Statement of Charles D. Ferris), 60.

[229] (Statement of Charles D. Ferris), 60.

[230] (Statement of Charles D. Ferris), 60.

[231] (Statement of Charles D. Ferris), 61.

Ferris's focus on regulation as a means of maintaining integrity was strongly at odds with the Reagan administration's approach. He argued that there was an irony in "those seeking to abolish the fairness doctrine trying to use the public interest standard as the basis for its repeal when without it, there is no public interest standard."[232] In other words, within a deregulated radio landscape, Ferris argued a major risk of corporate control, and of broadcasts serving economic interests rather than public ones. Thus, Ferris continued to make their case by appealing to ethics, starting with a break in the exceptionalism of radio broadcasting. Ferris found that in paper news existed writings like the Code of Ethics of the American Society of Newspaper Publishers; these documents mandated that "every effort must be made to assure that news content is accurate, free from bias, and in context, and that all sides are presented fairly."[233] For one, Ferris strove to weaken Fowler's suggestion that paper news had succeeded in absence of regulation. How could one describe paper news as deregulated when very similar provisions served to regulate the circulation of America's most popular newspapers at the time? Notably, these mandates did not come from the federal government and could not entail legal force as punishment for violation. However, Ferris showed that journalistic ethics were being mirrored by the fairness doctrine, and that all forms of media could benefit from such standards being in place. When "community groups or the politically powerful"[234] pressured broadcasters and writers to "suppress coverage of unpopular issues or support their points of view,"[235] they could

[232] (Statement of Charles D. Ferris), 61.

[233] (Statement of Charles D. Ferris), 61.

[234] (Statement of Charles D. Ferris), 61.

[235] (Statement of Charles D. Ferris), 61.

simply point to the fairness doctrine and equivalent codes of ethics as justifications for not doing so.

Ferris continued to condemn Fowler by suggesting that their findings of the fairness doctrine limiting speech were one-sided.[236] Noting that they "completely ignored the testimony of groups as to the increased opportunities for speech provided by the doctrine,"[237] Ferris argued an ignorance in Fowler's methodology that had undermined their case for constitutionality. Was Fowler truly acting in favor of the First Amendment, or was their pro-abolishment stance simply a product of Reagan's deregulatory endeavors? To address this, Ferris first dismissed Fowler's characterization of the doctrine as "chilling,"[238] affirming that just a decade earlier, they saw "no credible evidence of a chilling effect."[239] If anything, they noted that in 1979, the FCC "explicitly found that the fairness doctrine enhanced, not reduced speech."[240] Ferris then argued that the idea of regulation as "chilling"[241] had been sourced solely from "the self-serving anecdotes of broadcasters."[242] The weight of this accusation cannot be understated; Ferris implied that Fowler's deregulatory approach was a product of cooperation with status quo broadcasters, and was not necessarily constructed with the everyday listener in mind. Carrying

[236] (Statement of Charles D. Ferris), 62.

[237] (Statement of Charles D. Ferris), 62.

[238] (Statement of Charles D. Ferris), 62.

[239] (Statement of Charles D. Ferris), 62.

[240] (Statement of Charles D. Ferris), 62.

[241] (Statement of Charles D. Ferris), 62.

[242] (Statement of Charles D. Ferris), 62.

this narrative further, Ferris suggested that a "chilling"[243] effect would only be felt by broadcasters who sought to violate the doctrine. Overall, they found that Fowler's argument for deregulation was "economically motivated,"[244] and that it only served to protect those who wished to air "grossly imbalanced coverage"[245] of controversial issues, thus abusing their public interest duties. With the District of Columbia Court of Appeals recognizing the Reagan administration as being "one of the foremost advocates of across-the-board deregulation for the entire broadcast industry,"[246] Ferris not only viewed efforts against the doctrine as a battle for deregulation, but Fowler as a proponent for the elimination of much-needed oversight in radio.

Reinforcing Ferris's views was consumer advocate Ralph Nader. Already renowned for exposing inadequacies in the automotive industry and the Federal Trade Commission, Nader contrasted Fowler by not only endorsing the codification of the fairness doctrine, but proposing an even more widespread enforcement of it. Nader began by interpreting the First Amendment in an entirely different fashion from Fowler. Noting the words of Supreme Court Justice Hugo Black, Nader reminded Congress that an assumption of the First Amendment was that "the widest possible dissemination of information from diverse and antagonistic sources is essential to

[243] (Statement of Charles D. Ferris), 62.

[244] (Statement of Charles D. Ferris), 63.

[245] (Statement of Charles D. Ferris), 63.

[246] District of Columbia Court of Appeals in (Statement of Charles D. Ferris), 63.

the welfare of the public."[247] Viewing the airwaves as a public good, Nader agreed with Justice Black that "the rights of the viewers and listeners are paramount, not the rights of the broadcasters."[248] Already, Nader's characterization of the government was antithetical to Fowler's. The image of an FCC censoring and destroying the prospect of free speech had been replaced with one of an organization simply serving the interests of its people. Moreover, Nader equated the abolishment of the fairness doctrine to an increased leverage amongst broadcasters in deciding what would and would not be presented to their viewers, a prospect they found dangerous considering already existing monopolies in network and cable television. Furthermore, Nader not only dismissed Fowler's views on the death of the scarcity narrative, but suggested the opposite: that radio had become more scarce than ever before. With prices for airtime on broadcast frequencies reaching colossal highs,[249] Nader affirmed, "more people would like to air programming on these channels than can do so."[250] This continuously increased the power of the few who could afford to maintain their stations, and made more and more important the fairness doctrine as a tool for ensuring a "content-neutral flow of information in an unobtrusive manner."[251] Backing the doctrine's usage as such, they reminded Congress of its two

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[247] *Hearing Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce House of Representatives,* 100th Cong. First Session on H.R. 1934 (1987) (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

[248] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

[249] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

[250] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

[251] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

prongs, and they sought to disprove Fowler's theory of the doctrine being too powerful for government hands. Firstly, as they considered the requirement for broadcasters to "devote air time to the discussion of controversial issues of public importance in the community of service,"[252] Nader reminded his audience that the broadcasters were in complete control of the "issues"[253] being highlighted. In fact, with a large enough audience, a broadcaster could even take an issue with little public awareness and inspire much greater controversy around it than it had had before. With the FCC relying on "reasonable, good faith determinations"[254] from broadcasters, Nader found the measure so lenient that "it is on its face ridiculous for broadcasters to object to it."[255] Moving on to the second measure, which required that "broadcasters afford a reasonable opportunity for the presentation of contrasting viewpoints on those controversial issues of public importance,"[256] Nader applied the same logic. "Who determines what is a reasonable opportunity and which viewpoints get aired? Again, it is broadcasters."[257]

Nader's approach is shrewd both because of its transfer of perceived power from regulator to broadcaster, and for the need it inspires for greater regulation in the broadcasting sector. Where Reagan and Fowler painted businesses as entities in trouble, Nader not only warned of their power, but implied that by trusting them on the basis of ethics, the fairness

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[252] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

[253] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

[254] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

[255] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

[256] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

[257] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

doctrine had such clear workarounds that corporate broadcasters could still act nefariously with the power they possessed. “Far from a heavy tool [for] big government to mold their broadcasts,”[258] he claimed, the fairness doctrine “is a very narrow, carefully tailored set of rules which, unfortunately, imposes the most minimal obligation on broadcasters.”[259] In addition, Nader went so far as to assert that in absence of the protections offered by the fairness doctrine, the *1934 Communications Act* mandated unconstitutional regulation of radio. This was thanks to its licensing model, which granted exclusive licensing to a single party for a single frequency. With entire frequencies being acquired by individual companies, according to Nader, monopolistic power would become more and more in need of regulatory oversight. Nader’s statement is of extraordinary importance to this hearing, as it not only reveals that debates over enforcement were a question of regulation on both sides, but also that the Reagan administration’s deregulatory framework had faced extreme scrutiny before Congress. Ultimately, Nader’s rationale was defeated by Reagan’s veto, but in the fight against deregulation, his rhetoric was among the most impactful to be delivered by anti-abolishment progressives.

What About Patrick?

Though Fowler’s uncompromising vendetta against the doctrine can clearly be understood through the hearing, it is also important to note how deregulation advanced under his successor. Fowler announced his resignation on January 16, 1987; despite facing continued criticism from Democrats over his deregulatory agenda, he had served as chairman longer than

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[258] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

[259] (Statement of Ralph Nader. I. The Fairness Doctrine is Already Codified.), 251.

any of his predecessors, and he chose to leave on his own terms to pursue interests in the private sector.[260] His last day in office was April 17th, just ten days after the hearings he had testified in. With the fight against the doctrine still months away from ending, Dennis R. Patrick was an attractive choice for chairman. Like Fowler, he had worked as a lawyer before joining the Commission, handling corporate law cases at Adams, Duque, & Hazeltine.[261] In addition, after serving as Associate Director of Presidential Personnel under Reagan from 1982 to 1983, he was sworn in as an FCC Commissioner, thus already beginning work with Fowler to remove the doctrine from regulation.[262] When word first came out of Patrick's appointment to FCC chairman, Democrats recognized the likelihood for the continuation of a conservative direction. Yet they were willing to approach it with optimism and determination. For instance, the thirty-six-year-old quickly established a reputation for acting with "a more diplomatic bearing"[263] than his predecessor. That said, however, with less than two years remaining in Reagan's second

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[260] Jerry Knight, "MARK FOWLER PLANS TO RESIGN AS FCC CHAIRMAN IN SPRING," *The New York Times*, January 17, 1987.

[261] "Designation of Dennis R. Patrick as Chairman of the Federal Communications Commission," Ronald Reagan Presidential Library and Museum, accessed March 18, 2023, https://www.reaganlibrary.gov/archives/speech/designation-dennis-r-patrick-chairman-federal-communications-commission.

[262] "Designation of Dennis R. Patrick as Chairman of the Federal Communications Commission."

[263]Sandra Salmans, "REGULATOR UNREGULATED: Dennis Patrick; At the F.C.C., Another Man Who Loves Free Markets," *The New York Times*, September 20, 1987.

term, Patrick had no choice but to act with haste. The *Fairness in Broadcasting Act* was quickly taking shape, and victory for Democrats could embarrass Reagan's efforts. The result was a Patrick under pressure; while some lawmakers welcomed him at first, lauding him as a much-needed "politic successor to the abrasive Mr. Fowler,"[264] it was only by September that Democrats had "castigated him as an ideologue."[265] Larry Irving, Democrat Congressman and senior counsel for the House Telecommunications Subcommittee, went so far as to declare that Patrick "will be stopped,"[266] and that "after six years of Mark Fowler, Congress isn't going to tolerate 18 months of Dennis Patrick."[267] Such frustrations were not only driven by specifics of the *Fairness in Broadcasting Act*, but by fundamental disagreements on the roles of regulation and markets. When asked in an interview with *The New York Times* to address the question of "everything's already been done [in regards to deregulation], what possibly is left?,"[268] Patrick

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[264]Salmans, "REGULATOR UNREGULATED: Dennis Patrick; At the F.C.C., Another Man Who Loves Free Markets."

[265] Salmans, "REGULATOR UNREGULATED: Dennis Patrick; At the F.C.C., Another Man Who Loves Free Markets."

[266] Salmans, "REGULATOR UNREGULATED: Dennis Patrick; At the F.C.C., Another Man Who Loves Free Markets."

[267] Salmans, "REGULATOR UNREGULATED: Dennis Patrick; At the F.C.C., Another Man Who Loves Free Markets."

[268] Richard E. Wiley, Dennis R. Patrick, Laurence A. Tisch, Jonathan D. Blake, and Marshall J. Breger, "Broadcast Deregulation: The Reagan Years and Beyond," in *Administrative Law Review* 40, no. 3 (1988): 352.

asserted that "a central tenet of the recent FCC's administration of our responsibilities has been reliance upon marketplaces forces to be distinguished from relying upon regulation where reliance upon markets is possible."[269] Patrick's distinction should not be understated; he spoke of the media as a component of the American economy, where viewership and revenue take precedent in deciding the sector's dominant players. Though connections between success in the market and integrity of material being covered was of hot contention thanks to figures like Nader, Patrick assured that his approach was ideal for bettering consumer welfare and serving the public interest. By erasing the doctrine, a "vigorously competitive market [could] supplant the regulatory restraints and provide "proper incentives,""[270] a term referring to rewards that would "cause broadcasters to maximize consumer welfare or public interest benefits."[271] Patrick conceded that the markets didn't always function in such a manner, and that legitimate rationale may have existed for regulation in the past. He referenced the "chaos"[272] narrative, which suggested that broadcasting would digress into pandemonium in absence of regulation, as well as the "scarcity"[273] argument, which suggested that the radio spectrum "cannot be allocated in the market and must be regulated."[274] Yet he dismissed both by returning to the universality of economic markets. To him, both critiques emerged as part of the assertion that broadcasting was

[269] Patrick, "Broadcast Deregulation: The Reagan Years and Beyond," 352.

[270] Patrick, "Broadcast Deregulation: The Reagan Years and Beyond," 353.

[271] Patrick, "Broadcast Deregulation: The Reagan Years and Beyond," 353.

[272] Patrick, "Broadcast Deregulation: The Reagan Years and Beyond," 354.

[273] Patrick, "Broadcast Deregulation: The Reagan Years and Beyond," 354.

[274] Patrick, "Broadcast Deregulation: The Reagan Years and Beyond," 354.

unique from every other sector of the American economy in terms of its need for regulatory oversight. He concluded, however, that while radio could easily influence social, political, and economic dialogue, it was just as capable of integrating with American capitalism as any other aspect of the markets, and thus was just as entitled to operate in absence of scrutiny from the FCC.

Patrick, in essence, was a perfect extension of Fowler's rhetoric. Whether it was Nader and other pro-codification advocates arguing the verity of scarcity concerns, or fears of oligopolies controlling the nation's spread of information, Patrick was not only unrelenting in his critiques of the doctrine, but in doing so, had worn his passion for deregulation on his sleeve. While Fowler might have started the fight to abolish the doctrine at the FCC, Patrick was the one to finish it.

The Veto

On June 19, 1987, Congress's efforts to save the fairness doctrine came to an end. Reagan submitted a veto to the *Fairness in Broadcasting Act*, with both his and his appointees' rhetoric prevalent throughout. Fowler's and Patrick's tones set the mood for the first paragraph, summing the two original conditions of the doctrine before declaring it "antagonistic to the freedom of expression guaranteed by the First Amendment."[275] Reagan added a flare of patriotism to Fowler's rhetoric, however, by declaring that the founding fathers, "confident that public debate would be freer and healthier without the kind of interference represented by the

[275] Letter, Ronald Reagan to the Senate of the United States, June 19 1987, Entire Category, S,742, WHORM: Subject File, Ronald Reagan Library, 1.

fairness doctrine, chose to forbid such regulations in the clearest terms."[276] He then went on to consider *Red Lion Broadcasting Co. v. FCC*. Once a victory for the doctrine, Reagan, like Patrick, brushed off the verdict as being due to the political and cultural landscapes surrounding radio at the time. He argued the Supreme Court's decision was based on the now-antiquated belief that "usable broadcast frequencies were then so inherently scarce that government regulation of broadcasters was inevitable."[277] To back this up, Reagan cited Fowler's 1985 report on the doctrine, which concluded that it was "an unnecessary and detrimental regulatory mechanism,"[278] especially in light of a "recent explosion in the number of new information sources."[279] All of this was to say that the "controversial issues of public importance"[280] that the fairness doctrine was meant to balance coverage of were being discussed less efficiently and effectively as they could be if the doctrine was not in place. To Reagan, the reporting of such issues went hand in hand with the First Amendment, as he demanded that Americans be allowed to "promote vigorous public debate and a diversity of viewpoints in the public forum as a

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[276] Letter, Ronald Reagan to the Senate of the United States, June 19 1987, Entire Category, S,742, WHORM: Subject File, Ronald Reagan Library, 1.

[277] Letter, Ronald Reagan to the Senate of the United States, June 19 1987, Entire Category, S,742, WHORM: Subject File, Ronald Reagan Library, 2.

[278] Letter, Ronald Reagan to the Senate of the United States, June 19 1987, Entire Category, S,742, WHORM: Subject File, Ronald Reagan Library, 2.

[279] Letter, Ronald Reagan to the Senate of the United States, June 19 1987, Entire Category, S,742, WHORM: Subject File, Ronald Reagan Library, 2.

[280] Ann Ruane, "Fairness Doctrine: History and Constitutional Issues," 2.

whole."[281] If the First Amendment could ensure a balance of perspectives, then there was little reason for the fairness doctrine to make matters more strict. It is no surprise then, that when Congress tried to codify the doctrine, Reagan deemed it "unconstitutional"[282] altogether.

The Role of Deregulation, as Documented in Historiography

Congressional hearings, interviews, and federal documents explicitly reveal the abolishment of the fairness doctrine to be a product of Reagan's deregulatory pursuits. Yet several scholars have not only de-emphasized Reagan's role in the doctrine's demise, but attributed it either to prior leaders or to other factors pre-dating his presidency. It is thus important to carefully evaluate how historiographic conclusions have been made so far, which factors might be helpful in explaining the doctrine's story, and where emphasis may have been improperly placed up to this point.

Offering a compelling explanation for the fairness doctrine's demise is Princeton professor Julian E. Zelizer, who argued that the rule failed because it inadequately regulated conservative broadcasters. To them, the doctrine had in practice only been a "modest regulation;"[283] by allowing conservative radios to proliferate under its watch, it paved the way

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[281] Letter, Ronald Reagan to the Senate of the United States, June 19 1987, Entire Category, S,742, WHORM: Subject File, Ronald Reagan Library, 2.

[282] Letter, Ronald Reagan to the Senate of the United States, June 19 1987, Entire Category, S,742, WHORM: Subject File, Ronald Reagan Library, 3.

[283] Julian E. Zelizer, "How Washington Helped Create the Contemporary Media: Ending the Fairness Doctrine in 1987," in *Media Nation: The Political History of News in Modern America*, ed. Julian E. Zelizer and Bruce J. Schulman (University of Pennsylvania Press, 2017), 179.

for the critics who demanded its demise. Zelizer set the stage by suggesting that "conservative radio talk show hosts hated the fairness doctrine"[284] since the 1950s. The era saw "a growing number of right-wing radio broadcasters take to the airwaves and openly challenge the FCC regulation."[285] With over 1,000 conservative-hosted shows in America by 1964,[286] Zelizer argued that "wealthy conservative philanthropists"[287] were funding radio commentaries that deliberately leaned to the right. With the rules "not [being] well enforced,"[288] they could speak without reference to the public interest or alternative viewpoints to challenge them. Though the Red Lion case resulted in the Supreme Court "upholding the constitutionality of the fairness doctrine,"[289] Zelizer affirmed that conservative radio hosts had no intent of modifying their programming. Instead, they expressed disagreement with the Court's decision and created new

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[284] Zelizer, "How Washington Helped Create the Contemporary Media: Ending the Fairness Doctrine in 1987," 179.

[285] Zelizer, "How Washington Helped Create the Contemporary Media: Ending the Fairness Doctrine in 1987," 179.

[286] Zelizer, "How Washington Helped Create the Contemporary Media: Ending the Fairness Doctrine in 1987," 179.

[287] Zelizer, "How Washington Helped Create the Contemporary Media: Ending the Fairness Doctrine in 1987," 179.

[288] Zelizer, "How Washington Helped Create the Contemporary Media: Ending the Fairness Doctrine in 1987," 179.

[289] Zelizer, "How Washington Helped Create the Contemporary Media: Ending the Fairness Doctrine in 1987," 180.

arguments for why the doctrine was in violation of the First Amendment. Zelizer concluded that right-wing hosts became particularly emboldened by a 1974 Supreme Court case involving the print journalism industry. The case had been remarkably similar to Red Lion's; in 1972, Florida House of Representatives candidate Pat Tornillo was criticized in a newspaper published by *Miami Herald*. Tornillo demanded space in the paper to respond, citing a law passed in Florida stating that "if any newspaper in its columns assails the personal character of any candidate for nomination or for election in any election, or charges said candidate with malfeasance or misfeasance in office, or otherwise attacks his official record, or gives to another free space for such purpose, such newspaper shall upon request of such candidate immediately publish free of cost any reply he may make thereto in as conspicuous a place and in the same kind of type as the matter that calls for such reply, provided such reply does not take up more space than the matter replied to."[290] Despite the statute being in place, *Miami Herald* refused Tornillo's request, as they felt it would compromise their freedom of press. The Supreme Court ruled in *Miami Herald*'s favor, overturning the statute on the basis that it threatened "the function of editors"[291] and "the exercise of editorial control and judgment."[292] Zelizer argued this to be a watershed moment in conservative radio hosts' battle against the doctrine. If an extremely similar statute was found to be unconstitutional in print journalism, then perhaps the Court had ruled improperly in Red Lion's case, and the doctrine could be abolished after all. Thus the partisan

[290] Florida Statute § 104.38, F.S.A. (1973).

[291] *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 94 S. Ct. 2831, 41 L. Ed. 2d 730 (1974).

[292] *Miami Herald Publishing Co. v. Tornillo*.

broadcasting continued to grow in aggression, and the more the FCC failed to regulate it, the more support conservatives could rally in ensuring the doctrine's demise.

Viewing deregulation from Zelizer's lens is extremely important; it shows how the doctrine's abolishment became a dominant agenda for conservatives rather than liberals. Yet more could be done to explain how its demise became a product of Reagan's deregulatory efforts. For one, as Zelizer notes, funding played a crucial role in the rise of conservative radio. However, few details are given regarding the "wealthy conservative philanthropists"[293] argued to have kept right-wing broadcasters afloat. Whether they also lobbied regulators, or even figures like Reagan themselves to abolish the doctrine is entirely unexplored, leaving massive gaps in what can be understood about the financial backing of partisan radio. What is known about lobbying, however, is that some of the biggest sources of funding for Packwood's abolishment campaign did not come from independent conservative broadcasters. Instead, he recruited many of America's biggest corporations to support the Freedom of Expression Foundation, including Times-Mirror Company, AT&T, and the Big Three network broadcasters (CBS, NBC, and ABC).[294] Understanding the fairness doctrine's abolishment requires recognition of the fact that deregulatory efforts were largely backed, through both finance and testimony, by several of America's biggest radio companies and interest groups. An additional area of concern for Zelizer lies more broadly in how Reagan's role is conveyed. Given his prior success in radio broadcasting, it is extremely possible that Reagan viewed the fairness doctrine's abolishment as a

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[293] Zelizer, "How Washington Helped Create the Contemporary Media: Ending the Fairness Doctrine in 1987," 179.

[294] Smith, "The Campaign to Repeal the Fairness Doctrine," 485.

way to expand the reach of right-wing rhetoric. However, Reagan's public appeals against the doctrine, both in his 1975 broadcast and in his veto, omitted any mention of conservative radio, or even any accusations of the right being censored. Instead, he focused on individual cases where the doctrine had either failed to invoke fairness on the airwaves or had proven itself to be in violation of the First Amendment. For instance, although he expressed frustration over FCC enforcement in the Texaco case, he only viewed Texaco as a third-party victim rather than as a representative of the right. Ultimately, although a rise in right-wing broadcasting certainly preceded Reagan-era efforts to abolish the doctrine, the deregulatory efforts that resulted in its demise were driven by bipartisan initiatives focused on free markets and First Amendment rights.

While Zelizer found that the doctrine's regulation of conservatives was weak, Libertarianism.org editor Paul Matzko believed it went too far. In *The Radio Right*, they not only argued that the FCC discriminately targeted right-wing broadcasters, but that attempting to serve the public interest was an impossible feat destined to fail. Matzko noted that a bias in understanding the public interest is dangerous; he agreed with fellow twenty-first century scholar Allison Perlman about it not being a "singular, knowable thing."[295] Instead, they argued that throughout the fairness doctrine's enforcement, the public interest became "a battlefield among groups all claiming that their particular interests are the public interest,"[296] as well as "a fight

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[295] Paul Matzko, *The Radio Right: How a Band of Broadcasters Took on the Federal Government and Built the Modern Conservative Movement* (Oxford: Oxford University Press, 2020), 108.

[296] Matzko, *The Radio Right,* 108.

over cultural resources and for political recognition."[297] For corporate operators, the public interest was simply "the programs that interested the public,"[298] as well as the advertisements that gave viewers "the high-quality programming they wanted for "free.""[299] For right-wing stations, the public interest involved accusing the private sector and the FCC of liberal bias, "warning ordinary citizens about the bad policies of [Democrat presidents] and organizing political resistance."[300] With these differences in mind, Matzko transitioned to consider the vulnerability of independent right-wing broadcasters compared to corporate ones. Conservatives' reliance on syndication meant that although they could "reach the kind of national audience previously reserved for network customers,"[301] they still "lacked [the major networks'] lobbying heft and cohesion."[302] In other words, Matzko affirmed that although they had tremendous viewership, conservatives had little means of supporting court efforts against the FCC should they had been censored by them. Because of this, despite both corporate and conservative broadcasters distorting the public interest for personal gain, the latter was disproportionately targeted by the FCC.

Matzko found that the FCC's efforts against the right began when Kennedy-appointed chairman Emil William Henry sought to replace profit-driven entertainment with "more

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[297] Matzko, *The Radio Right,* 108.

[298] Matzko, *The Radio Right,* 108.

[299] Matzko, *The Radio Right,* 109.

[300] Matzko, *The Radio Right,* 109.

[301] Matzko, *The Radio Right,* 106.

[302] Matzko, *The Radio Right,* 106.

substantive programs."[303] What was and was not "substantive"[304] quickly became of hot contention between the FCC, major broadcast networks, and the syndicated right. However, where the networks' profits could lobby them out of regulation, conservative broadcasters became especially vulnerable to scrutiny. Henry's ambitions materialized through the fairness doctrine's personal attack reforms, which Matzko argued to have "clearly targeted right-wing broadcasters."[305] In declaring that it looked "to substance rather than to label or form when deciding whether stations complied with the fairness doctrine,"[306] Matzko found that the FCC's impartiality was in reality just "pleasant-sounding fictions disguising partisan intent."[307] Matzko believed "labels of 'Americanism,' 'anti-communism,' or 'states' rights,' [regardless of] whether it was a paid announcement, official speech, editorial or religious broadcast,"[308] were the focus of the amended fairness doctrine's enforcement, with corporate and liberal radio hosts being largely ignored. Compromising the fairness doctrine, then, was the FCC's regulatory targeting of right-wing radio hosts over others. By acting with such bias, the doctrine had failed to serve the public interest, and Republicans had no choice but to fight back through efforts to repeal it.

Matzko's view of the doctrine as a tool of biased enforcement is of undeniable importance. It emphasizes a largely unexplored reasoning behind the left's support for the

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[303] Matzko, *The Radio Right,* 110.

[304] Matzko, *The Radio Right,* 110.

[305] Matzko, *The Radio Right,* 112.

[306] Matzko, *The Radio Right,* 112.

[307] Matzko, *The Radio Right,* 112.

[308] Matzko, *The Radio Right,* 112.

doctrine, and it reveals a dichotomy between corporate broadcasters' circumventing of regulation, and independent right-wing hosts' subjection to it. However, like with Zelizer, issues arise in regarding the demise of the doctrine as a product of right-wing radio rather than of deregulation. To be sure, their points are antithetical; where Matzko felt the doctrine went too far, Zelizer believed it didn't go far enough. Yet convincing enough members of Congress to abolish the doctrine had little to do with advocating for the radio right, especially when it came to persuading Democrats. Instead, Reagan's deregulatory agenda challenged existing measures by arguing that they infringed on all Americans' First Amendment rights. Had 1980s-era deregulation not been so all-encompassing and bipartisan, discussion surrounding the doctrine may have continued to focus on the censorship debate Matzko described. Yet the fact that it didn't demonstrates a need for Reagan's efforts to be analyzed in greater depth. Matzko did not provide this, choosing mainly to focus on the doctrine's 1960s-era enforcement instead. Another issue for Matzko lies in how they portray the power imbalance between corporate and independent radio broadcasters. It is certainly true that the former had easy access to funds and could typically be relied on to defend itself in court. Their involvement in the Freedom of Expression Foundation must also not be forgotten. Yet to suggest that their power allowed them to circumvent the doctrine is to ignore cases like the one brought to NBC over the Standard Oil of New Jersey ads they aired. The FCC believed a corporate broadcaster was failing to serve the public interest and mandated that action be taken. In addition, when it came time for corporate interests to advocate for the doctrine's abolishment, their complaints came from cases where the FCC had already succeeded in holding them accountable. Indeed, evidence of regulation against media's most powerful players may make it more difficult to convey the doctrine as solely

targeting independent broadcasters. That's not to say, however, that Matzko's evidence doesn't contribute crucially to historiography on the fairness doctrine.

A third perspective on the doctrine's demise is offered by University of Pennsylvania professor Victor Pickard. In *America's Battle for Media Democracy*, they not only argued that the fairness doctrine lacked proper means to ensure representation of the public interest, but that its demise was ensured decades before Reagan entered office. Pickard found that from the 1940s onwards, the FCC and the fairness doctrine had been forced to adapt to "an increasingly right-wing tilt in Washington politics."[309] Much of this, they believed, came as a result of Clifford Durr resigning from the FCC in 1948. Durr had earned their commissioner seat under Roosevelt and was identified by Pickard as one of the last leading progressives to advocate for stricter regulation in broadcasting.[310] The fairness doctrine brought compromises to much of Durr's work; they had previously helped draft the Mayflower doctrine, which allowed the Commission to apply a ban of editorialized content across the airwaves. Durr noted prior to its repeal that the "soundest idea uttered on a street corner, or even in a public auditorium, can't hold its own against the most frivolous or vicious idea whispered into the microphone of a national network."[311] With the Mayflower doctrine gone, "pro-business proclivities would be further

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[309] Victor Pickard, *America's Battle for Media Democracy: The Triumph of Corporate Libertarianism and the Future of Media Reform* (Cambridge: Cambridge University Press, 2015), 118.

[310] Pickard, *America's Battle for Media Democracy*, 120.

[311] Clifford Durr in Pickard, *America's Battle for Media Democracy*, 106.

amplified"[312] and would risk drowning out the public voice. Upon the Cold War commencing and the Second Red Scare taking shape, Truman mandated a loyalty oath to ensure Commissioners did not support far-left ideologies. Durr refused to take it and resigned.[313] In absence of a figure like Durr, Pickard argued that "the possibility of progressive regulatory intervention was greatly diminished,"[314] and that "systemic change seemed to be a lost cause."[315] With corporations having greater freedoms to advance their interests through editorials, and with progressives no longer having the means to hold them accountable, the trend towards Reagan-era deregulation became inevitable, as did the fairness doctrine's demise.

Pickard does well to note the compromises made between the Mayflower and fairness doctrines, especially in terms of how they spawned a proliferation of editorializing in broadcasting. Yet to suggest that Durr's exit from the FCC ensured the doctrine's demise is to dismiss the efforts made by Democrats, the Supreme Court, and the public to uphold it. For one, the Supreme Court inspired confidence in the doctrine through the Red Lion case, backing the FCC's decision to defend the public interest and regarding such measures as constitutional. In addition, when oil companies advertised their drilling operations on air, progressives called on the doctrine to provide balance, and were able to broadcast their views at equal time because of it. And when the Reagan administration called for the doctrine to be abolished, Democrats

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[312] Pickard, *America's Battle for Media Democracy*, 107.

[313] Pickard, *America's Battle for Media Democracy: The Triumph of Corporate Libertarianism and the Future of Media Reform*, 118.

[314] Pickard, *America's Battle for Media Democracy*, 120.

[315] Pickard, *America's Battle for Media Democracy*, 120.

responded by attempting to codify it. Though their efforts failed, the clear majorities in favor of the move, seen amongst the Senate and the House, were a testament to the doctrine's perception at the time as a vital tool for preserving the public interest. It is indeed true that the doctrine was abolished by the right in the 1980s. Yet the victories it brought to progressives in the 60s and early 70s prove that its fate was anything but sealed until the rise of Reagan-era deregulation.

Conclusions

A media as polarizing as today's demands context. How did corporate network and cable news operators react to and benefit from regulation? How did independent radio broadcasters advocate for or condemn the fairness doctrine? And most of all, in what ways was the abolishment of the doctrine a direct consequence of sweeping deregulation by the Reagan administration?

Historiography on the subject has proven scattered. Scholars have either examined the usage and/or impact of the doctrine prior to the rise of Reagan, or in absence of emphases on his and his appointees' policies. It should be noted that each of these contributions has been extremely valuable to constructing a timeline of the doctrine's demise. Though Reagan was the single biggest driving force behind it, his actions were undoubtedly preceded by an era of contention between the FCC and right-wing radio hosts, as well as a decline in regulators advocating for Mayflower doctrine-levels of regulatory stringency. Matzko, Zelizer, and Pickard, though mostly failing to reach consensuses on their views, reveal a doctrine ridden by scandal before Reagan even had the power to fight it. If parties didn't want the doctrine to be erased from the law completely, they often wanted substantial if not radical reforms. Moreover, despite Packwood's bipartisan efforts succeeding in ensuring a valid veto, groups on the left and right still expressed discontent with Reagan's decision. On June 21, 1987, the *Los Angeles Times*

reported that "a diverse coalition of public interest and religious groups and conservative and liberal political organizations vowed to fight for a congressional override."[316] Democrat John D. Dingell, chairman of the House Energy and Commerce Committee, failed to be convinced by Fowler, Packwood, or Patrick, instead aligning with the likes of Nader in considering the doctrine "a limited requirement imposed on broadcasters in exchange for the highly lucrative privilege they obtain with their licenses for exclusive use of a scarce national resource."[317] The sheer contrast in views between Dingell and Fowler on licensing, scarcity, and the degree of effective regulation imposed by the doctrine made clear the prevalence of party polarization prior to a post-doctrine media landscape even taking shape.

Much is also to be considered about the debate over Reagan's deregulation in the age of modern broadcasting and social media. Firstly, his language lives on in a 2008 op-ed by conservative paper news publication *The Washington Times*. As the twenty-year anniversary of the veto approached, and as the FCC progressed in a fight to repeal the doctrine for good, the *Times* found that ""fairness" meant that federal authorities would monitor the airwaves for perceived political bias, imposing their own notion of "equal" time and access for other viewpoints."[318] The writer claimed that the government had forced broadcasters to self-censor, "hedging their programming"[319] and resulting in "blander, more stifler, and less free

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[316] Penny Pagano, "Reagan's Veto Kills Fairness Doctrine Bill," *Los Angeles Times*, June 21, 1987.

[317] Pagano, "Reagan's Veto Kills Fairness Doctrine Bill."

[318] "EDITORIAL: 'Fairness' is censorship."

[319] "EDITORIAL: 'Fairness' is censorship."

coverage."[320] However, they also referenced revived efforts by Democrats to restore the doctrine under the Obama administration. Democrat Senator Dick Durbin suggested that with the fairness doctrine in place, "Americans [would] hear both sides of the story, [and would be] in a better position to make a decision."[321] Democrat Senator Diane Feinstein, meanwhile, complained that "talk radio is overwhelmingly one way."[322] Both insights are curious. Durbin, like Ferris and Nader, identified an outcome for the doctrine that was entirely different from what conservatives like Fowler and Patrick argued. They now viewed regulation as the solution to a problem deregulation had exacerbated. And Feinstein, amidst the rise of the Internet, when Facebook had already claimed fifty million active users,[323] still put talk radio first and foremost in debate over media law. Disagreements between *The Washington Times* and Democrat lawmakers are but a continuation of the polarized arguments that surrounded the fairness doctrine's 1987 abolishment. Although Democrats' reinstatement efforts may have failed thus far, continued support of the measure within Congress proves that twentieth century progressives' views have endured.

Lastly, Reagan's deregulatory views have come to be credited by scholars as a cause for success in a new age of far-right conservatism, most recently and prominently embodied under the Trump administration. Writers Kevin M. Kruse and Julian Zelizer described a change in

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[320] "EDITORIAL: 'Fairness' is censorship."

[321] Dick Durbin in "EDITORIAL: 'Fairness' is censorship."

[322] Diane Feinstein in "EDITORIAL: 'Fairness' is censorship."

[323] Doug Sherrets, "Microsoft invests $240m in Facebook, as Facebook develops ad product," *VentureBeat*, October 24, 2007.

media as happening "overnight"[324] after Reagan's veto, with a "driving force"[325] being talk radio. With Zelizer having already made the case for a proliferating radio right in the decades preceding the doctrine's demise, they found Reagan's deregulatory success to have only emboldened conservative broadcasters in terms of the rhetoric they shared with their followers. Kruse and Zelizer cited Bob Grant as among the first examples; "long been known to test the limits of the doctrine,"[326] Grant could now feel "free to engage in outspoken nativism and racism"[327] on air, calling black protestors in the 1991 Los Angeles riot "screaming savages,"[328] complaining about "not being able to discuss white rights,"[329] and referring to immigrants crossing the US-Mexico border as "subhumanoids."[330] Where Grant was only appealing to a New York audience, however, Rush Limbaugh envisioned – and achieved – national success, forming a personality around their language towards progressives as "commie-libs, feminazis, and environmentalist wackos."[331] With over twenty million Americans streaming them from six

[324] Kevin M. Kruse and Julian Zelizer, "How policy decisions spawned today's hyperpolarized media," *The Washington Post*, January 17, 2019.

[325] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[326] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[327] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[328] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[329] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[330] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[331] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

hundred and fifty stations,[332] Kruse and Zelizer viewed Limbaugh as a near-immediate consequence of deregulation, and a warning of what would continue to proliferate in absence of federal intervention. From this point forward, they argued, conservative radio began to integrate itself with deregulatory Republican policy, even while wading between the lines of journalism and entertainment.[333] During their 1992 campaign, for instance, George H. W. Bush allowed Limbaugh to stay in the White House overnight, going so far as to carry their luggage into the building themselves.[334] In exchange, Limbaugh "threw his full support behind the president."[335] The phenomenon Kruse and Zelizer identified is extremely telling; after breaking free from the fairness doctrine and gaining unprecedented control of their own narratives, Republican politicians not only allowed personalities like Limbaugh to personify conservatism through hate speech, but openly befriended them in hopes of gaining their political support. By 1995, conservatives dominated the airwaves, accounting for approximately seventy percent of all talk radio listeners.[336] The story of deregulated radio had proven itself, and it was only a matter of time before it spread to other mediums. "Seeing the massive audiences that conservative talk radio attached,"[337] Kruse and Zelizer claimed, "cable television entrepreneurs realized that they,

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[332] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[333] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[334] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[335] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[336] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[337] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

too, could thrive by providing the news from a partisan perspective."[338] The 1996 launch of Fox News saw cable viewers be introduced to "the scandals of the Clinton administration,"[339] and later, "full-throated support for the war on terrorism."[340] Interestingly, Kruse and Zelizer noted that the old guard of network providers did not immediately react the same way. NBC president Bob Wright did not "pay as much attention"[341] to the Clinton scandals as Fox. Yet the establishment of MSNBC, according to Kruse and Zelizer, as a "left-leaning operation"[342] late in the Bush presidency,[343] symbolized an embrace of Reagan's deregulation. In the age of Trump, Kruse and Zelizer believed the "merger of [Fox News] and modern conservatism has been completed,"[344] with "several hosts serving as informal advisors to the president,"[345] and others even taking formal roles in their administration.[346] The fact that a single news network has such influence over an ideological movement, that said network has such close ties to America's most powerful political leaders, and that said leaders have little to no incentive to regulate networks

[338] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[339] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[340] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[341] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[342] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[343] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[344] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[345] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

[346] Kruse and Zelizer, "How policy decisions spawned today's hyperpolarized media."

due to personal gain, can all be traced to the proliferation of conservative radio after Reagan vetoed the fairness doctrine.

I began writing this thesis with the intent to analyze today's hyper-polarized media, and to answer the all-encompassing question of why things are the way they are. The more it developed, however, the more it became a story of how the government relinquished its duties to enforce non-partisan broadcasting, and set the media free to explore content of its own preference, on its own terms. Reagan demanded the markets decide how the media shapes its reporting; he got his wish, and it is thus impossible to view the abolishment of the fairness doctrine, the rise of conservative radio, and every implication it has had for late twentieth and twenty first century mass media, as anything but a product of his work and his ideologies.

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