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Trying to make social media ‘fairer’ poses dangers for Republicans

Such regulations sound good in theory but can easily become political weapons.

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Suspicion of the mainstream media is commonplace on the right, but that long-standing worry now extends to social media. Conservatives widely believe, despite minimal evidence, that the big social media platforms are censoring their voices via “shadow banning” or algorithmic bias. In response, President Trump has repeatedly called for the repeal of Section 230 of the Communications Decency Act, an obscure law that fundamentally shaped the nature of the Internet in the 1990s.

Section 230 shields social media companies from liability for user-posted content. It is rooted in a body of jurisprudence protecting freedom of speech for bookstores. One could sue an individual author for defamation but couldn’t hold the bookstore owner who sold the book liable, ultimately allowing owners to carry controversial books if they chose to do so. Section 230 extended this principle to the Internet, giving platforms control over user-posted content without having to worry about lawsuits. This kept the Internet from turning into a web of either tightly controlled walled gardens that banned all controversial content or unmoderated sites that banned none at all.

Trump and allies such as Sens. Marsha Blackburn (R-Tenn.) and Josh Hawley (R-Mo.) — both of whom have proposed legislation that would condition Section 230 protections on not discriminating against conservative content — may care little about this history. But they should.

While trying to force media to be “fair” sounds good in theory, waging political campaigns via regulatory policies can backfire. In fact, the last time the federal government attempted such a project, the result was the most successful episode of government censorship of the last half-century and it was conservatives who were the primary target.

The Fairness Doctrine certainly sounded like a good idea to media reformers in the late 1940s and 1950s. Because of the scarcity of stations, the Federal Communications Commission mandated that television and radio station owners give airtime to both sides of any controversial issue, like school desegregation, to ensure that the public would have access to all points of view.

In practice, however, it was a potential weapon waiting for the right set of unscrupulous political operatives willing to wield it. After all, the FCC, an agency filled with executive appointees, decided whether stations fulfilled this requirement and also controlled whether stations’ licenses would be renewed. In other words, the president could game the Fairness Doctrine by appointing political allies to the FCC and then leaning on them to privilege or punish particular content. And that is precisely what John F. Kennedy did in the early 1960s. Kennedy had narrowly won the

election of 1960; his campaign had nearly foundered in the West Virginia Democratic primary because of what one staffer called “every hatemonger, radio preacher and backwoods evangelist” who attacked Kennedy’s Catholic faith and liberal policies. The most prominent of these radio preachers was a fundamentalist, Presbyterian minister in New Jersey named Carl McIntire, who had an estimated weekly audience of 20 million listeners. (For the sake of comparison, that matches Rush Limbaugh’s peak some 40 years later.)

McIntire, and other conservative broadcasters like Billy James Hargis and Clarence Manion, used their rapidly expanding platforms to incessantly attack the Kennedy administration’s actions. And these denunciations mattered. Ceaseless radio criticism of Kennedy’s decision to lower trade barriers with the Eastern Bloc boosted a massive, national boycott of Eastern European imports by suburban housewives that compelled the largest retailers to pull the offending items and that led Congress to reprimand the president.

Such cases explain why an Oval Office tape recorder captured Kennedy telling an aide to check whether the FCC could “do something about ‘Life Line’” (one of the major conservative radio programs).

And “do something” his administration did. First, Attorney General (and the president’s brother) Robert Kennedy leaned on the Internal Revenue Service to audit right-wing radio programs with an eye toward revoking their tax exemptions. Second, the president told FCC Chairman E. William Henry that “it is important that stations be kept fair.” Henry promptly announced his intent to rigorously enforce the Fairness Doctrine and explicitly called out examples of unbalanced conservative speech.

By keeping the stations “fair,” Kennedy meant, of course, to keep them fair *to him*. At a subsequent Oval Office meeting, the administration and various political allies created the Citizens Committee for a Nuclear Test Ban to monitor conservative broadcasts and look for criticisms of the administration’s proposed Nuclear Test Ban Treaty with the Soviet Union. Stations that aired attacks on the treaty would then be warned by the committee that unless they aired a response program defending the treaty — and did so for free — a Fairness Doctrine complaint would be filed with the FCC, potentially putting the future renewal of their station licenses in question.

This censorship campaign only accelerated under Lyndon B. Johnson’s administration. During the 1964 election, the Democratic National Committee adopted the Kennedy administration’s playbook and created a new front organization — the National Council for Civic Responsibility — to launder cash from allied interest groups, launch a dirty-tricks team headed by operative Wayne Phillips and weaponize the Fairness Doctrine.

This effort to punish stations that aired critiques of Johnson or praised his opponent, Barry Goldwater, secured 1,700 free broadcasts in the weeks leading up to the election. Even more importantly, in Phillips’s words, the operation inhibited “the political activity of Right Wing broadcasts,” whose attacks on the Johnson administration “virtually disappeared.”

The DNC’s successful Fairness Doctrine campaign was soon followed by a congressional investigation into the problem of “radical right” dominance of the airwaves. Democrats on the Senate Commerce Committee — which had oversight of the FCC — sent a survey on official letterhead to every radio station in the country asking them to list which radical conservative

programs they aired and mentioning that the committee was considering adding new enforcement mechanisms to the Fairness Doctrine.

The one-two-three combination of Kennedy's censorship efforts, the DNC's election campaign and the threat of congressional sanction led all but the most ideologically committed station owners to drop conservative programming altogether. It simply was not worth the expense of giving away free response time or the risk of complications at license renewal time. In fact, conservative broadcasting would not fully recover until after the Fairness Doctrine was repealed in the 1980s and a new generation of entertainment and profit-focused conservative broadcasters emerged.

The abuse of the Fairness Doctrine in the 1960s reminds us that while making mass media a fairer and more equitable space is a noble goal, such efforts can easily be turned into weapons of political warfare waged by partisans from both sides of the aisle. Matzko

Indeed, those involved in the Kennedy censorship campaign watched in horror as the Nixon administration adopted the threat of Fairness Doctrine complaints to pressure the television networks into providing more flattering coverage of the Vietnam War. It is no accident that it was print outlets like The Washington Post — which were not subject to any kind of Fairness Doctrine — that played a predominant role in toppling the Nixon administration.

Ultimately, the effort to create media fairness in the 1960s both failed to secure greater media fairness and seriously impaired the freedom of broadcast speech. This outcome serves as a reminder of the dangers inherent in undertaking similar efforts today.

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