

to all other such candidates for that office in the use of such broadcasting station, and the Commission shall make rules and regulations to carry this provision into effect; Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

The conference report summarized, but did not explain the section.⁴⁸

D. SUMMARY OF CONGRESSIONAL ACTION ON THE RADIO ACT OF 1927

Since section 18 of the Radio Act was later carried forward verbatim as section 315 of the Communications Act of 1934,⁴⁹ its legislative history is relevant to an analysis of the present law. As enacted by the 69th Congress, the Radio Act contained no provision similar to the Fairness Doctrine. This omission seems to have been specifically intended. As indicated above, the question of whether licensees ought to be under a legal obligation to be nondiscriminatory in their discussion of public questions was taken up during the consideration of the Radio Act. Moves to incorporate such a requirement into the law were rejected in both the House and Senate. This rejection was much more sharply defined in the Senate debates than in the House.

These legislative events would appear to cast serious doubt on the proposition that the Fairness Doctrine, at least in substance, is a necessary corollary of the "public interest" standard contained in the Radio Act, and carried forward into the 1934 Communications Act. Had this been the intention or understanding of the members of the 69th Congress the debate between Senators Dill and Howell, summarized above, would have been moot, since the language which Senator Howell sought to preserve would have been essentially surplusage. There is no suggestion in the legislative history that this was the case.

IV. ACTION IN THE 72ND CONGRESS TO AMEND THE RADIO ACT

H.R. 7716, introduced during the first session of the 72nd Congress, was the most important transitional step between the 1927 Radio Act and the 1934 Communications Act. The bill sought to amend 12 different sections of the Radio Act. Section 14 of H.R. 7716 sought to strike out section 18 of the Radio Act with respect to the treatment of political candidates, and substitute an amended section. The purpose of the amendment, among other things, was to extend the requirements of equality of treatment of political candidates to supporters and opponents of candidates, and to "public questions" before the people, a legislature, or city council for a vote.⁵⁰

This bill passed both Houses of Congress, but was subjected to a pocket veto by President Hoover.⁵¹ The same "fairness" type provision was reintroduced in the Senate during the 73d Congress (S. 3285) for incorporation into the 1934 Communications Act, but was not adopted (see below).

⁴⁸ H. Rept. No. 1886, 69th Cong., 2d sess. (1927).

⁴⁹ 48 Stat. 1088.

⁵⁰ H. Rept. 2106, 72d Cong., 2d sess. (conference report), at p. 6.

⁵¹ See generally, McMahon, *Regulation of Broadcasting—Half a Century of Government Regulation of Broadcasting and the Need for Further Legislative Action*, A study for the House Committee on Interstate and Foreign Commerce, 85th Cong., second sess. (1958), pp. 21-39.