

Fairness Doctrine fight goes on

By: [Keach Hagey](#)

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When some liberals called for reining in harsh political rhetoric after the Arizona shootings, Rep. Jim Clyburn (D-S.C.) took it one step further. He called for bringing back the Fairness Doctrine, in what was widely considered an attempt to clamp down on talk radio.

A week later, those calls have abated, and no one is seriously pursuing the idea of returning to the long-defunct policy, which required media on the public airwaves to present both sides of controversial political issues. Not Clyburn, not another Democrat who echoed his call for regulatory remedies, Rep. Louise Slaughter (N.Y.), and not the Federal Communications Commission, whose chairman opposes reinstating the policy.

But you wouldn't know it from listening to conservative talk radio.

Conservative talkers like Rush Limbaugh, Glenn Beck and Sean Hannity are rallying their listeners with a very old — and very successful — battle cry, accusing the left of trying to curb their free speech.

“So believe me, I wouldn't be surprised, folks, if somebody in the Obama regime or some FCC bureaucrat or some Democrat congressperson has already written up legislation to stifle and eliminate conservative speech, and that legislation is sitting in a desk drawer someplace just waiting for the right event to clamp down because that's what all this is,” Limbaugh said Monday, in his first show since the shooting. “And every time an event like this happens, they get into a trial run in hopes that this is the one that they can succeed in shutting us all down.”

This theme remained a constant on talk radio, conservative blogs and Fox News throughout the week, as conservative commentators accused liberals of exploiting the tragedy to score political points without any evidence linking the shooter to conservative media. But beyond the political tit-for-tat was a media regulation debate that gave conservative talk radio a chance to talk about one of its favorite topics: itself.

“This is ultimately very good for talk radio,” said Michael Harrison, publisher of Talkers magazine, said of the Fairness Doctrine controversy. “Why? Because

talk radio is really just a form of entertainment...It thrives on attention.”

Still, it's hard to overstate the importance of the Fairness Doctrine to conservative commentators — its demise in 1987, through an executive order signed by President Ronald Reagan, is credited with the creation of modern-day talk-radio, because broadcasters no longer had to offer competing views on the same broadcasts. (The Fairness Doctrine sometimes gets confused with equal-time provisions that still apply to modern broadcasting, but equal-time rules only apply to political candidates, while the Fairness Doctrine applied to controversial issues.)

And the conservative commentators could be excused for having a powerful feeling of *deja vu*. After the Oklahoma City bombings in 1995, President Bill Clinton spoke to a group of students in Minneapolis, saying, “We hear so many loud and angry voices in America today” whose sole goal “seems to be to try to keep some people as paranoid as possible and the rest of us all torn up and upset with each other. They spread hate. They leave the impression, by their very words, that violence is acceptable.”

No one had any doubt who he was talking about, since Rush Limbaugh was by far the highest rated talk radio figure of the time. The president scored political points, but there was no regulatory effort at the time to back up his words.

When President Barack Obama was elected, conservative talkers picked up the theme again — warning their listeners that with Democrats in Congress and a Democrat in the White House, a new liberal push for the Fairness Doctrine to silence their voices could not be far behind. Obama does not support the return of the Fairness Doctrine, his spokesman told Fox News last year.

And in contrast to Clinton's remarks from 1995, Obama delivered a call for civility on Wednesday and offered what many interpreted as a rebuke to the left — though not exclusively the left — for rushing to pin blame on their political opponents in the hours and days after the attack.

But that did nothing to pull conservative talk radio out of its defensive posture last week. Limbaugh titled one call-in segment of his Thursday show “Civility is the New Censorship.” On Monday, Limbaugh said he really expected the president to come after conservative talk radio in the State of the Union address, which early reports say will address the topic of civility in public discourse.

From the first hours after the shooting, liberals made talk radio part of the story, with the New York Times's Paul Krugman tying Beck and Limbaugh to a "climate of hate" that creates violent acts. The next morning, Time's Joe Klein told CNN that Beck, Hannity and Limbaugh contributed to a "zeitgeist where nuts are empowered."

Even as suspected shooter Jared Loughner's media influences and motivations remained largely unknown, Clyburn told the Charleston Post and Courier the day after the shooting that he wanted to bring back the Fairness Doctrine, saying "Free speech is as free speech does. You cannot yell 'fire' in a crowded theater and call it free speech and some of what I hear, and is being called free speech, is worse than that." He made similar comments on NPR.

Slaughter, who has supported reinstating the doctrine in the past, made an appeal for bipartisan civility on Monday and said she would look into what the FCC could do.

"We just came off an administration that didn't regulate much of anything," she said. "I really want to look into what has been done, what can be done."

Rep. Bob Brady (D-Penn.) told the New York Times on Saturday that he would introduce a bill banning the use of symbols, such as crosshairs, or language that threatens federal lawmakers or judges. The move was widely interpreted as a political swipe at Sarah Palin, who had put out a map last year targeting House Democrats with crosshairs over their districts, including that of shooting victim Rep. Gabrielle Giffords.

Palin swiped back at the proposed bill in her video address on Wednesday, and on Wednesday night Jon Stewart – not someone usually in Palin's political corner – said of the bill, "So basically what you're trying to do here is write a new federal law just to say 'F --- you' to Sarah Palin."

But it has been Rep. Clyburn's raising of the old conservative nemesis of the Fairness Doctrine that has gotten the most sustained attention in conservative media.

On Wednesday, Limbaugh played clips of Rep. Clyburn's NPR interview on his show, calling the effort the "Hush Rush" bill.

"Do not kid yourself," he said Monday. "What this is all about is shutting down conservative media."

In some ways, he's right. It's no coincidence that Limbaugh's show launched in 1988, the year after Reagan struck down the Fairness Doctrine.

"The repeal of the Fairness Doctrine opened the door to talk radio growing and expanding and becoming what it is today," Harrison said. "Before the repeal, radio station license holders were very hesitant to talk about anything in politics because they were afraid they would be fined, shut down, or be forced to put things on that were not interesting to their audiences."

The FCC introduced the Fairness Doctrine in 1949 as a way of requiring broadcasters to present contrasting viewpoints on controversial issues of public importance.

The constitutionality of this policy was confirmed by the Supreme Court in its 1969 *Red Lion Broadcasting Company vs. FCC* decision, which rested on the idea that public spectrum was a scarce resource – unlike, say, newspapers.

In 1987, Reagan-appointed FCC Chairman Michael Fowler decided the commission would no longer enforce the policy, arguing that the scarcity argument no longer held.

The doctrine's removal allowed a kind of debate that ensured it was unlikely to ever come back, said Susan J. Douglas, a professor of communications at the University of Michigan and supporter of reinstating the doctrine.

"When the Fairness Doctrine was suspended, a lot of conservative voices got on the air and they amplified the very arguments that would sustain not having the Fairness Doctrine," she said. "They helped create and legitimate a kind of ideological space, in which something like the Fairness Doctrine is derided as too much government interference, too much social engineering."

But the political fight over the policy has never really ended. The last time anyone tried to introduce legislation to reinstate it was in 2005, when Rep. Maurice Hinchey, another New York Democrat, introduced a bill that went nowhere. In 2007, Sen. Norm Coleman (R-Minn.) introduced an amendment to prevent the return of doctrine, which Senate Democrats blocked.

Experts on both sides of the political aisle agree the return of the doctrine is highly unlikely, either by an act of Congress or by a change in FCC policy.

“The chances of it passing the House are zero,” said Michael Tanner, a senior fellow at the Cato Institute. “Legislatively, it’s got no chance. The FCC, that’s potentially a marginally bigger threat. But the original Fairness Doctrine was thrown out in the first place because lawsuits were coming. I really doubt that it is the kind of thing the courts would uphold. It is very difficult to enforce.”

Even Douglas admits the scarcity argument that underpinned its previous legal legitimacy would be hard to prove in today’s media environment.

Rep. Clyburn’s spokeswoman said there was no legislation pending from his office on the matter, while Rep. Slaughter’s spokeswoman said the office was still looking into what the FCC had done and could do.

An FCC spokesman said no action was being taken at the commission to bring back the doctrine, and pointed to Chairman Julius Genachowski’s congressional testimony and letter to Sen. Chuck Grassley (R-Iowa), opposing a return to the policy.

“I do not support the Fairness Doctrine’s reinstatement and oppose any effort to censor or impose speech on the basis of political views or opinions,” Genachowski wrote. “Further, I do not support policies intended to reinstate the Fairness Doctrine through a backdoor or otherwise.”

Still, don’t expect talk radio to stop talking about the Fairness Doctrine anytime soon.

“Talk radio plays it up as a threat to themselves,” Tanner said. “They love controversy. The more you denounce them, the happier they are.”