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Harrop Freeman and Stewart Edelstein Political Campaigning and the Airways, 1 Pepp. L. Rev. 2 (1974)
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Political Campaigning and the Airways

HARROP FREEMAN*

STEWART EDELSTEIN**

The political year of 1972 has faded into history, but the nightmare or unsolved problems for the broadcasting media, politicians and listener-viewers remain vivid. The specters of meaningless promises, of charges and counter-charges, of unexplained scandals, of inability to produce confrontation, of media intimidation, and of broadcasting snarls glimmer in memory of a constant reminder of the power of television and radio in a democratic society, of the phenomenal cost of current campaigning, of the advantages of the in-party, of influence of wealth, and of the inadequacy of existing statutes and rules applicable to political broadcasting. That something substantial must be done before 1976, and probably before 1974 elections, is obvious to all.

The purpose of this article is to define the cause of controversy as to political broadcasting engendered by section 315 of the Federal Communications Act and related rules, to describe the power

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** J.D., Cornell Law School, 1973; currently with Cohn and Wolf, Bridgeport, Connecticut.
and cost of political television and radio broadcasting, and to
discuss various proposals for changing section 315 (by suspension, re-
peal or by various modifications). Finally, a solution to the polit-
ical broadcasting morass will be suggested.

the amended provisions effective April 7, 1972, and previously existing
law deleted by the Campaign Communications Reform Act is enclosed in
brackets):

Sec. 315. (a) If any licensee shall permit any person who is
a legally qualified candidate for any public office to use a broad-
casting station, he shall afford equal opportunities to all other
such candidates for that office in the use of such broadcasting sta-
tion: Provided, That such licensee shall have no power of censor-
ship over the material broadcast under the provisions of this sec-
tion. No obligation is hereby imposed under this subsection upon
any licensee to allow the use of its station by any such candidate.
Appearance by a legally qualified candidate on any—

(1) Bona fide newscast,
(2) Bona fide news interview,
(3) Bona fide news documentary (if the appearance of the
candidate is incidental to the presentation of the subject or sub-
jects covered by the news documentary), or
(4) On-the-spot coverage of bona fide news events (included
but not limited to political conventions and activities incidental
thereto),
shall not be deemed to be use of a broadcasting station within
the meaning of this subsection. Nothing in the foregoing sentence
shall be construed as relieving broadcasters, in connection with
the presentation of newscasts, news interviews, news documents-
taries, and on-the-spot coverage of news events, from the obliga-
tion imposed upon them under this Act to operate in the public in-
terest and to afford reasonable opportunity for the discussion of
conflicting views on issues of public importance.

[(b) The charges made for the use of any broadcasting station
for any of the purposes set forth in this section shall not exceed
the charges made for comparable use of such station for other pur-
poses.]

(b) The charges made for the use of any broadcast station by
any person who is a legally qualified candidate for any public office
in connection with his campaign for nomination for election,
or election, to such office shall not exceed—

(1) During the 45 days preceding the date of a primary or pri-
mary runoff election and during the 60 days preceding the date
of a general or special election in which such person is a candidate,
the lowest unit charge of the station for the same class and amount
of time for the same period; and
(2) At any other time, the charges made for comparable use of
such station by other users thereof.

(c) No station licensee may make any charge for the use of
such station by or on behalf of any legally qualified candidate
for Federal elective office (or for nomination to such office) un-
less such candidate (or a person specifically authorized by such
candidate in writing to do so) certifies to such licensee in writing
that the payment of such charge will not violate any limitation
specified in paragraph (1), (2), or (3) of section 104(a) of the Cam-
paign Communications Reform Act, whichever paragraph is appli-
cable.
Few appear to be satisfied with the equal time provision of the Communication Act, or with the application of the “fairness” doctrine, or even with the 1972 Federal Election Campaign Act. Speaking of section 315, CBS president, Frank Stanton, says: “the device backfired” by requiring “equal time to the most trivial

(d) If a state by law and expressly—
(1) Has provided that a primary or other election for any office of such State or of a political subdivision thereof is subject to this subsection,
(2) Has specified a limitation upon total expenditures for the use of broadcasting stations on behalf of the candidacy of each legally qualified candidate in such election,
(3) Has provided in any such laws an unequivocal expression of intent to be bound by the provisions of this subsection, and
(4) Has stipulated that the amount of such limitation shall not exceed the amount which would be determined for such election under section 104(a)(1)(B) or 104(a)(2)(B) (whichever is applicable) of the Campaign Communications Reform Act had such election been an election for a Federal elective office or nomination thereto,
then no station licensee may take any charge for the use of such station by or on behalf of any legally qualified candidate in such election unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies to such licensee in writing that the payment of such charge will not violate such State limitation.

(c) Whoever wilfully and knowingly violates the provisions of subsection (c) or (d) of this section shall be punished by a fine not to exceed $5,000 or imprisonment for a period not to exceed five years, or both. The provisions of sections 501 through 503 of this Act shall not apply to violations of either such subsection.

(f) For the purposes of this section:
(A) The term ‘broadcasting station’ includes a community antenna television system.
(B) The terms ‘licensee’ and ‘station licensee’ when used with respect to a community antenna television system, means the operator of such system.
(C) The term ‘Federal elective office’ means the office of President of the United States, or of Senator or Representative in, or Resident Commissioner or Delegate to, the Congress of the United States.

(2) For purposes of subsections (c) and (d), the term ‘legally qualified candidate’ means any person who (A) meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate and (B) is eligible under applicable State law to be voted for by the electorate directly or by means of delegates or electors.

[(c)](g) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

Hereafter, 47 U.S.C. § 315(a) shall be referred to as “§ 315.”

2. Id.

3. Federal Communications Act, 47 U.S.C. § 315(a) (1962), amending 47 U.S.C. § 315 (1934). The fairness doctrine requires licensees to broadcast contrasting views on “controversial” issues of public importance, providing fair and reasonable opportunity for spokesmen of various sides of these issues. It is an issue oriented doctrine which is applicable at all times rather than at special times such as political campaigns; Red Lion Broadcasting Co., Inc. v. F.C.C., 395 U.S. 367 (1969).

and irresponsible candidates” or in the alternative the denial of time “to the busy and distinguished men and women seriously aspiring to serve their nation . . . .”

Nathan Karp of the Socialist Labor Party, on the other hand, views any change in section 315 with concern, emphasizing that the section’s purpose was not so much to assure candidates equal time as “to protect the people’s right to hear, see and consider the widely divergent viewpoints.”

Recently Senator Pastore, chairman of the Senate Communications Subcommittee, introduced a bill to amend section 315, in the hopes of lowering cost, assuring more free time and placing an overall ceiling on media spending.

These representative quotations highlight the controversy over section 315 of the Communications Act of 1934, the provision which mandates that if a licensee permits any legally qualified candidate for any office to use a broadcast station, with certain exceptions, he must provide equal opportunities to all other candidates for that office. No obligation is imposed upon any broadcasting licensee to allow the use of its station by any such candidate; but if the licensee gives time to one candidate, it must give the same time to all other legally qualified candidates, or if a licensee sells time to one candidate, it must offer to sell time to all other legally qualified candidates.

Section 315 is susceptible to broad attack in that its inadequacies are written into its very terms: it does not compel the media to air an issue, no matter how important; it does not provide free time; it tends to encourage competition in spending; it does not really concern itself with the public’s right to hear and see; it gives the in-power party and the candidate who can best create “news” a home-free advantage; it does not assure concerned and able citizens not running for office an opportunity to reply to candidates’ broadcasts.

Section 315 was adopted with a dual purpose: (1) to assure equal-

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8. Supra, note 1.
ity for minority party candidates and ban discriminatory coverage of the campaigns; and (2) to provide reasonable opportunity for the public to become informed of political candidates and events.\(^9\)

Considering only the first objective, section 315 does not go far enough. A licensee must provide equal time only where it gives (as opposed to sells) time to one candidate. If a licensee sells time to a candidate, it must provide the same opportunity to buy time to other legally qualified candidates. Of course, if a candidate cannot afford to buy the time, the "equal" opportunity is no opportunity at all. Furthermore, the 1959 amendments to section 315, which exempt bona fide newscasts, news interviews, news documentaries, and on-the-spot coverage of bona fide news events, favor those in the news.\(^\text{10}\)

If the second objective is to inform the public as completely as practicable about the candidates who have the greatest chance of becoming the next elected official, then section 315 goes much too far: it should apply only to the major party candidates. But if the objective is to inform the public about the widely divergent political views represented by the various political parties and the political issues, then section 315 does not go far enough because it allows the two major parties to dominate the airways and excludes non-candidates.

The legislative history of section 315, originally derived from section 18 of the Radio Act of 1927, reveals both objectives of section 315: to give candidates equal opportunity and to inform the public.\(^\text{11}\)

Informing the public fairly was the original intent of Senator Howell in urging the passage of section 18 of the Radio Act of 1927. He warned, in the 1926 legislative debate over this section, that "in the hands of a comparatively few interests, the opportunity of reaching the public by radio and allowing them alone to determine what the public shall hear is a tremendously dangerous course for Congress to pursue."\(^\text{12}\)

In 1959, an FCC decision which considered only the objective of providing equal opportunity to candidates resulted in an amendment to section 315 to serve the objective of informing the public.


\(^{10}\) 47 U.S.C. § 315(a) (1-4).

\(^{11}\) For a detailed account of the legislative history of § 315, see Felix v. Westinghouse Radio Station, Inc., 186 F.2d 1, 3-6 (3rd Cir. 1950).

\(^{12}\) 67 Cong. Rec. 12502 (1926).
In the famous Lar Daly decision, the FCC ruled that Lar Daly, the American First candidate for Mayor of Chicago (who often campaigned in an Uncle Sam suit), was entitled to free television time corresponding to the time which a CBS licensee had devoted in a news program to Mayor Daly opening Chicago’s March of Dimes drive and making other ceremonial appearances. One writer described this decision as “so widely ridiculed that there was speculation that it was a deliberate attempt by the Commissioners to bring the issue to a head.” President Eisenhower called it absurd. Senator Pastore, in the legislative debate over section 315 which was sparked by the Lar Daly decision, stated: “If it is desired to place a blackout on the people of this country, if we want to stop all important news of political campaigns getting to the American people, let the Lar Daly decision stand.”

In 1959 Congress, in reaction to Lar Daly, amended section 315 by exempting from the equal opportunity provision any bona fide newscast, bona fide news interview, bona fide news documentary where the appearance of a candidate is incidental to presentation of the subject matter, and on-the-spot coverage of bona fide news events. The Senate Report on these amendments stated: “It should be noted that the programs that are being exempted in this legislation have one thing in common: they are generally news and information-type programs designed to disseminate information to the public.”

In a recent attempt to alter section 315, the sole objective of informing the public was clearly stated: “Equal time was not conceived to serve candidates for public office. Equal time was designed to serve the public.” Dean Burch, Chairman of the FCC, told Congress that the first objective of any change in section 315 should be “to promote the widest and most penetrating airing possible of views and issues in an election.” Furthermore, as the

20. Hearings on Political Broadcasting Before the Subcomm. on Com-
Supreme Court stated in *New York Times v. Sullivan*, there is a “profound national commitment that debate on public issues should be uninhibited, robust, and wide-open.” These selections from section 315’s legislative history demonstrate that the emphasis of section 315 must be to inform the public, not just to achieve equality between two candidates.

If we are to accomplish the goal of modifying section 315 so as to promote the widest and most penetrating airing of views and issues, it is first necessary to understand the power of television in a campaign and to understand the relation between television costs and the fantastic amount of money necessary to conduct a campaign.

**The Power of Television**

As one commentator states:

“At almost no other time are the power and benefits of television and radio in a democratic society so apparent.” The power and benefits of television are unparalleled; ninety-five percent of all American homes have television sets. The average American home has its television turned on more than five and a half hours a day, seven days a week. An adult American spends more time in watching television than in any other activity except sleeping and working.

Not only is television available in nearly every American household and used extensively, it is, according to a Roper survey, a source of most news for 59% of those polled (compared with 49% for newspapers, 25% for radio, 7% for magazines) and considered by 44% of those polled the most believable news medium (compared with 21% for newspapers, 11% for magazines, 8% for radio). Sixty-five percent of those polled indicated they gained the clearest understanding of national candidates and issues from television.

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The influence of television campaigns has been aptly described by Herbert E. Alexander, a foremost authority on political campaigning:

Television has changed the political campaign, changed the political candidate, and, in fact, changed the entire nature of the political discourse. Television has reordered the political campaign. Itineraries, speeches, and the nominating conventions are planned according to the dictates of prime time. Campaigners design methods for getting exposure on newscasts: some of the best practitioners

the news-disseminating function of television is reproduced in Voters' TIME: REPORT OF THE TWENTIETH CENTURY FUND COMMISSION ON CAMPAIGN COSTS IN THE ELECTRONIC ERA (Table 1) (1969).

Table 1

MASS MEDIA AS SOURCES OF NEWS (Roper Polls)

<table>
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<td>Television</td>
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<td>52</td>
<td>55</td>
<td>58</td>
<td>64</td>
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<td>People</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Don't know; no answer</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>3</td>
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<tr>
<td>Television</td>
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<td>36</td>
<td>41</td>
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<td>21</td>
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<td>Magazines</td>
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<td>10</td>
<td>10</td>
<td>10</td>
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<td>11</td>
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<tr>
<td>Radio</td>
<td>12</td>
<td>12</td>
<td>8</td>
<td>7</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Don't know; no answer</td>
<td>17</td>
<td>17</td>
<td>18</td>
<td>18</td>
<td>20</td>
<td>16</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C. Major Sources of News about Candidates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. STATE OFFICES</td>
</tr>
<tr>
<td>Television</td>
</tr>
<tr>
<td>Newspapers</td>
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<tr>
<td>Radio</td>
</tr>
<tr>
<td>People</td>
</tr>
<tr>
<td>Magazines</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>D. Sources Giving Clearest Understanding of National Issues and Candidates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1964</td>
</tr>
<tr>
<td>Television</td>
</tr>
<tr>
<td>Newspapers</td>
</tr>
<tr>
<td>Magazines</td>
</tr>
<tr>
<td>Radio</td>
</tr>
</tbody>
</table>


NOTE: Since multiple answers were accepted, some of the columns total more than 100 per cent. The source does not explain why some columns total less than 100 per cent.
of the political art claim that a few minutes on the evening news are worth all the rest of the publicity they can get—or can buy.\textsuperscript{25}

A recent example of the power of television in getting the attention of a large number of potential voters is that Senator McGovern, in mid-October, 1972, attracted an audience estimated at at least thirty million during a half-hour prime-time telecast.\textsuperscript{26} Another example is former Governor John Connally’s half-hour prime-time October 20, 1972, broadcast for Democrats for Nixon. Mr. Connally was described as “TV’s newest superstar, second, in fact, only to Archie Bunker” for his thirty point Nielsen rating in New York.\textsuperscript{27} In the 1972 presidential election, extensive use was made of television, particularly by the Democrats. One commentator noted that “Political programs in the last days of this year’s campaign are so frequent they’ve begun to look like regularly scheduled series.”\textsuperscript{28}

Thus, it is clear that to promote the widest and most penetrating airing of views and issues in an election, television will play the decisive role. But what is the cost? To deal intelligently with proposals for modifying section 315, one must know the expense of television campaigning.

\textbf{The Cost}

The editors of The Progressive recently referred to politics as “a growth industry.”\textsuperscript{29} Total campaign expenditures for all offices were $140 million in 1952, $300 million in 1968 and a projected $400 million in 1972.\textsuperscript{30} The Citizens’ Research Foundation’s estimate for

\begin{table}[h]
\centering
\begin{tabular}{lccc}
\hline
Year & 1912 & 1944 & 1948 & 1952 & 1956 \\
\hline
1912 & 2.9 & 7.7 & 7.8 & 11.8 & 12.9 \\
1916 & 4.7 & 4.7 & 4.7 & 4.7 & 4.7 \\
1920 & 6.9 & 194 & 1952 & 1956 & 1968 \\
1924 & 6.4 & 194 & 1952 & 1956 & 1968 \\
\hline
\end{tabular}
\caption{DIRECT CAMPAIGN EXPENDITURES BY NATIONAL-LEVEL COMMITTEES, 1912-1968\textsuperscript{30}}
\end{table}

\textsuperscript{25} Alexander, \textit{Communications and Politics: The Media and the Message}, 34 LAW & CONTEMP. PROB. 255, 260 (1969). One notable exception to planning nominating conventions according to the dictates of prime time is the 1972 Democratic Convention, which climaxed at about 3:00 A.M.

\textsuperscript{26} See \textit{Broadcasting}, Oct. 16, 1972, at 17.

\textsuperscript{27} \textit{Broadcasting}, Oct. 30, 1972, at 20.


\textsuperscript{30} Id. A table reproduced in Voters’ Time: \textit{Report of the Twentieth Century Fund Commission on Campaign Costs in the Electronic Era} (Table 4) (1969) shows the great increase in recent years in campaign expenditures.
1972 is even higher: over $420 million.\textsuperscript{31}

According to the Government Accounting Office figures, a total of $35,178,792 was spent by four GOP committees to re-elect President Nixon after the campaign spending law went into effect April 7, 1972. Of this amount, $4,392,644 went to communications media. Senator McGovern spent a total of $18,475,912, about one-half the Nixon amount, but spent more than President Nixon ($6,042,204) on communications media.\textsuperscript{32} This difference in media expense is partly due to President Nixon's preference to radio in making his appeal. These broadcast expenditures, totalling over $10 million, represent a continuing increase over the broadcast expenses incurred by the presidential candidates in 1968 (about $8 million) and in 1964 (less than $4 million).

Broadcasting costs are the single largest item in most statewide and national campaign budgets.\textsuperscript{33} Broadcast expenditures are also increasing at a rapid rate. According to the Brookings Institution, broadcast expenditures for all candidates in 1956 were less than $10 million; for 1960—over $14 million; for 1964—over $24 million;

\begin{table}[h]
\centering
\begin{tabular}{lll}
\hline
   & 11.6 & 5.1 & 14.1 & 7.8 & 19.9 & 24.8 & 44.2 & 44.2 & 44.2 \\
\end{tabular}
\caption{Broadcast Expenditures (in millions of dollars)}
\end{table}

\begin{itemize}
\item \textsuperscript{a} Direct expenditures exclude transfers to candidates and committees. Expenditures by national-level committees are primarily for presidential and vice presidential candidates; they do not, however, include expenditures at state and local levels in behalf of national candidates.
\item \textsuperscript{31} The Disgrace of Campaign Financing, TIME, Oct. 23, 1972, at 24. At the time of writing it is not known if these estimates are accurate. Final reports on receipts and expenditures are due from campaign committees on Jan. 31, 1973.
\item \textsuperscript{32} Nixon Outspends McGovern in Total but Not on Air, BROADCASTING, Nov. 13, 1972, at 20. For a sense of perspective, it is interesting to note that Proctor and Gamble Co. spends more than half as much in its annual advertising budget as the entire nation spends in its political campaigns. See The Disgrace of Campaign Financing, TIME, Oct. 23, 1972, at 30.
\item \textsuperscript{33} Squier, Lowering the Cost of Buying Democracy, in \textit{The Political Image Merchants: Strategies in the New Politics}, 108 (R. Hiebert ed. 1971). For an interesting comparison of expenses with a past campaign see Alexander and Meyers, The Switch in Campaign Giving, in \textit{Fortune}, Nov. 1965, in which there is a breakdown of expenses released by the Republican National Committee after the Goldwater defeat which reveals that of the approximately $14 million spent for Goldwater, almost 40\% went to television and radio.
\end{itemize}
for 1968—over $40 million. This increase of over 400% during this
twelve year period compares with about a 100% increase in estimat-
ed total candidate expenses.\textsuperscript{34} The significance of such increase can
be seen most graphically in the comparison chart prepared by

34. *D. Dunn (The Brookings Institution), Financing Presidential
Campaigns 32 (1972).* The increase in broadcast costs from 1955 to 1968 are
shown in the following tables from *Voters' Time: Report of the Twenty-
tieth Century Fund Commission on Campaign Costs in the Electronic
Era* (Tables 2 and 3) (1969):

**CHARGES FOR BROADCASTS, GENERAL ELECTION CAMPAIGNS,
BY PARTY, 1956-1968**
(thousands of dollars)

<table>
<thead>
<tr>
<th></th>
<th>1956</th>
<th>1960</th>
<th>1964</th>
<th>1968</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Television</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NETWORKS:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>$1,733</td>
<td>$1,820</td>
<td>$1,912</td>
<td>$4,189</td>
</tr>
<tr>
<td>Democrats</td>
<td>1,197</td>
<td>1,107</td>
<td>1,895</td>
<td>2,501</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td>672</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2,931</td>
<td>2,927</td>
<td>3,807</td>
<td>7,362</td>
</tr>
<tr>
<td><strong>STATIONS:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>2,004</td>
<td>3,611</td>
<td>7,519</td>
<td>10,994</td>
</tr>
<tr>
<td>Democrats</td>
<td>1,549</td>
<td>3,308</td>
<td>5,820</td>
<td>7,923</td>
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<tr>
<td>Other</td>
<td>152</td>
<td>206</td>
<td>350</td>
<td>808</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3,705</td>
<td>7,125</td>
<td>13,689</td>
<td>19,725</td>
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<tr>
<td><strong>TELEVISION, TOTAL:</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>3,737</td>
<td>5,431</td>
<td>9,431</td>
<td>15,183</td>
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<tr>
<td>Democrats</td>
<td>2,746</td>
<td>4,415</td>
<td>7,715</td>
<td>10,424</td>
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<td>Other</td>
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<td>206</td>
<td>350</td>
<td>1,480</td>
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<tr>
<td><strong>Total</strong></td>
<td>6,636</td>
<td>10,052</td>
<td>17,496</td>
<td>27,087</td>
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<td><strong>B. Radio</strong></td>
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<td><strong>NETWORKS:</strong></td>
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<td>Republicans</td>
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<tr>
<td><strong>Total</strong></td>
<td>321</td>
<td>79</td>
<td>119</td>
<td>663</td>
</tr>
<tr>
<td><strong>STATIONS:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>1,500</td>
<td>2,063</td>
<td>3,513</td>
<td>6,853</td>
</tr>
<tr>
<td>Democrats</td>
<td>1,198</td>
<td>1,756</td>
<td>3,267</td>
<td>4,846</td>
</tr>
<tr>
<td>Other</td>
<td>164</td>
<td>225</td>
<td>209</td>
<td>954</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2,861</td>
<td>4,064</td>
<td>6,988</td>
<td>12,654</td>
</tr>
</tbody>
</table>

**CHARGES FOR BROADCASTS,
TO PRESIDENTIAL AND VICE PRESIDENTIAL ASPIRANTS,
PRIMARIES AND GENERAL ELECTION CAMPAIGNS, 1964 AND 1968**
(thousands of dollars)

<table>
<thead>
<tr>
<th></th>
<th>1964</th>
<th>1968</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Television</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NETWORKS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Primaries:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>$257</td>
<td>$1,008</td>
</tr>
<tr>
<td>Democrats</td>
<td></td>
<td>511</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>257</td>
<td>1,519</td>
</tr>
</tbody>
</table>
The Brookings Institution. Some of the statistics underlying this chart are that in 1968 the broadcast industry reported total charges for political broadcasting to be 70% higher than in 1964. In 1968 TV network and station broadcast contributions were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Republicans</th>
<th>Democrats</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Networks, total:</td>
<td>2,168</td>
<td>5,197</td>
<td>2,501</td>
</tr>
<tr>
<td></td>
<td>1,895</td>
<td>3,012</td>
<td>672</td>
</tr>
<tr>
<td></td>
<td>4,064</td>
<td>8,881</td>
<td></td>
</tr>
<tr>
<td>STATIONS:</td>
<td>637</td>
<td>2,887</td>
<td>245</td>
</tr>
<tr>
<td>Primaries:</td>
<td>276</td>
<td>946</td>
<td>64</td>
</tr>
<tr>
<td></td>
<td>3,205</td>
<td>4,818</td>
<td>13</td>
</tr>
<tr>
<td>General campaigns:</td>
<td>3,842</td>
<td>6,332</td>
<td>78</td>
</tr>
<tr>
<td></td>
<td>2,115</td>
<td>4,861</td>
<td></td>
</tr>
<tr>
<td>Stations, total:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
|                | 35. Indicators of Campaign Costs Compared with Other National Indicators, 1956-68
| 1956 = 100     | 0           | 100       | 200   | 300 | 400 |
| Presidential television time costs
| 1956           |             |           |       |     |     |
| 1964           |             |           |       |     |     |
| 1968           |             |           |       |     |     |
| Presidential campaign costs
| 1956           |             |           |       |     |     |
| 1960           |             |           |       |     |     |
| 1964           |             |           |       |     |     |
| 1968           |             |           |       |     |     |
| Spot television time costs
| 1956           |             |           |       |     |     |
| 1960           |             |           |       |     |     |
| 1964           |             |           |       |     |     |
| 1968           |             |           |       |     |     |
broadcasting accounted for $38 million, or about 65% of the total.\textsuperscript{36}

Political broadcast advertising in the 1970 campaign surged to about $58 million, almost double that of the 1966 non-presidential campaigns.\textsuperscript{37} It is important to remember that in addition to television time, a candidate must cover the cost of production. For example, the expense to Senator McGovern for a half-hour national television speech on CBS during prime-time in early October, 1972, is estimated at $110,000. Production costs are estimated to have been between $10,000 and $15,000.\textsuperscript{38}

But production expenses are not the only secondary expense involved in television broadcasting. One author noted that:

Television is a principal factor in this escalation (of campaign costs). It is not simply the money spent on buying television time but the fact that television has created an entirely new syndrome

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
 & Gross national product & & \\
1956 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1960 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1964 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1968 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
\hline
\end{tabular}
\end{table}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
 & Number of Households with television & & \\
1956 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1960 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1964 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1968 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
\hline
\end{tabular}
\end{table}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
 & Consumer price index & & \\
1956 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1960 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1964 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1968 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
\hline
\end{tabular}
\end{table}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
 & Voting age population & & \\
1956 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1960 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1964 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
1968 & \multicolumn{3}{c|}{\text{\begin{tabular}{c}
\end{tabular}}} \\
\hline
\end{tabular}
\end{table}

\textbf{SOURCE:} Consumer price index from U.S. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES, CONTINUATION TO 1962 AND REVISIONS, p. 19, and STATISTICAL ABSTRACT OF THE UNITED STATES, 1969, p. 345; gross national product from STATISTICAL ABSTRACT \ldots 1969, p. 311, and HISTORICAL STATISTICS OF THE UNITED STATES, COLONIAL TIMES TO 1957, p. 139; number of households with television from NIELSEN TV 1969 (New York: A. C. Nielsen Co.); population of voting age from STATISTICAL ABSTRACT \ldots 1969, p. 368; spot television time costs from Table 3; presidential campaign costs and presidential television time costs from Table 1.


37. M. McCarthy, Elections for Sale 17 (1972). It is interesting to note that the actual number of hours of political broadcasting in 1970 sharply declined. The greater expenditure was due to greater use of costly spot announcements. The 1972 presidential campaign brought a resurgence of longer political broadcasts, particularly during the closing weeks of the campaign when half-hour, prime-time programs were broadcast. See supra note 21.

of campaign costs. Because of television, large sums of money are now spent on advertising firms, opinion surveys, film and videotape production, and, recently, computers. Higher costs of telephones, printing, mailing, salaries, jet transportation, office rental, and incidentals like renting typewriters and feeding staff, have all contributed to campaign-cost inflation. But television is the great squanderer both in itself and by encouraging a more extravagant mode of campaigning.39

Broadcasting costs will probably continue to increase, not only as an extension of the current trend, but also due to technological advances. “Color television has already brought higher time and production costs. Community antenna or cable television (CATV) facilities promise more broadcasting opportunities once the cities are wired and particular districts can be reached exclusively. Cable television permits the candidate to broadcast very specific appeals to a limited number of carefully selected households.”40

These high campaign costs reduce access to television, limit the number of potential candidates for elective office, and invite corruption. Regarding television access, John F. Kennedy wrote a year before his election: “If all candidates and parties are to have equal access to this essential and decisive campaign medium (television) without becoming deeply obligated to the big financial contributors from the worlds of business, labor or other major lobbies, then the time has come when a solution must be found to this problem of TV costs.”41

Congressman James C. Wright, Texas Democrat, wrote in 1967 that “the price of campaigning has risen so high that it actually imperils the integrity of our political institutions. Big contributors more and more hold the keys to the gates of public service. This is choking off the well-springs of fresh, new thought, and severely limiting the field of choice available to the public.”42 A recent study by The Brookings Institution found that:

42. R. Drummond, Campaign Costs, Christian Science Monitor, Apr. 24, 1967. A similar idea is expressed in a recent article, The Disgrace of Campaign Financing, Time, Oct. 23, 1972, at 30: “The threat to democracy is not posed by the amount of money needed to campaign; it lies
The nonwealthy man desiring to contest for office must appeal to the wealthy for funds. Many aspirants may not meet whatever set of criteria the wealthy choose to impose. This adds an undesirable component to the electoral process, for voters do not participate in this exercise. By giving the wealthy veto power over who may contest, high campaign costs grant them greater influence than other voters have in determining who achieves office . . . (Such high costs) make it impossible for groups without money to enter the electoral arena to offer their ideas in competition with those who can afford the price of admission. 43

The possibility of corruption is not limited to the electoral process: it pervades the entire process of government. As Erwin Knoll stated in the January, 1972 issue of The Progressive:

One need only scrutinize the record of this (or any recent) Administration, of this (or any recent) Congress to see how many decisions have been shaped by gratitude for past political contributions, by promises of contributions to come, or by fear of contributions to be withheld. 44

Scrutinizing the record of the Nixon administration, one finds some curious coincidences: for example, the administration's reversal in raising milk subsidies shortly before receiving large campaign contributions from dairy producers, 45 and ITT's offer of financial support to the Republican National Convention followed by the favorable settlement it received from the Justice Department in antitrust cases. Time magazine, in its October 23, 1972 issue, as part of its lead story, included many similar examples on both the national and statewide level. 46 One example:

The Maryland Chairman of Democrats for Nixon, Harry Rogers III, seems to have more than an ideological interest in re-electing the President. Announcing a drive to raise $250,000 for Nixon, he denied that his concern stemmed from the fact that most of the business of his land-development partnerships is with the Federal Government. His business gets some $5 million a year from the Government in lease payments . . . . Another lease and building deal is awaiting Federal approval. 47

The evils of campaign costs are succinctly summed up by former in the inequity of its availability and in the commitments, however tacit, often required to acquire it. Private wealth should not be decisive in a democracy, either in electing an official or in influencing public policy.”

44. KNOLL, supra note 22, at 10.
47. Id., at 28. One of the most straight forward and revealing statements about the relation between campaign contributions and political favors was made by Kenji Osano, one of the most powerful Japanese entrepreneurs, who was chief political fund raiser for Prime Minister Kakuei Tanaka of Japan: “Politics and business are one. They are inseparable.” The Osano Connection, TIME, Jan. 1, 1973, at 56.
Attorney General Richard G. Kleindienst in a statement before the Subcommittee on Elections:

The cost of political campaigns are spiraling upward, causing concern that only the wealthy, or those supported by powerful economic interests, can afford to run for public office. Adding to this concern is the widespread suspicion that the high price of campaigning leads to secret agreements to exchange political favor for financial support. These are the principal reasons for the loss of public confidence in the integrity of the election process. The only problem now is to agree upon effective means to restore that confidence.48

One means to restore that confidence by reducing political campaign costs has been agreed upon. The Federal Election Campaign Act49 limits the amount candidates for federal offices can spend on radio, television, CATV, newspapers, magazines, billboards and automated telephone systems in any primary, runoff, special or general election to ten cents times the voting-age population of the geographic unit covered by the election or $50,000, whichever is greater. A key provision is that no more than sixty percent of candidates' funds can be spent on broadcasting. The broadcast media cannot charge candidates more than the lowest unit rate charged any other advertiser for the same class and amount of time for a period of forty-five days before the primary election or sixty days before a general election. At other times rates cannot exceed charges made for comparable use for other purposes. In addition, the Act tightens disclosure requirements and limits the amount a candidate or his immediate family may contribute. It is interesting to note that the Senate version of the bill repealed section 315 for all candidates for federal office, but because of opposition in the House and White House, the final version of the bill did not repeal section 315.

The practical significance of this Act is that the presidential candidates in 1972 could spend up to $14.25 million on communications media, of which no more than $8.55 million could be spent on TV and radio.50 President Nixon spent about half this amount on radio and television, and Senator McGovern spent about three-

fourths this amount.\footnote{51}

While this statute may appear effective on its face, its impact is questionable. According to one recent article, “so far, the major impact of the new law . . . has been to loose an avalanche of lists and papers . . . About the only discernible result of the new law has been to scare off some contributors who are shy of publicity.”\footnote{52} In addition, the spending limitations appear to be set too high to be effective limits on radio and television spending.

**Suspension or Repeal of Section 315**

Proposals have been made to reduce the costs of political campaigns while attempting to accomplish the goal of promoting the widest and most penetrating airing of views and issues. One such proposal is to suspend or repeal section 315, thereby allowing licensees to cover various campaigns more thoroughly, without fear of equal opportunity obligations. In 1960 there was such a suspension during the presidential campaign. The facts substantiate the theory: In 1960 Nixon and Kennedy received much more free time from networks than Johnson and Goldwater received in 1964, or than Eisenhower and Stevenson received in 1956. In 1956 the total free time for the Democratic and Republican presidential aspirants was less than thirty hours; in 1960, when section 315 was suspended, the total was almost forty hours; in 1964, the total was less than five hours.\footnote{53}

Another significant development in 1960 was the series of Great Debates, made possible by suspending section 315. While the value of these debates has been questioned,\footnote{54} much can be said in their favor. According to Delmer Dunn of The Brookings Institution:

> Debates as an educational tool should not be lightly discarded. They do offer higher quality information than any presently used alternative formats . . . A suspension could also help assure that each major candidate would have some chance of getting his message to the voter. Thus, some of the difficulties of the present finance system, particularly for presidential candidates, could be

\footnote{51. See note 24, supra.  
53. R. MacNeil, supra note 7, at 285-86.  
54. See E. Barnouw, supra note 8, at 165:  
"Critics of the Great Debates stressed their superficiality. Like most newscasts, the programs were collections of tidbits. Major topics had to be tucked into capsules, each without context. The situation measured coolness and adroitness, not wisdom. The Great Debates, said historian Henry Steele Commanger, glorified traits having no relationship to the presidency; he was sure George Washington would have lost a television Great Debate."}
In addition, the debates caused one party to listen to the opposing party and vice versa, which is healthy for a democracy.\footnote{55}{
\textit{Political Campaigning and the Airways}

In addition to the Great Debates, the suspension of section 315 allowed the networks to devote much greater coverage to Kennedy and Nixon than to the minor candidates. NBC presented a series of eight programs, "The Campaign and the Candidates," focusing on these two candidates and their running-mates. In 1964 NBC planned a similar series but suspension of section 315 had lapsed, thereby making it impractical to include any significant appearances by major contenders.\footnote{57}{The particular advantage of suspending section 315 was well expressed by Robert Shafer, news director for Philadelphia television station WRC-TV:}

Because it is not possible to present extensive coverage of political activities within the framework of newscasts and news interviews (currently exempt from section 315) . . . many news directors . . . assume additional programming responsibilities in the production of documentary, special events, and face-to-face programs. It is in this area of programming that section 315 has proved completely unworkable.\footnote{58}{Section 315 has the effect of emasculating many election year special broadcasts, including those which would feature minor parties. CBS cancelled plans for a half-hour special on minor parties in 1964 because any splinter candidate the network might have omitted from the program could have requested equal time.\footnote{59}{Recently, PBS decided not to air a satire by Woody Allen because the film footage used shorts of President Nixon, Governor George Wal-}

\footnote{56}{For further information regarding the Great Debates, see S. Kraus, Ed., \textit{The Great Debates: Background, Perspective, Effects} (1967).}


\footnote{58}{G. Wyckoff, \textit{supra} note 50, at 256-57.}

\footnote{59}{See J. Pennybacker and W. Braden, Eds., \textit{Broadcasting and the Public Interest} 150 (1969). It is interesting to note that the leader of one minor party, the Conservative party in New York, sided with broadcasters:}

\footnote{D. Dunn, \textit{supra} note 27, at 102.}
lace and Senator Hubert Humphrey, and PBS decided not to broadcast the episode of "The Mouse Factory" in which Pat Paulsen appeared. (Mr. Paulsen had officially declared himself a candidate for the Presidency.) PBS's reluctance is well founded: on January 25, 1972, the FCC held that Pat Paulsen's appearance on an entertainment program after he had officially declared his candidacy did subject the broadcaster to equal opportunity requirements.

The Senate, on March 23, 1972, voted to repeal section 315 insofar as it applies to presidential and vice-presidential candidates. Senator George McGovern, while campaigning for the presidency, pushed strongly for congressional action repealing section 315, at least as it applies to presidential and vice-presidential candidates. The effect of such repeal, according to the New York Times, would have been virtually to guarantee the Democrats more than $1 million worth of free broadcast time in the closing months of the election. The basis for this figure is CBS's promise to split eight hours of broadcast time equally between candidates Nixon and McGovern, NBC's promise of four prime-time half-hours to be split the same way, and a similar promise by ABC. The networks also said they would give time to candidates of any other significant party, such as George C. Wallace's American Independent Party.

There are compelling arguments either for repeal of section 315, or for limiting its application to major party candidates. As Chairman Dean Burch of the FCC recently stated in a case involving Congresswoman Shirley Chisholm:

There is a longstanding Commission proposal to amend section 315 to limit the application of 'equal time' in general elections to major party candidates, with such candidates defined liberally so as to in-


61. *See In Re Request for Review of the Pat Paulsen Ruling Concerning Section 315 Political Broadcast, Letter to Daniel Sklar, Esq.* 33 FCC 2d 835 (Jan. 25, 1972). Chairman Burch, in a concurring statement, said:

... (however) there is simply no room for the Commission to make determinations as to degree of intent, or qualifications, or 'seriousness'—nor should there be. The Communications Act bestows on us no particular expertise about the working of the American political process.


64. *Id.* *See also* N.Y. TIMES, March 24, 1972, at 44, col. 1.
clude all who have significant public support. The basis of that proposal is obvious. Equal opportunities do not get free time for the Vegetarian or Socialist Workers or other 'fringe' parties. As a practical matter, it just inhibits presentations of the major party candidates (or, in the primary context, of the candidates with any real chance of winning). The only loser is the public.65

Chairman Burch would limit equal opportunity to “significant candidates” because, he says, presentation of candidates lacking significant public support “would appear to be [of] little, if any, public benefit.”66

This statement demonstrates an attitude which should be scrutinized closely. If section 315 were to be repealed, it is clear that broadcast coverage of the Democratic and Republican candidates would probably increase. But what would be the effect on minor parties? What about the possibility of biased coverage of the campaign? The brief discussion of the power of television, supra, should make self-evident the importance of considering these questions.

According to Nathan Karp, the Socialist Labor Party leader:

Nothing in the record of the overwhelming number of broadcast licensees justifies the conclusion that they can or should be trusted to treat all candidates for public office in keeping with the basic principles of democracy. In the past, they have resorted to every conceivable device to evade their legal responsibilities to the democratic process as spelled out in section 315 and the “fairness doctrine.” If they fail to meet their responsibilities and obligations when the law is on the books, what justification is there, or can there be, for assuming that they will act responsibly when the law is removed? To ask the question is to answer it.67

Facts bear this out: In 1956, minority parties as a group received approximately the same amount of free time as the Democrats and as the Republicans. When section 315 was suspended in 1960, however, minority parties as a group received less than one-sixth the free time devoted to Republicans and to Democrats.68 The fair-

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68. D. Dunn, supra note 27, at 86. Mr. Dunn concludes that “Suspending section 315 would probably produce less free time for candidates of
ness doctrine did not seem to protect their rights to equitable treatment.

Proposals for repeal of section 315 have assumed that the fairness doctrine would provide adequate protection for minority parties. For example, former Attorney General Richard G. Kleindienst, in testimony before the Subcommittee on Elections, stated, “We believe that candidates will be assured of reasonable access to broadcasting facilities on an equitable basis by the Fairness Doctrine enforced by the Federal Communications Commission. We, therefore, recommend total repeal of section 315(a).”

However, such reasoning is not realistic. E. William Henry, Chairman of the FCC in 1966, has stated that “The FCC has had considerable experience with the administration of this [fairness] doctrine enough to teach us that it will not do as a general set of ground rules for broadcasting in political campaigns absent section 315. The fairness doctrine is not suited to solve section 315 problems because such problems arise in situations requiring immediate, formula-like answers. The equal opportunity requirement provides such a formula. The fairness doctrine, on the other hand, based on the exclusive concept of “fair” time, can be applied only in an after-the-fact, case-by-case, fact-finding administrative procedure. As Herbert E. Alexander so aptly put it, “There is no equity for a candidate after an election is lost.”

Furthermore, application of the fairness doctrine has not always achieved the goal of the doctrine. As University of California at Berkeley law professor Stephen R. Barnett recently noted, “The gap between what the doctrine was supposed to mean and what it means in fact has widened progressively in recent years, as the television speech has amplified the power of the presidency and as Mr. Nixon, in particular, has exploited it to an unprecedented

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69. Hearings on H.R. 8234 et al. Before the Subcomm. on Elections of the Comm. on House Administration on Campaign Financing at 9 (July 14, 1971). See also M. CUMMINGS, JR., Ed., THE BROOKINGS INSTITUTION, THE NATIONAL ELECTION OF 1964, at 152 (1966): “nothing the minor parties did in 1964 indicates any need to give them and their candidates more protection than they would enjoy under the fairness doctrine and the broadcasters' competitive drive to play a full role in reporting the newsworthy among political candidates, ideas and movements.”


degree.” An even more extreme view is expressed by Socialist Nathan Karp:

The fairness doctrine is practically meaningless since no effective effort is ever really made to enforce it, except possibly where powerful or influential organizations are involved . . . . broadcast licenses manifest a complete disregard for the “fairness doctrine,” as far as minority parties are concerned, despite the specific emphasis placed upon this doctrine in the 1959 amendment. They arrogantly refuse to recognize any obligation to minority party candidates, and invariably are upheld by the FCC in this respect. This speaks volumes on what would happen if section 315 were repealed and political broadcasting were left to the vagaries of the “fairness doctrine.”

A recent example of the truth of this statement is an FCC decision on November 6, 1972, refusing to order ABC, CBS, and NBC to give a free half-hour to Dr. Spock on election eve as requested by the People’s Party, who argued that the networks had violated the fairness doctrine by failing to provide adequate coverage of Dr. Spock’s views during the campaign. The majority, in a 5-1 decision, held that the party had not demonstrated that Dr. Spock’s campaign was sufficiently substantial to render unreasonable the network’s judgment that their coverage was adequate. Nicholas Johnson, the lone dissenter, said that the coverage of CBS and NBC during the final three weeks of the campaign, “zero appearances and zero minutes,” does not comply with their obligations under the fairness doctrine.

It is clear that repeal of section 315, or applying section 315 only to the two major candidates, and relying on the fairness doctrine would have a deleterious effect on minority parties. Such legislative action would hinder the growth and effectiveness of existing minority parties and inhibit the emergence of new parties claiming to represent plans for improved forms of government, something which the Declaration of Independence declared to be the right and duty of citizens to present for adoption by the people. As Social-

74. FCC Tells Spock: No Time Due, BROADCASTING, Nov. 13, 1972, at 20.
ist Nathan Karp stated in testimony before a Senate subcommittee:

It cannot be repeated too often that creating the opportunity for frequent presentation of the substantially identical views of the two major parties, while at the same time suppressing, or drastically limiting the expression of all divergent views, is the very antithesis of democracy. It would eliminate not only an essential ingredient of democracy—the right of proponents of new ideas to be on an equal basis with those who defend and uphold the status quo—but also an essential prerequisite for human and social progress, the free competition in the marketplace of ideas.\(^7\)

**INCUMBENTS AGAINST REFORM OF SECTION 315**

Repeal of section 315 is obviously not a proper alternative. Yet most would agree that section 315 should be amended to achieve the goal of informing the public more effectively. While there are strong pressures for reform, there are also, ironically, strong pressures against reform, because the political well-being of incumbents is closely tied to maintaining the status quo of section 315.

Between 1955 and 1970, members of Congress introduced over thirty bills aimed at excluding from the equal time requirements, candidates ranging from president only to all those running for public office.\(^7\) Since 1970, there have been at least half-a-dozen such proposals.\(^7\) None of these bills have become law, with the exception of the experimental suspension of section 315 during the 1960 campaign.

Incumbents have a vested interest in section 315 for several reasons. An incumbent’s activities are widely covered on exempt newscasts, while a non-incumbent’s activities are not. Repeal would increase pressure on incumbents to debate challengers on television or radio; incumbents are generally reluctant to do this.\(^7\) President Kennedy was willing to debate his Republican opponent in 1964, but when he was assassinated, President Johnson indicated

\(^7\) J. Pennybacker and W. Braden, Eds., Broadcasting and the Public Interest 141 (1969). It should be noted that third parties must overcome difficult requirements for registration or getting a candidate on the ballot even before the problem of publicity arises.

\(^7\) D. Dunn, supra note 26, at 47.


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he did not wish to debate with Senator Goldwater, and a previous Congressional vote to suspend section 315 was effectively killed.\textsuperscript{80} The Wall Street Journal, October 9, 1964, had no doubt “that President Johnson himself engineered the Senate vote on equal time,”\textsuperscript{81} and that Congressmen were “sure not ready” to lay “their political lives in the laps of the broadcasters.”\textsuperscript{82}

As indicated above, another advantage to an incumbent is that section 315 does not apply to him until he officially announces his candidacy. This explains the many television appearances of President Nixon in the two weeks before he announced his candidacy on January 7, 1972, and President Nixon’s reluctance to declare himself a candidate in an interview with newsman Dan Rather, even though he could not have made his candidacy much clearer.\textsuperscript{83}

This was buttressed by the recent Supreme Court refusal to review the Court of Appeals’ denial of a right of response to the Democratic National Committee when the president is not yet a candidate (three speeches in early 1971).\textsuperscript{84} Two FCC decisions are said to be “perfectly designed to buttress the President’s strategy.”\textsuperscript{85} President Nixon does not feel comfortable in news conferences. The FCC holds that news conferences are not exempt from section 315—so President Nixon has an excuse to avoid news conferences.\textsuperscript{86} The second holding is that when a president reports to the nation on a matter of national concern, no equal time is re-

\textsuperscript{80}. See G. Wyckoff, \textit{supra} note 51.


\textsuperscript{82}. Id.

\textsuperscript{83}. According to the New York Times, “Mr. Nixon refused the opportunity offered by Dan Rather . . . to announce his candidacy formally. But the President . . . conceded later that there was ‘good reason to think that I might make the decision in that direction.’” Semple, \textit{Nixon Indicates He’ll Run with Agnew on the Ticket}, \textit{N.Y. Times}, Jan. 3, 1972, at 1, col. 1.

\textsuperscript{84}. \textit{Broadcasting}, Oct. 16, 1972. See also Letter to Columbia Broadcasting System, Inc., 40 FCC 395 (1964) (Loevinger dissent). For an interesting contrast, see \textit{In Re Complaints of Committee for the Fair Broadcasting of Controversial Issues}, 19 R.R. 2d 1103 (1970) in which the FCC held that an imbalance was created when five free prime time broadcasts by the party in power was not counterbalanced by an opposing viewpoint.


quired. President Nixon used many such speeches. There are those who trace the political composition of the FCC and see these decisions as tailored to favor President Nixon.

SUGGESTED SOLUTIONS

It seems that every writer who has studied section 315 and the surrounding problems has a different solution. Since the authors will attempt an eclectic approach combining their own proposals with those of others deemed to have continuing merit, we mention here only two or three plans (actually drafted as amendments) which we do not believe are necessary or productive. The first is to exempt debates from section 315. One would apply only to television. Another includes radio. The purpose is to encourage or force debate. It has been proposed that two candidates debate in a news interview. This was thought to be exempt from section 315, under the theory of "fullest presentation of the news." But the later case of Congresswoman Shirley Chisholm seems to require that where the "news" is so scheduled as to feature the two major contenders, equal time must be provided a third candidate where the scheduling time and format makes these real debates. The debate amendment might be unnecessary with some clarification of these decisions. Another proposal would


88. Barnett, supra note 78. It is interesting to note the following statement of Senator J.W. Fulbright: "As matters now stand, the President's power to use television in the service of his policies and opinions has done as much to expand the powers of his office as would a constitutional amendment formally abolishing the co-equality of the three branches of government. Hearings of S.J. Res. 209 Before the Subcomm. on Communications of the Senate Comm. on Commerce, 91st Cong., 2d Sess. (1970).

89. Barnett, supra note 78, at 809.

90. G. Wyckoff, supra note 51, at 262.


96. FCC and U.S.A., No. 72-1505, quoted at Id.

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make equal time available only to major candidates, e.g. those who receive four percent of the popular vote in the preceding national election. This would have excluded Roosevelt in 1912, LaFollette in 1924 and Wallace in 1948. Some would lower the percentage to one or two percent. This is believed to be too difficult to enforce and may be constitutionally discriminatory.

The author's proposed solution deals with four areas: (a) governmentally funded broadcast time; (b) regulation of broadcast time that is given by the media; (c) tax reform; and (d) sanctions and total spending regulation. These areas would include the following elements:

(a) Governmentally funded broadcast time: 1. Adoption of the candidate categories and specified broadcast times of the "voters' time" proposal based on the idea presented by the Twentieth Century Fund Commission on Campaign Costs in the Electronic Era in 1969. Under this system of Voters' Time, as opposed to equal time, the federal government provides significant candidates in general election campaigns for president and vice-president with basic campaign broadcasting access to the American voting public within the context of programs that will promote rational political discussion, and that will be presented in prime evening time simultaneously over every broadcast and cable television facility in the United States. This proposal is the subject of House Resolution 6112, which fixes a system of major, third and minor parties. We would apply the same system to Congressional, and even to state candidates.

Within the context of the various Voters' Time proposals, the key element is "significant candidates." The characterization of "significant" encompasses candidates who are nominees of parties that support the same candidate for president and vice-president in at least three-fourths of the states and qualify electors for those same

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97. See 35 FCC 2d 579, 580. It is interesting to note that in an opinion by Chairman Burch in which three other Commissioners concur, it is argued that "If and when it [the FCC denial of relief] is considered on its merits, in the context of the full factual record, I believe it should be sustained." Id.
98. G. Wyckoff, supra note 51, at 255.
100. Id.
candidates on the ballot in that proportion of states provided that the electoral votes of those states are sufficient to elect a president and vice-president.

Among the groups of candidates characterized as "significant," three categories are drawn. Category I includes significant candidates nominated by parties that ranked first or second in the popular vote in two of the three previous presidential elections. Category II includes significant candidates that are nominated by parties that received at least one-eighth of the popular vote in the preceding presidential election. Category III includes all other significant candidates.

Category I candidates are entitled to six prime-time thirty minute programs within the thirty-five days preceding the Monday before Election Day, provided that at least one program be broadcast in each seven day period. Category II candidates are entitled to two such programs with the same restrictions. Category III candidates are entitled to only one such program.

This "Voters' Time" would be paid for by the Federal Government at no more than fifty percent of the commercial rate charged for such time or the lowest charge made to any commercial advertiser for such time, whichever is lower. "Voters' Time" would be exempted from section 315. As originally made, this proposal does not preclude candidates from buying time other than the time given them in "Voters' Time."

The proponents contend that this proposal recognizes dual needs: "a healthy chance for the upward movement of new parties and candidates and the possible decline of the old, as well as the stability provided by a strong two party system." Dividing candidates into three categories leaves the door open to new parties whose perspective on new circumstances may be of great value to the people. If "Voters' Time" were in effect in the past, the following parties would have fallen within Category II: Roosevelt's Bull Moose Party in 1916, LaFollette's Progressive Party in 1924, and George C. Wallace's American Independent Party in 1972. The following parties would have been in Category III: Henry A. Wallace's Progressives in 1948, Theodore Roosevelt's Bull Moose Party in 1912, and the Socialist Party of Eugene V. Debs and Norman Thomas, which would have qualified seven times. Dr. Spock's party would not qualify.

Presenting each program simultaneously over every broadcast and cable television facility in prime evening time would enhance the possibility of all voters perceiving the candidates. The idea of
simultaneity is borrowed from the English system, which has proved successful in this respect.

(b) Regulation of broadcast time that is furnished by the media. 1. Adoption of a proportional (as opposed to equal) time requirement, based on the “Voters’ Time” categories of candidates.102 This would work as follows: If a broadcaster gave one hour of free time to Category I candidate, he would be obligated to give one hour of time to every other Category I candidate, one-half hour to every Category II candidate, and five minutes to every Category III candidate. If a broadcaster gave one hour of free time to a Category II candidate, he would be obligated to give the same time to other Category II candidates, a half-hour to Category I candidates, and five minutes to Category III candidates. Giving free time to any Category III candidate would not subject the broadcaster to equal opportunity provisions. This scheme would encourage dissemination of the views of the fringe parties, provoke broadcasters to give all candidates more time, reduce campaign expenses, and inform the public more effectively. The proportions allotted to each category could be modified so as not to place too great a burden on broadcasters; and, of course, a station could give an evolving candidate who would not qualify otherwise free time.103

The above would seem superior to a fixed percentage mandated free time,104 or dependence on “public service,”105 or insistence on networks giving greater free time,106 or paralleling bought time by free time for minor parties107—all of which raise a question of confiscation,108 or serious policy as no other industry is so regulated.109

103. H. ALEXANDER, MONEY IN POLITICS 273-74 (1972).
104. Id., at 274.
107. R. MACNEIL, supra note 7, at 286.
2. Adoption of the English system of non-campaign rebuttal time. Application of rebuttal time proportional to the time which an incumbent uses on television or radio before he officially declares his candidacy is suggested by the English system. For example, as a result of President Nixon's one hour interview with Dan Rather a few days before the President officially declared his candidacy, the Democrats would be given equal time to use as they saw fit, and Category II and III candidates could be given lesser time.

The New York Times, in an editorial on January 6, 1972, suggested the English system as a model to be followed, particularly with respect to the time before the incumbent officially declares himself a candidate:

The British political system (whereby the leader of the opposition is routinely asked to make an equivalent appearance whenever the incumbent Prime Minister appears on television) with its institutional opposition, makes the exercise of fairness on television much easier. At the moment, half a dozen Democrats are vying to be recognized as the future leader of Mr. Nixon's opposition. Nevertheless, it is not beyond the inventive powers of the FCC to devise an arrangement by which a President's opposition across the whole political spectrum regularly and routinely receives access to free television time equal to that which he receives. This recurrent squabble over equal time is one controversy which should have been settled in a mature democracy.

3. Removal of the "news" exception favoring incumbents and expansion of the "issue oriented fairness" doctrine with extremely quick methods of review. As said, section 315 attempts to be automatic. Whether a "news" appearance should be answered should not depend on an automatic formula. If the "news" is essentially political, issue-oriented, it should be answered. But we cannot tolerate the delays of the existing "fairness" rule. At the same time we need the fairness doctrine advantages—emphasis on broadcasting as a public trust, concern that controversial issues be aired and understood, the right of non-candidates to reach the public.

(c) Tax reform. 1. Adoption of amendments to the Internal Revenue Code that would provide tax incentives for broadcasters

110. H. ALEXANDER, supra note 103, at 263. Such arguments may be precluded by the precedent of 315, which mandates free time. A distinction must be drawn, however, because 315 mandates free time only when the station first offers free time, whereas this proposal would mandate free time even in the absence of any such prior action by the licensee.


112. GELLER, supra note 104.

for providing free time to candidates.

Under this proposal, the Internal Revenue Code would be amended to permit broadcasters to deduct from taxable income not only out of pocket costs of free political broadcasts (which are currently deductible) but some portion of the profits which are thereby sacrificed. This would be a further inducement to broadcasters to provide free time to candidates. A caution must be added—the advantage to the broadcaster must not be so great as to substitute them as the new “fat cats” of the parties.

2. Amendments of the current Internal Revenue Code provisions that provide tax incentives to citizens for making campaign contributions.

Small amounts should be fully deductible, but large contributions refused a deduction. We want to encourage the average citizen to contribute more to political campaigns, and reduce the impact of the “fat cats.” It might even be provided that contributions above a certain amount would give rise to taxable income (many now give low cost stock and avoid tax on the gain).

3. Alternatively, abandonment of the entire tax incentive system with the government collecting a fund and disbursing the same to provide for broadcast time for all parties.

This was the proposal of the Twentieth Century Fund Commission on Campaign Costs in the Electronic Era. An even more extensive reliance on this method was Rexford Tugwell’s suggestion. The current tax provision allowing a one dollar credit on the 1972 tax return for a special Federal fund is a half-way step, still coupled to designating one’s party preference.

(d) Regulation of total amount of campaign spending and sanctions. 1. Amendment of the Federal Election Campaign Act to lower the ceiling on campaign spending generally and the proportion which can be spend on broadcasting.

This would necessarily decrease the fantastic cost of running for public office and the evils generated by that cost, so long as

114. A good analysis of why the broadcast industry cannot be expected to take the lead while Congress continues to favor its own members, in discussing proposals for structuring content and greater use of “short program” and “spot” coverage of issues is in Political Broadcasts and the Informed Electorate: A Call for Action, 22 CATH. U.L. REV. 177 (1972).
the disclosure requirements of the Act were strictly enforced. The existing Act and the Pastore proposal are inadequate. It may be all right to retain a provision limiting spending to some amount per registered voter, but there should also be a dollar limit, whichever is lower (not higher, as at present).

2. Imposition of substantial fines on any candidate and/or contributor over one hundred dollars where any advantage was obtained from the government by the contributor or related persons within five years of the contribution, and for any failure to disclose contributions or their expenditure.

Watergate and all the numerous “front” committees and failures of disclosure ought to convince us of the need for penalties with teeth.

Finally, for once the political incumbents should stop providing for their own protection. The emphasis should shift to the citizen’s right to be informed and to vote intelligently. It is too much to expect that we can at once produce a law that is free from trouble and favoritism. We have tried to show why throwing out section 315 entirely would bring a cure worse than the disease, why the fairness doctrine alone is inadequate. But we have learned, or should have learned, from our operations under the existing law. The proposal advanced here is by no means the only solution, but it is based on the lessons of experience. This proposal merits careful scrutiny. Certainly, Congress should revise section 315 and attempt to resolve the problems before the 1974 elections.

115. Some criticisms and suggestions for modifying the fairness doctrine to accomplish the original intent of 315 has been voiced earlier in this article. A full recent discussion and proposals to get around such present problems as “no requirement that the time given be equal nor that the time be given to any particular persons” is found in W.C. Canby, Jr., The First Amendment Right to Persuade: Access to Radio and Television, 19 U.C.L.A. Rev. 723 (1972).