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THE FAIRNESS DOCTRINE

An "400-pound gorilla" (to use a current political cliche) is waiting in the shadows of the federal bureaucracy which could devour almost any political candidate in the 1984 elections. The "gorilla" is the proposed F.C.C. regulation which would effectively nullify the Equal Time rule for candidates.

A candidate would have no recourse, for example, if broadcasters sell all their available time in the week before the election to one candidate to the exclusion of his opponent. Whether the sale were for profit or for reasons of leftwing bias wouldn't matter.

A candidate would have no recourse if television and radio stations in his district aired editorials against him and for his opponent, but refused to grant reply time. In many races, TV and radio are more important to the outcome of the election than any other element of the campaign, perhaps than all other elements combined.

In 1981 the F.C.C. asked Congress to abolish the Fairness Doctrine, Equal Time, and Personal Attack rules, as enunciated in the Federal Communications Law. Congress declined to do so. So now the F.C.C. is trying to do an "end-run" around Congress and the law by issuing regulations to accomplish the same goal.

The proposed regulations would give broadcasters the unregulated "freedom" to be as unfair or partisan as they want. The F.C.C. is cavalier, even sarcastic, in suggesting that it "would review a renewal applicant's programming in response to a Petition to Deny. ... [Such Petitions to Deny] based on programming considerations would be expected to present specific facts demonstrating the failure of a licensee to provide issue responsive programming."

This statement is tantamount to suggesting that no candidate or member of the public can expect fairness or balance in the presentation of controversial issues of public importance, or of political advertising, unless he or she is willing to puursue the most

expensive, cumbersome and extreme of legal devices: the Petition to Deny. The statement is doubly ironic when coupled with further recommendations by the F.C.C. that record-keeping requirements be scrapped along with programming requirements.

Conspicuously absent from the proposed F.C.C. rules are statements in favor of concepts such as objectivity in journalism, professional ethics, fairness, and responsibility of broadcasters to serve the public interest by allowing conflicting viewpoints to be heard on controversial issues.

It is unreasonable to expect candidates who have been unfairly denied access to the media, or members of the general public who have not been allowed to hear the "other side" on important issues, to pursue their complaint in the courts. Our overburdened court system could not handle an additional burden of this kind, nor should it be expected to assume the F.C.C.'s duties.

Furthermore, in regard to candidates needing equal time before election day, we would surely have hundreds of cases proving the old axiom that "justice delayed is justice denied." What good would a court ruling a year later do for the candidate who had lost an election because he was frozen out of television by a station supporting his opponent?

What about the rights of the people who disagree with leftwing or pacifist issue programming, or with sex-and-violence entertainment programming? The F.C.C. Chairman replies: "Let them buy a radio station." (That is the modern electronic equivalent of Marie Antoinette's "Let them eat cake.")

The F.C.C.'s proposed recommendations are hopelessly skewed to serve the special interests of broadcasters to the detriment of those who want access to the media and members of the general public who want to be informed on the issues of the day.

TV and radio station broadcasters do not own the First Amendment; other people have First Amendment rights, too. Today's Fairness Rules are beautifully designed to balance the constitutional rights of three parties: (1) station broadcasters, (2) individuals and candidates who wish to get their message on the air, and (3) members of the general public who have a right to be informed about the issues and candidates of the day.

The public has only until January 5 to file objections to the proposed new F.C.C. regulations.