

WITHDRAWAL SHEET

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DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Gary Bauer to Rhett Dawson re Fairness Doctrine legislation, 1p [Item is still under review under the provisions of EO 13233]	6/16/87	
2. memo	T. Kenneth Cribb to R. Dawson re Fairness in Broadcasting Act, 2p [Item is still under review under the provisions of EO 13233] 5/17/02 600	6/17/87	

RESTRICTIONS

- B-1 National security classified information [(b)(1) of the FOIA].
- B-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- B-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- B-7a Release could reasonably be expected to interfere with enforcement proceedings [(b)(7)(A) of the FOIA].
- B-7b Release would deprive an individual of the right to a fair trial or impartial adjudication [(b)(7)(B) of the FOIA].
- B-7c Release could reasonably be expected to cause unwarranted invasion or privacy [(b)(7)(C) of the FOIA].
- B-7d Release could reasonably be expected to disclose the identity of a confidential source [(b)(7)(D) of the FOIA].
- B-7e Release would disclose techniques or procedures for law enforcement investigations or prosecutions or would disclose guidelines which could reasonably be expected to risk circumvention of the law [(b)(7)(E) of the FOIA].
- B-7f Release could reasonably be expected to endanger the life or physical safety of any individual [(b)(7)(F) of the FOIA].
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE
WASHINGTON

Date:

6/24/87

FOR:

Tuck

FROM: TOM GRISCOM

- Action
- Your Comment
- Let's Talk
- FYI

~~OK~~
noted
6-25-87

United States Senate

WASHINGTON, DC 20510

June 23, 1987

The Honorable Howard Baker
Chief of Staff
The White House
Washington, D.C. 20500

Dear Howard:

Given the President's veto of the fairness doctrine codification bill, it is more important than ever that Craig Smith be nominated for the seat that has been open since April 17 on the Federal Communications Commission. No one has fought harder for the repeal of the doctrine and been more supportive of deregulation in general than Craig.

As you know, Craig has been a spear carrier for the Republican Party dating back to his support of the President's first run for governor in California and culminating with his service to us as Director of Senate Services for the Republican Conference and Deputy Director of the National Republican Senatorial Campaign Committee. Perhaps that's why Craig has generated so much support for this appointment from Republican Senators.

Craig's academic credentials are equally impressive. His ten years of university teaching culminated in the Chairmanship of the Department of Communications at the University of Alabama in Birmingham. During and since that time, he has written many articles and books directly related to issues that will come before the FCC. That's one of the reasons I asked Craig to become President of the Freedom of Expression Foundation. In the four years he has run the Foundation, he has testified on Capitol Hill, appeared before the FCC, and prepared many friend-of-the-court briefs on cases involving the First Amendment and 20th century technology. On every occasion, he has acquitted himself with distinction.

The Honorable Howard Baker
June 23, 1987
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Craig would make an impressive nominee and send a message to the Hill that this Administration is very serious about its defense of the First Amendment and deregulation in general. I urge you to act on this nomination soon.

Sincerely,

A handwritten signature in black ink that reads "Bob". The letters are stylized and cursive.

BOB PACKWOOD

Tom -
wasn't sure
How personal
so didn't open.
P.



Tom -

thought
you'd

(202) 546-1917

DR. CRAIG SMITH

want to
see this -

Craig

PRESIDENT
FREEDOM OF EXPRESSION FOUNDATION
414 S. CAPITOL STREET, S.E.
WASHINGTON, D.C. 20003

Craig R. Smith

414 SOUTH CAPITOL STREET, S.E.
WASHINGTON, D.C. 20003

WHITE HOUSE MAIL
RECEPTION & SECURITY

1988 JUN 24 11:11:07

Personal

Mr. Tom Griscom
Director of Communications
The White House
Washington, D.C. 20500

BY MESSENGER

THE WHITE HOUSE

WASHINGTON

June 16, 1987

file

MEMORANDUM FOR RHETT DAWSON

FROM: GARY L. BAUER *GLB*

SUBJECT: Fairness Doctrine Legislation

The Office of Policy Development recommends that the President sign this legislation. Although we would normally oppose governmental requirements in this area, the "fairness doctrine" has served a useful purpose.

- o Without it the networks are under no serious imposition to present both sides. It is the only "stick in the closet" to ensure a fair hearing.
- o Ideological bias has been clearly shown by a number of studies of network programming. This bias is likely to worsen without the fairness doctrine to ensure open debate.
- o Many of the President's traditional supporters support the fairness doctrine as the only way they have to get access. For example, Phyllis Schlafly credits it with providing her the chance to battle ERA proponents on the air. She and others will work for an override of any veto.
- o The public supports fairness legislation. A 1984 NBC poll showed that by 58% to 37% Americans favor laws requiring the networks to be fair.

I recommend we keep the veto weapon for issues on which there is a more clear consensus among our natural allies.

June 5, 1987

S. 742 -- FAIRNESS IN BROADCASTING ACT OF 1987

Background and Description

The so-called "Fairness Doctrine," which is administered by the Federal Communications Commission (FCC), imposes two duties upon radio and television broadcasters. First, they must cover issues of public importance. Second, they must fairly reflect differing viewpoints on those issues. S. 742 would preclude the FCC from repealing the Fairness Doctrine administratively.

Status

S. 742 passed the Senate by a vote of 59-31 on April 21st. It passed the House by a vote of 302-102 on June 3rd. According to an informal check with the enrolling clerk of the Senate, the earliest the enrolled bill will arrive at the White House is Monday, June 8th. If the bill does in fact arrive on Monday, the President's last day for either approving or vetoing the legislation would be Friday, June 19th.

Administration Position to Date

The administration has opposed S. 742 in both the House and Senate. Statements of Administration Policy opposing S. 742 were sent to both Houses before floor action on the bill stating that the Fairness Doctrine: (1) is unnecessary, in light of the dramatic increase in the number of information sources in recent years; (2) does not promote, but actually inhibits, free and open discussion of important and controversial issues; and (3) may contravene important constitutional principles by restricting the First Amendment rights of broadcasters. In addition, the Justice Department sent letters to both the House and Senate strongly opposing this measure on constitutional grounds, and the Commerce Department testified in opposition in the House. Finally, the OMB Director sent letters to the House on June 3rd stating that he would recommend that the President veto the bill.

Next Steps

OMB has already requested the recommendations of the Departments of Commerce and Justice and the Federal Communications Commission for Presidential action on the bill. After the agencies' views are received, the OMB enrolled bill memorandum to the President will be sent forward for signature. OMB will be recommending disapproval of S. 742, and the Departments of Justice and Commerce are seriously considering recommending a veto.

Attached is an LSG strategy paper, prepared by OMB staff, which addresses S. 742 in greater detail.

OFFICIAL FILE

June 4, 1987
12:00 noon

FAIRNESS DOCTRINE

The "fairness doctrine," adopted by the Federal Communications Commission (FCC) in 1949, currently requires radio and television broadcasters to: (1) provide coverage of important controversial issues and (2) provide a reasonable opportunity for the presentation of contrasting viewpoints on such issues.

Background

- o In 1985, the FCC issued a report on the fairness doctrine, which determined that the fairness doctrine no longer served the public interest, but declined to repeal the doctrine administratively (an action that an appeals court has held, in the so-called "TRAC" decision would be legal). The FCC has taken no further steps to eliminate the fairness doctrine.
- o S. 742 responds to concerns of Congress that the FCC may indeed choose to repeal the fairness doctrine at a later date; the two bills preclude any administrative action in this area by codifying the doctrine in statute.
- o Presently before the Supreme Court is a petition for certiorari of the TRAC decision, which concluded that the fairness doctrine is not a statutory requirement. The Supreme Court is expected to consider the issue.
- o The President has previously expressed his support for full First Amendment freedoms for broadcasters; the fairness doctrine is inconsistent with this position.

Major Actors

- o SENATE: Supporters of this legislation include Senators Hollings, Inouye and Danforth, co-sponsors of S.742. Opposition includes Senators Packwood, Proxmire and Stevens. Although Senator Packwood did little lobbying before the Senate vote, the bill passed the Senate by a relatively close vote of 59-31, showing probable veto strength.
- o HOUSE: Commerce Committee Chairman Dingell has taken a personal interest in getting the fairness doctrine codified. Dingell has apparently sought out members of the House (e.g., Subcommittee Chairman Markey) to ensure support. Key Republicans supporting this legislation include Dannemeyer and Bliley. The bill passed the House by 302-102.
- o Groups supporting this legislation are many and varied. The list includes the League of Women Voters, the National Conservative Political Action Committee, the National Education Association, Accuracy in the Media, the ACLU, Common Cause, and all the major religious organizations.

- o Opposition comes from the Freedom of Expression Foundation, the Radio-Television News Directors Association, the major networks, and the National Association of Broadcasters (NAB). (NAB has not lobbied against the legislation for fear of angering Dingell who controls a major license renewal reform proposal set to go before Congress this session.)
- o On April 7th, the Commerce Department testified before the Senate Commerce Committee in opposition to the fairness doctrine bills. Justice has sent letters to the Senate and the House to register strong opposition, on constitutional grounds. On June 3rd OMB Director Miller sent a letter to Representatives Lent, Michel, Dingell, Foley, Lott and Rinaldo stating he would recommend that the President disapprove H.R. 1934 should it pass.

Next Steps

- o S. 742 has now passed the House and Senate. The Senate enrolling clerk advises informally that the enrolled bill will be sent to the White House early during the week of June 8th.

Options

- o The President will have 10 days (excluding Sundays) from the date the bill is received in the White House to approve or veto it.
- o Veto -- if sustained, would reaffirm strong position and set groundwork for impending Supreme Court review of constitutionality issue, as Justice has argued. If overridden, a veto could still embarrass the President. Both Kassebaum and Armstrong voted present because of broadcast interests. They may be persuaded to vote on sustaining a veto. Apparently, the perception on the Hill is that the Administration has been very concerned about this legislation and that the WH sees it as a "big" issue.
- o Sign the legislation into law -- if the President were to veto, Dingell may include language in another veto proof bill to prevent FCC from taking any administrative action to repeal the fairness doctrine. This would make a veto of S. 742 moot.

THE WHITE HOUSE
WASHINGTON

file

June 17, 1987

MEMORANDUM FOR RHETT DAWSON

FROM: T. KENNETH CRIBB, JR. *TKC/A*
SUBJECT: Veto Recommendation for the
Fairness in Broadcasting Act

I join the White House Counsel's Office, the Justice Department, the Commerce Department, and OMB in urging the President to veto the so-called Fairness in Broadcasting Act -- a bill which would codify the "Fairness Doctrine" regulations of the FCC. The FCC concluded in 1985 that these regulations were unconstitutional but did not repeal them because the Commission believed they were statutorily mandated. Since then, the courts have ruled that the regulations are not statutorily required and may well be unconstitutional. Accordingly, the Commission will almost certainly scrap the regulations in a case now pending that squarely raises the issue of their constitutionality.

Like the regulations it would codify, the Fairness in Broadcasting Act is itself unconstitutional because, in violation of the First Amendment, it requires the private owners of television and radio stations in every state to publish statements by members of the general public that they do not agree with, under the threat of criminal penalties to be imposed by a five member Commission of the Federal Government. The Courts have never allowed a Federal Commission to tell newspapers what to publish and recent decisions make it clear that they are not likely to tolerate attempts by the Federal Government to tell television and radio station owners what they have to broadcast or say. Recently, the Courts have abandoned their previous willingness to uphold broadcasting regulation and now appear likely to insist on the same First Amendment protection for television and radio as is enjoyed by the traditional print media. As the President himself said in his June 15, 1985 comments upon the 50th anniversary of the FCC, "there is simply no basis to distinguish between a journalist who uses a microphone and a camera and a journalist who uses newsprint and ink under our First Amendment. Protection for both should be strong and equal."

As the Washington Post pointed out in a June 10, 1987 editorial, the so-called Fairness Doctrine should be opposed on policy grounds as well as for constitutional reasons. It gives a five member Government Commission, the FCC, the power to regulate the speech of television and radio broadcasters to make sure that in the view of the FCC members it is "fair" and that a diversity of viewpoints is represented. The latest data from the FCC strongly suggests that the Fairness Doctrine is at best unnecessary and at worst actually results in less diversity of speech than would obtain if there were a totally free market.

Aside from our general reservations over any sweeping Federal regulatory scheme, this particular scheme should alarm us because it could in theory be misused to inhibit that free debate and discussion of ideas that is essential to the holding of elections and to the maintenance of a free society. Some in our society now dislike the big media so much that they would rather trust their fate to a five member Federal Commission than rely on decentralized competitive market forces to preserve their access to the public. This is a mistake. Those who like the way this Administration's FCC has performed should not necessarily expect to be at all pleased with FCC regulatory policies under some future Administration. Instead, they should put their trust in competitive free market forces which, if unleashed, would soon make the big networks attentive to public concerns. Over the last six and one-half years, the Commission has found that deregulatory communications policies cause a proliferation of radio and television outlets which, in effect, decrease the monopoly power of the three major networks. To quote the President again, "[t]he answer is not to create a Federal Newspaper Commission ("FNC") or some other nightmare worthy of a George Orwell novel. The answer is freedom for all who sit at the press table."