

The Censorship Doctrine: Silencing Talk Radio in the Name of ‘Fairness’

By Sean Higgins

Summary: Free speech is fine, except when it needs to be rationed. That’s the view of liberal advocates of the “Fairness Doctrine” who believe radio stations give too much airtime to Rush Limbaugh and other conservative talk show hosts. The Left wants to reinstate a discarded FCC regulation once used to balance viewpoints back when there were only a few stations on the radio dial.

One of Johnny Carson’s regular skits on “The Tonight Show” in the 1970s and 80s was “Floyd R. Turbo, American.” The premise of the skit was that Turbo, a member of the “silent majority,” had taken offense at the way his local TV station had covered some controversial topic. Turbo demanded – and received – time to appear on the evening news to offer a rebuttal.

Carson would appear on the screen in a red flannel jacket and Elmer Fudd-style hunting cap and launch into an angry diatribe that revealed how hopelessly ill-informed Turbo was on the subject at hand. One skit had Turbo taking issue with the station’s editorial support for seatbelts by explaining: “The last place I want to be during an accident is strapped into the seat of my car. I’d rather be home in my easy chair drinking a beer.”

Another skit had Turbo explaining his stance on nuclear power thusly: “And what’s all this fuss about plutonium? How can something named after a Disney character be dangerous? ... They say atomic radiation can hurt your reproductive organs. My answer is, so can a hockey stick, but we don’t stop building them.”



Sen. Chuck Schumer (D-New York) wants to revive the so-called Fairness Doctrine that would destroy talk radio. Here he speaks at a Hillary Clinton for president event in 2007.

Comedian Gilda Radner played a similar character called Emily Litella during her time on the TV comedy program “Saturday Night Live” in the 1970s. Litella, elderly and partially deaf, would appear as a citizen commentator offering her hilariously confused take on the burning news issue of the moment. Why, she asked in one skit, was everybody so concerned about the plight of “Soviet jewelry”? At some point the news anchorman would point out her misunderstanding: People are concerned about Soviet *Jewry*. Litella would cringe, look into the camera and say, “Never mind.”

Though exaggerated for comic effect, these characters were based on actual people that TV and radio broadcasters knew all too well.

From 1949 through 1987, broadcasters were subject to a federal rule called the Fairness Doctrine. The rule obliged broadcasters to offer rebuttal time to just about anyone who took issue with a political position or other controversial viewpoint broadcast on the station.

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In theory, the Doctrine furthered the cause of free speech by giving everyone a chance to have access to the airwaves. No viewpoint would be stifled and debate would flourish, at least in theory.

In practice, the opposite happened. The sketches by Carson and Radner give a sense of why: the law didn't differentiate between thoughtful, sober-minded critics and kooks, cranks, and the perpetually aggrieved. Airing anything remotely controversial meant that stations could find themselves bullied into giving airtime to people no matter how daft their opinions or obnoxious their agendas might be. Once they knew they could get on the air, they came back to object to other things. (The joke of the Turbo and Litella skits was that they were constant complainers, no matter what the issue.) Stations that refused to host them could find themselves in court and their federal licenses in jeopardy.

"When official Fairness Doctrine letters came to the station's owner from the FCC, the front office panicked," wrote civil liberties columnist and former radio reporter Nat Hentoff in a 2008 column. "Lawyers had to be summoned; tapes of the accused broadcasts had to be examined with extreme, apprehensive care; voluminous responses to the bureaucrats at the FCC had to be prepared

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and sent. After a number of these indictments from Washington arrived at WMEX, the boss summoned all of us and commanded that from now on, we ourselves would engage in no controversy at the station."

Rather than deal with these money-draining legal headaches, most station managers simply avoided controversy altogether. Expressly opinionated programming and anything else that might spark a challenge was nudged off the air. Public affairs shows were assiduously balanced – and boring, and audiences disappeared. Many media bigwigs came to the conclusion that there wasn't an audience for public affairs programming.

Just how much the Fairness Doctrine had quashed free expression became apparent a few years after its repeal in 1987. Once stations were free to experiment with politically controversial material without fearing to be held hostage to any crank who complained, there was a renaissance in public affairs programming, particularly on once moribund AM radio. Led by Rush Limbaugh, talk radio came roaring back to dominate the airwaves.

Fans of the Fairness Doctrine

Not everyone is pleased by this turn of events, and the reason is simple: The broadcast renaissance in political commentary has tilted heavily towards advocacy of conservative ideas. That's caused liberal groups and top Democratic lawmakers to push back. They are toying with ways to reinstate the Fairness Doctrine, and they see that a new Congress and administration is opening up opportunities for them to get their way.

For left-wing ideologues, the repeal of a government regulation promoting fairness has been a disaster that allowed the right wing to gain control of public airwaves and poison public discourse. It's bad enough that the federal government gives broadcast licenses to corporations that sell commercial airtime for profit. The least lawmakers can do is bring back the days of federal regulation and bring the Rush Limbaughs, the Sean Hannitys, and the rest to heel.

"I think we should all be fair and balanced, don't you?" said Sen. Chuck Schumer (D-New York), slyly affirming his support for the Doctrine during a Nov. 4, 2008 appearance on Fox News.

The movement to reinstate the Fairness Doctrine is currently somewhat inchoate, involving a loose coalition of groups and individuals who have yet to launch a public campaign for it. Instead supporters seem to be biding their time, as if they are waiting for just the right controversy that will help them frame a policy debate more in their direction. Schumer's comments reflect this strategy, as he claims it is about restoring balance to the air waves, not muzzling anybody.

Advocates are also exploring alternate paths that avoid specifically reviving the Fairness Doctrine but accomplish the same goal. One such proposal would be to allow local community activists to have a say in the renewal of licenses. Imagine if every time you wanted to renew your station's license you have to get the okay of the local branch of ACORN or the NAACP. Current FCC chairman Kevin Martin has already made moves in that direction.

"They will try to sneak in the Fairness Doctrine through the Trojan Horse of localism," John Berlau, director of the Center for Entrepreneurship at the Competitive Enterprise Institute, told *Foundation Watch* in an interview.

In addition to Schumer, the Fairness Doctrine's return has been explicitly endorsed by such congressional leadership figures as House Speaker Nancy Pelosi (D-California), Senate Majority Whip Dick Durbin (D-Illinois), and Sen. John Kerry (D-Massachusetts), the 2004 presidential candidate. Rep. Dennis Kucinich (D-Ohio), chairman of the Domestic Policy Subcommittee of the House Oversight and Government Reform Committee, has pledged to hold hearings on it. Before the Democrats regained control of Congress, House Judiciary Committee Chairman John Conyers (D-Michigan) actually held a shadow committee hearing calling for its return. Its most ardent supporter may be Rep. Louise Slaughter (D-New York), who has sponsored several bills to bring it back.

"Rush Limbaugh has every right to be (on the air) but that radio station has to give equal time to another point of view," Slaughter told Bill Moyers on his PBS program, "Now," in December 2004.

That argument is a favorite of left-wing bloggers like the folks at Daily Kos and liberal pundits like Air America host Randi Rhodes as well.

“I found the Fairness Doctrine in the Museum of TV archives. Dust it off and put it back on the public shelf,” Rhodes told Conyers’s shadow committee in May 2005.

The Washington, D.C.-based Media Access Project is the main advocacy group providing the legal and intellectual firepower for the return of the Doctrine. The liberal non-profit (2006 revenue: \$548,000) “promotes universal and equitable access” in electronic mass media. Other supportive groups are the radical left-wing Fairness & Accuracy In Reporting (FAIR) and, to a lesser extent, the George Soros-funded Media Matters For America.

They appear to be making progress. An Aug. 14, 2008 Rasmussen poll found that 47% of Americans believe the government should require all radio and TV stations to offer equal amounts of liberal and conservative commentary. Only 39% rejected this idea. Conservative supporters of talk radio are not the only opponents of the Fairness Doctrine. Promoters of innovation in communications technology consider the Doctrine a dead letter. They say the Internet, fiber-optic cable, satellite broadcasting and broadband has so multiplied the available ways to communicate that the original rationale for the Doctrine – the scarcity of the spectrum – has been rendered moot.

But that’s not stopping left-wing “fairness” advocates in Washington.

How “Fairness” Became a Broadcasting Norm

From its start in 1927, the Federal Communications Commission (then called the Federal Radio Commission) chose to grant licenses to stations that offered public service programming without a discernable point of view over stations whose programming reflected a distinct viewpoint.

Officials reasoned that radio frequencies were a scarce commodity. Because there was only so much space on the dial it was up to the government to decide who could broadcast on the spectrum. Stations that served the broadest sections of the public would get preference.

The Fairness Doctrine was formally adopted as policy by the FCC in 1949. (Report on Editorializing by Broadcast Licenses, 13 FCC, 1246 [1949]). The law seemed innocuous enough. It said that broadcasters were obliged to give opportunities to discuss contrasting viewpoints on important public issues.



Political advertising on radio was expensive. Just like today, candidates for office were obliged to fundraise aggressively to afford radio spots for their campaigns.

It’s hardly surprising then that Washington policymakers would embrace regulating



Comedy writers in the 1970s and 80s used the clueless Floyd R. Turbo, played by Johnny Carson (left) on “The Tonight Show” and Emily Litella (right), played by Gilda Radner on “Saturday Night Live” to make fun of the Fairness Doctrine.

While Washington swathed the decision in the language of fairness, it nevertheless asserted control over access to the airwaves—and to the content broadcast over them. It had reasons other than civic-mindedness.

“In 1948, radio was the most important medium in America. Tens of millions listened each night to the variety of shows offered by the networks,” wrote historian Zachary Karabell. (*The Last Campaign: How Harry Truman Won the 1948 Election*, Alfred A. Knopf, 2000, page 72)

In those days, reporters and news outlets were often openly partisan. Some of the most noted journalists of the day saw no reason not to share their opinions with their audience. Karabell recounts how during the 1948 election “(Walter) Winchell questioned Truman’s ability to govern. Walter Lippmann repeatedly advised Truman to withdraw his name from consideration. Others (in journalism) expressed similar opinions.”

political opinion on stations that relied on them to receive their broadcast licenses. In 1959, Congress amended the Communications Act of 1934 to include Fairness Doctrine language. It read: “A broadcast licensee shall afford reasonable opportunity for discussion of conflicting views on matters of public importance.”

It also should not be surprising to any student of politics that the Fairness Doctrine was abused. As Jesse Walker, author of *Rebels on the Air: An Alternative History of Radio in America*, has noted:

“In December 1961, Walter and Victor Reuther of the United Auto Workers, together with the liberal lawyer Joseph Rauh, wrote a 24-page memorandum to Atty. Gen. Bobby Kennedy. The memo urged the administration to deploy the FBI, the IRS, and, yes, the FCC to win ‘the struggle against the radical right.’”

which to the Reuthers included not just the John Birch Society and the Christian Crusade but Sen. Barry Goldwater and the libertarian Volker Fund. The FCC, the authors wrote, ‘might consider examining into the extent of the practice of giving free time to the radical right and could take measures to encourage stations to assign comparable time for an opposing point of view on a free basis.’”

The memo was leaked to the press and the administration backed away from it – at least publicly. In 1976, though, Bill Ruder, a former public relations consultant to President Lyndon Johnson, conceded that their strategy was, “to use the Fairness Doctrine to challenge and harass right-wing broadcasters and hope the challenges would be so costly to them that they would be inhibited and decided it was too expensive to continue.”

Republican administrations were not above using the Doctrine to their advantage either. When the Washington Post began to investigate Watergate, President Nixon threatened to revoke the broadcast licenses of radio and TV stations the Post’s parent company owned. Ostensibly the government would challenge whether the stations met local community standards for fairness. Graham refused and the administration, now teetering from scandal, backed down. (See “Katherine Graham, USA,” Global Journalist, posted April 1, 2000, <http://www.globaljournalist.org/stories/2000/04/01/katharine-graham-usa/>.)

The constitutionality of the Doctrine was first tested in 1969 when the Supreme Court heard *Red Lion v. FCC*. The case involved radio preacher Billy James Hargis who devoted a show to attacking Nation magazine writer Fred Cook, author of a book entitled *Goldwater: Extremist on the Right*. Cook heard the broadcast from a radio station in Red Lion, Pennsylvania, and demanded air time to reply. The station offered to sell Cook air time for a nominal \$7.50 fee – the same price that Hargis had paid – but that wasn’t good enough for the aggrieved Cook. Invoking the Fairness Doctrine, he claimed he was entitled to free time and took his case all of the way to the nation’s highest court.

The decision, written by Justice Byron White, found that the Fairness Doctrine did not contradict the First Amendment. White declared that a radio license holder had no right to “monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a license to share his frequency.” White’s

judges in the case, *Telecommunications Research and Action Center v. FCC*, included Robert Bork and future Supreme Court Justice Antonin Scalia.) The following year the same appeals court (Judges Bork and Scalia were not involved this time) found in *Meredith Corp. v. FCC* that the FCC did not have to enforce the Doctrine because it was only FCC policy and not law.



Fairness Doctrine advocate Rep. Louise Slaughter (D-New York)

decision was built, like the Fairness Doctrine itself, around the notion that radio frequencies were scarce public property and therefore access had to be shared.

That decision still stands, but it was weakened by a 1974 case, *Miami Herald Publishing Co. v. Tornillo*. In that unanimous decision, Chief Justice Warren Burger wrote: “Government-enforced right of access inescapably dampens the vigor and variety of public debate.”

During the Reagan administration the FCC under chairman Mark Fowler began to reconsider the Doctrine. The Commission’s first exception to the Doctrine—for the then-new technology of teletext—was challenged by the Media Access Project.

In a 1986 case, the U.S. Court of Appeals for the District of Columbia found that the Doctrine did apply to teletext but the FCC had discretion in whether to apply it. (The

Fearful about the direction things were heading, Congress passed a law in June 1987 that would have codified the Doctrine. President Reagan vetoed it. The next month, the FCC voted 4-0 to abolish the Doctrine.

It is worth noting that Reagan’s veto came over the objections of not just liberals but many of his fellow conservatives. Conditioned to accept the Doctrine as the norm, many feared they would not have access to the airwaves without it. Such notables as Senator Jesse Helms (R-North Carolina), a former TV commentator, and Rep. Newt Gingrich (R-Georgia), voted to codify the Doctrine. At the time groups such as the National Rifle Association and the Eagle Forum urged Reagan not to veto the bill. Then-Mississippi Congressman Trent Lott summed up their fears as well as their tangled logic: “We have unfairness now even with the Fairness Doctrine. Heaven knows what would happen without a Fairness Doctrine.”

Reagan wasn't buying any of it. "[H]istory has shown that the dangers of an overly timid or biased press cannot be averted through bureaucratic regulation, but only through the freedom and competition that the First Amendment sought to guarantee," he said in his veto statement. (See "Veto Time—Again" by John Berlau, Wall Street Journal, Aug. 26, 2003.)

In 1989 some in Congress tried again to enact a law but failed after President George H. W. Bush threatened to veto it.

Conservatives Win, Liberals Lose

Conservatives who thought they needed a Fairness Doctrine eventually changed their minds when they recovered their confidence in the 1980s. Exactly why talk radio is so attractive to conservative talkers remains a topic of much debate. Rush Limbaugh says conservative under-representation in other media explains the phenomenon. Radio stations say they are only responding to what the ratings say they public wants to hear. Many on the Left maintain that conservative talk radio reflects the desires of corporate owners, not ratings. My own view is that National Public Radio (NPR) already fills the void on the Left even if its genteel liberalism isn't very satisfying to hard-core progressives.

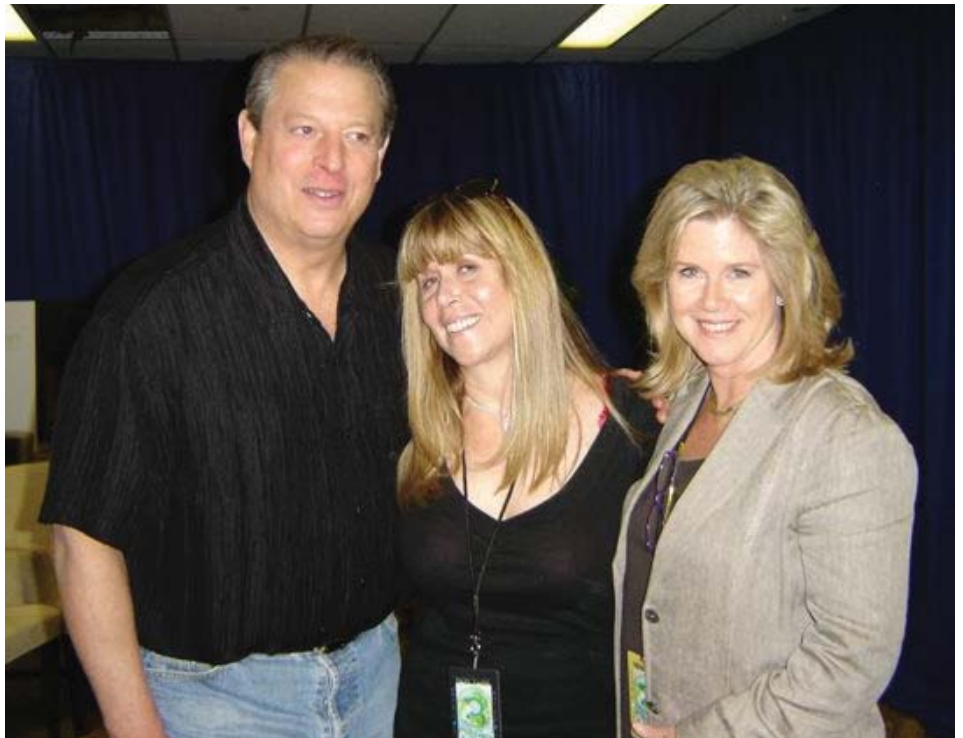
Whatever the reason, talk radio is a vexing problem for the Left. For two decades it has tried and mostly failed to create a counter-programming model. In the 1990s liberals in the media tried to make ex-New York Gov. Mario Cuomo a radio star. Then they tried to make Texas populist Jim Hightower the great anti-Rush. Both efforts fizzled out. So did much-ballyhooed Air America, which could not make radio stars out of comedians Janeane Garofalo and Al Franken. Franken grew so disenchanted that he gave up and ran for the U.S. Senate in Minnesota.

Commenting on Air America's failure to catch on, Steve Rendall wrote in the January/February 2007 edition of FAIR's magazine Extra: "[I]t's fair to say that it hasn't given liberal talk radio advocates a clear rebuttal to the conservative argument that says liberals just can't compete in talk radio." (See "Rough Road to Liberal Talk Success" by Steve Rendall, Extra! Jan./Feb. 2007, <http://www.fair.org/index.php?page=3144>).

As those efforts stall, the Left has an in-

creasing incentive to reinstate the Fairness Doctrine. Some never gave up in the first place.

"I remember my party was in charge at the time (of Reagan's 1987 veto)," Congresswoman Slaughter told Moyers. "I went to the leadership and I said, 'This is outrageous. We've got to try to override that veto.'"



Air America radio host Randi Rhodes (center) wants the Fairness Doctrine put "back on the public shelf." She is shown here with with former Vice President Al Gore (left) and Tipper Gore (right) in 2007.

The Democratic-led Congress tried fitfully but unsuccessfully to restore the Doctrine. A third try fizzled in 1993. The GOP took control of Congress the following year.

"One of the reasons we couldn't was that Rush Limbaugh had organized this massive uprising, calling it the 'Hush Rush Law'," she said. "He aroused his listeners so that they contacted their members of Congress and killed the bill, and that's not the first time we've seen that."

Granted, Ms. Slaughter may not find Limbaugh terribly arousing, but one wonders if it ever occurs to Slaughter that this is an example of real democracy: A public figure gets citizens to become passionate about the impact of an obscure, wonky piece of public policy.

Finally, in 2004 a controversy involving Sinclair Broadcasting, a major broadcasting company that currently owns 58 TV stations in 35 markets, seemed to spark the progressive movement's interest in reviving the Fairness Doctrine. In October 2004, Sinclair announced that it would require all 62 of its affiliates to broadcast a critical documentary about then-Democratic presidential candi-

date John Kerry. It was called *Stolen Honor: Wounds That Never Heal*. Democrats cried foul and Media Matters helped organize a boycott of Sinclair, whose stock price fell as a result of the controversy. Sinclair backed down. The Media Access Project also claimed to have provided "legal strategy and guidance to the coalition that stopped Sinclair Broadcasting Group," according to its 2004 annual report.

That month, Rep. Slaughter, Media Matters CEO David Brock and Andrew Jay Schwartzman, president and CEO of the Media Access Project, unveiled a website called www.fairnessdoctrine.com. It petitioned for the Doctrine's return. (See "Media Groups Unveil Web Site To Support Slaughter's Fairness Doctrine Bill," Alt Press Online, posted Oct. 21, 2004 at <http://www.altpressonline.com/>

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content/view/272/2/). The website was later pulled down for reasons never explained.

In February 2005, Slaughter and 23 co-sponsors introduced HR 501, the proposed "Fairness and Accountability in Broadcasting Act." It would have reduced a station's license term from eight to four years and formally enshrined the Fairness Doctrine.

Slaughter's bill never made it out of committee, and no other comparable bills have been introduced since then. However, what happens next? The Democrats enter the 111th Congress with expanded majorities, including a nearly filibuster-proof one in the Senate. Should they introduce Fairness Doctrine legislation, they may get some Republican support—and they will not face a president Ronald Reagan.

Liberals have found a successful format for their views on cable TV. Comedy Central's "The Daily Show with Jon Stewart" and MSNBC's Keith Olbermann have a loyal following of regular viewers. But this has done little to dissuade the Doctrine's strongest advocates. "It's time to reinstate the Fairness Doctrine," Sen. Dick Durbin told the Hill newspaper last year.

The Media Access Project

If policymakers successfully craft a new version of the Fairness Doctrine, their work will owe much to the Media Access Project (MAP), a 501(c)(3) nonprofit that describes

itself as the "only Washington-based organization devoted to representing listeners' and speakers' interests in electronic media and telecommunication issues before the Federal Communications Commission, other policy-making bodies and the courts."

MAP's staff attorneys are the Left's resident experts in this field, advising other liberal groups, nationally and locally. To use a baseball analogy, MAP is the Left's utility infielder on telecom litigation. Its staffers appear at academic forums, federal and local legislative hearings and professional telecommunications events "to ensure that the needs of the public are not forgotten as policies are established for the next generation."

In its 2005 annual report, MAP lists as one of its top goals: "Working for full implementation of the FCC's Fairness Doctrine and related policies ensuring access for divergent points of view and alternate artistic perspectives."

MAP is funded by left-leaning foundations including Arca Foundation, Soros's Open Society Institute, the Joyce Foundation, and the Ford Foundation. According to its IRS tax filing for 2006, it's a fairly lean organization, getting by on a budget of about a half million dollars that year. Lawyers working pro bono appear to handle much of its work. The National Journal has said it was "considered by some ... dollar-for-dollar the best run public

interest group in Washington."

Like many now-entrenched Washington advocacy groups, MAP traces its origins to the civil rights movement. It grew out of a 1966 effort by the United Church of Christ to prevent the license renewal of a Jackson, Mississippi TV station that had given airtime to supporters of racial segregation. Lawyers in that case founded MAP in 1972 to represent citizens in other license renewal hearings.

The nonprofit now organizes groups opposed to telecommunication company mergers. It has represented community groups challenging the relicensing of TV stations in Chicago and Milwaukee, and advocated that the FCC include net neutrality provisions in cable mergers. It persuaded the FCC to decline to appeal a court ruling that prevented the agency from relaxing broadband ownership rules. MAP president and CEO Andrew Jay Schwartzman is a long time legal advocate on telecommunications issues. He was on the losing side during the two key 1980s cases before the D.C. appeals court that overturned the Fairness Doctrine. (*Meredith Corp. v. FCC* and *Syracuse Peace Council v. FCC*) So he has something to prove.

Other Pro-Fairness Doctrine Groups


The 501(c)(3) group Fairness & Accuracy In Reporting (FAIR) handles the public relations aspect of the Left's media agenda. It functions as watchdog group, highlighting alleged cases of media bias. FAIR's co-founder and president Norman Solomon writes a syndicated column on the media. Co-founder Jeff Cohen is a commentator on Fox News and MSNBC. The organization publishes a bimonthly magazine called Extra! devoted to exposing what it considers to be the media's right-wing and pro-corporate bias.

The group was founded in 1986. According to its IRS tax filing for 2006, it gets by on a budget of about \$830,000 annually. Its funders include the Rockefeller Family Fund, the Tides Foundation, the John D. and Catherine T. MacArthur Foundation, the Schumann Center for Media and Democracy, and the Ford Foundation.

Extra!'s current and former board of advisors is a veritable who's who of hard core leftists, including Noam Chomsky (a contributor as well), the late poet Allen Ginsberg, author

Capital Research Center's

GUIDE TO
NONPROFIT ADVOCACY



JAMES DELLINGER
Introduction by Terrence Scanlon
President, Capital Research Center

Understanding the Nonprofit World

Capital Research Center's new *Guide to Nonprofit Advocacy* surveys more than 100 key nonprofit public interest and advocacy organizations shaping U.S. politics and society today. Although the law prohibits 501(c)(3) nonprofits from lobbying and political spending, this year nonprofits are working aggressively through 501(c)(4) and 527 affiliates and umbrella groups to pass laws and elect candidates.

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Barbara Ehrenreich, feminist Eleanor Smeal, Ralph Nader's 2004 running mate Winona LaDuke, radio DJ Casey Kasem, and Hollywood lefties Ed Asner, Tim Robbins, and John Cusack.

Given those advisors, it's not surprising that FAIR's idea of fighting media bias includes criticizing negative media coverage of Venezuela's president Hugo Chavez and hitting Dan Rather as not liberal enough. (The poor guy just cannot get any love.)

FAIR has called for the return of the Fairness Doctrine since at least 1994, when Cohen denounced conservative charges that it would "Hush Rush." More recently, it published an essay, "The Fairness Doctrine: How We Lost It, Why We Need It Back," by Extra! senior editor Steve Rendall.

Media Matters for America, which specializes in rapid response to "conservative misinformation" in the media, is a sometime-supporter of the Fairness Doctrine. No statement that favors the Fairness Doctrine is on its website, but founder David Brock did join in unveiling the pro-Doctrine website and petition with MAP and Slaughter in 2004. It has criticized the Wall Street Journal and radio host Michael Savage for their critical comments. (For more on Media Matters, see *Foundation Watch*, July 2007.)

Unlike MAP and FAIR, Media Matters enjoys lavish funding. It has an annual operating budget of \$8.7 million according to its IRS filing for 2007. Brock as president and CEO got a salary of \$259,336 in 2007. A one-time writer for the conservative magazine *American Spectator* who soured on the Right after his book on Hillary Clinton flopped, Brock later famously switched sides.

Media Matters funders include the liberal philanthropists Leo Hindery Jr. and James Hormel, shopping mall magnate Bren Simon, and Susie Tompkins Buell, who with her husband Douglas co-founded the Esprit clothing chain. Buell, who met Brock at a get-together of Hillary Clinton supporters, held a fundraiser for him at her San Francisco home. George Soros's Democracy Alliance has also brokered grants to the group. (For more on the Democracy Alliance, see *Foundation Watch*, December 2008.)

Alternatives to "Fairness"

Some frustrated fans of the two-decade effort to revive the Fairness Doctrine have decided that their energies are better spent elsewhere.

"Forget the Fairness Doctrine," declared a July 2007 essay by Mark Lloyd published by the liberal Center for American Progress. Lloyd argued that the Doctrine targeted a demographic that could not be counted on to push things far enough to the Left. "[T]he mainstream broadcast media in the late 1960s was middle-class, anti-communist, Protestant, male and white," he wrote. (See "Forget the Fairness Doctrine" by Mark Lloyd, The Center for American Progress, posted July 24, 2007 at http://www.americanprogress.org/issues/2007/07/lloyd_fairness.html).

Instead of letting middle-aged liberals who read the New York Times answer Rush Limbaugh on the air, Lloyd said the Left should push to require broadcasters to adopt rules deferring to local community interests. That's what will get grassroots activists on the air.

Interestingly, among the supporters of this direction is the current FCC, a majority of whose members as of December 2008 had been appointed by President Bush. In January 2008 it released a report on broadcast localism that required that stations to create "advisory boards" that included community leaders. This approach would help "individuals [to] directly participate in the license renewal process." (See "FCC Adopts Localism Proposals to Ensure Programming is Responsive to Needs of Local Communities" FCC press release, Dec. 18, 2007.)

"[A]s temporary trustees of the public's airwaves, broadcasters are obligated to operate their stations to serve the public interest, including their airing of programming responsive to the needs and issues of their station communities of license," read an official FCC press release.

The "temporary" line must send chills down the spines of license holders. Groups on the Left are already schooling members on how to leverage this opening.

"Imagine having to contend with such petitions, both from the Left and the Right, every

time you have to ask the FCC for permission to keep broadcasting. Even if you get to keep your license, it'll mean spending more time and money dealing with the hassle. The natural impulse will be to throw some bones to your critics, especially the one who have managed to land spots on your community advisory board," wrote Jesse Walker in a November 2008 Reason magazine essay.

And where will the incoming administration stand on this? In June 2008, Barack Obama's press secretary Michael Ortiz told *Broadcasting & Cable* magazine that Obama "does not support reimposing the Fairness Doctrine on broadcasters."

The spokesman added that Obama "considers this debate to be a distraction from the conversation we should be having about opening up the airwaves and modern communications to as many diverse viewpoints as possible."

Fairness Doctrine fans can only hope that change is coming.

Sean Higgins is a Washington, D.C.-based reporter.

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PhilanthropyNotes

A settlement has been announced in the **Robertson** family's donor intent lawsuit against **Princeton University**. Under it, Princeton will give **Robertson Family Charities** \$100 million rather than face trial over the family's charges that it ignored the wishes of their parents, the late **Charles** and **Marie Robertson**, whose gift of \$35 million in 1961 was intended to prepare students for careers in government service. The case is the largest donor intent settlement ever. **Capital Research Center** senior fellow **Martin Morse Wooster** says the case shows that donors must be very careful in making gifts that will continue over decades. He warns that "universities can and will exploit every available loophole to divert a gift to causes they prefer." However, philanthropy watcher **Neal Freeman** stresses that Princeton's six-year war of attrition against the Robertson family failed. "The next time a nonprofit executive is seized by larcenous impulse it may be necessary only to whisper in his ear the magic word, 'Princeton.'" Wooster wrote about the case in *Foundation Watch*, May 2006.

A Wall Street Journal editorial called upon the fabulously wealthy and liberal **Ford Foundation** to bail out the now-struggling **Ford Motor Co.** that made its \$13 billion endowment possible. "We've glanced at the foundation's 'mission statement,' and it appears to us that Ford Motor would qualify for the ultimate grant to a nonprofit," the newspaper editorialized. "Since severing from the Fords' initial vision, the foundation has gotten fat and famous. The moment has arrived for the Ford Foundation to "give back."

Republican senators were considering asking **Bill Clinton** to testify at his wife's upcoming confirmation hearing regarding potential conflicts of interest involving his international charitable efforts, the Politico reports. "Seeking donations from foreign governments is definitely concerning. ... It has been discussed, and it will be discussed," a GOP aide told the newspaper. Critics are concerned that with a Secretary of State **Hillary Clinton** abroad spreading world peace, donors to the **William J. Clinton Foundation** might expect favors from a Clinton State Department or from others in the Obama administration. Bill Clinton has responded to those concerns by vowing to disclose the identities of donors to his foundation but as of press time it hadn't happened.

The \$50 billion fraud perpetrated by hedge fund manager **Bernard Madoff** has hurt a number of charitable foundations including the liberal **JEHT Foundation**, Reuters reports. JEHT suffered such heavy losses to its portfolio that it is expected to close its doors. The foundation has given \$72,159,020 in grants since 2000, including \$4,256,600 to the **Tides Foundation** and its affiliates, \$839,500 to the **Center for Constitutional Rights**, and \$250,000 to the **ACORN** affiliate, **American Institute for Social Justice**.

Yale University reports its nearly \$23 billion endowment has dropped 25% to \$17 billion, forcing the school to put off construction projects and cut costs. The drop in value has impacted operations dramatically because endowment income covers 44% of the university's annual \$2.7 billion in expenditures, said Yale president Richard Levin. **Harvard University** said its endowment, valued at \$36.9 billion at the end of June, fell \$8 billion in recent months. That school is freezing pay raises for non-union staff and suspending searches for many tenure and tenure-track positions.

Goldman Sachs WATCH

In November, former Goldman Sachs partner Gary Gensler was appointed to lead the Obama transition team searching for a new Securities and Exchange Commission chairman to replace Chris Cox, a former GOP lawmaker who announced he would retire Jan. 20.

The Newark Star-Ledger reports one unit of Goldman Sachs marketed New Jersey state bonds to investors while another unit advised investors how they could profit by betting that the bonds would decline in value. Of course, the governor of New Jersey, Jon Corzine, is the former chairman of Goldman Sachs. According to the Los Angeles Times the company similarly encouraged investors to "short" the sale of California bonds at the same time that it was earning millions of dollars in fees selling them.

Goldman Sachs lost \$2.12 billion in the fourth quarter, its first loss since going public in 1999. Moody's Investors Service lowered its long-term credit rating on the bank one notch to A1 from Aa3 after earnings were released, citing the "ongoing credit-market crisis" and "persistent difficult operating environment."