

These hypotheses are offered primarily as a device for clarifying the issues. It is also observed, however, that hypothesis 3, above, seems to be the one most compatible with the legislative history.

As already stated, this memorandum will be limited to an exposition of the legislative history which is relevant to the Fairness Doctrine. In effect, this involves a review of the history of section 315 since that section is the only apparent specific statutory mandate for the doctrine.

Section 315 had its inception in section 18 of the Radio Act of 1927 (44 Stat. 1170).

III. SECTION 18 OF THE RADIO ACT OF 1927

The Radio Act of 1927 was passed by the 69th Congress. Section 18 of this Act, the forerunner of section 315 of the present Communications Act, read, in pertinent part:

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 * * *.

It is noted that this section makes no requirement for fairness in the discussion of controversial or public issues. The legislative history indicates that this omission was intentional.

A. COMMITTEE REPORT AND DEBATES—HOUSE

The Radio Act derived from H.R. 9971 of the 69th Congress. The bill, as passed by the House, did not contain any comparable provision to section 18 of the Radio Act. This fact was noted in the minority views (signed by only one member) contained in the committee report on H.R. 9971:

The broadcasting field holds untold potentialities in a political and propaganda way; its future use in this respect will undoubtedly be extensive and effective. There is nothing in this bill [H.R. 9971] to prevent a broadcasting station from permitting one party or one candidate or the advocate of a measure or a program or the opponent thereof, to employ its service and refusing to accord the same right to the opposing side; the broadcasting station might even contract to permit one candidate or one side of a controversy to broadcast exclusively upon the agreement that the opposing side should not be accorded a like privilege.³³

When the bill was debated in the House some concern was expressed regarding freedom of speech over the radio:

Mr. LAGUARDIA. The gentleman stated the recommendations, among which was a guarantee of free speech over the radio. What provision does the bill make to carry that out?

Mr. WHITE of Maine. It does not touch that matter specifically. Personally, I felt that we could go no further than the Federal Constitution goes in that respect. The pending bill gives the Secretary no power of interfering with freedom of speech in any degree.

Mr. LAGUARDIA. It is the belief of the gentleman and the intent of Congress in passing this bill not to give the Secretary any power whatever in that respect in considering a license or the revocation of a license.

Mr. WHITE of Maine. No power at all.³⁴

³³ House Rept. No. 464, 69th Cong., first sess. (1926); Minority views of Representative Davis, p. 16.

³⁴ 67 Cong. Rec. 5480 (1926).