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SPECIAL PRESENTATION

“THE FAIRNESS DOCTRINE”

PANEL DISCUSSION TRANSCRIPT

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MR. TOM FITTON: I think we're ready to begin. Good afternoon everyone. I'm Tom Fitton. I'm president of Judicial Watch. And welcome to our discussion on the Fairness Doctrine.

Judicial Watch is a conservative, nonpartisan, educational foundation dedicated to promoting transparency, accountability, and integrity in government politics and the law. Through its educational endeavors, Judicial Watch advocates high standards of ethics and morality in our nation's public life and seeks to ensure that political and judicial officials obey the law and do not abuse the powers entrusted to them by the American people.

Our topic this afternoon, of course, is the Fairness Doctrine. We're blessed to be joined by probably three of the most knowledgeable individuals in Washington on the topic. Or at least two of them are here. We're expecting the third shortly.

In brief, the Fairness Doctrine is a policy which would require broadcasters to air both sides of controversial issues and to do so in a manner that was, in the FCC's view, the Federal Communications Commission, honest, equitable, and balanced. Currently, a stealth version of the doctrine may be teed up at the FCC in the form of community advisory boards to help determine local programming. Efforts to re-oppose the Fairness Doctrine also could stretch the cable, satellite, and even the Internet, or so that's the concern.

But if the Fairness Doctrine is dead, as President Obama would have you believe given his stated and recent opposition to it, you wouldn't know it from the batch of documents Judicial Watch obtained from the FCC recently. We filed a Freedom of Information Act request back in December of 2008 to find out what internal government discussions have taken place surrounding the reimplementing of the Fairness Doctrine which had been abolished in 1987.

And there was much discussion for sure. Not only did these documents show that controversy continues concerning the Fairness Doctrine but the FCC is considering alternative proposals that may similarly regulate free speech in the media.

Here's one example. In December 2007, the FCC proposed new localism measures to force broadcast stations to offer programming more responsive to the needs and interest of the communities that they are licensed to serve. These proposed measures are highlighted in a document. Of course, all these documents are available on our Internet site at Judicialwatch.org.

But the document's entitled "The Report on Broadcast Localism and the Notice of Approved Rulemaking." And it included a requirement that broadcasters provide three hours per week of locally produced program and that licensers and licensees establish permanent advisory boards including representatives of underserved community

segments. The FCC noted that these measures would become part of the application renewal process to make sure broadcasters, quote, “meet their responsibilities,” unquote. In my view, it’s a nice way of the government to say, “Do it or else.”

Problems with this localism proposal are highlighted in the legal memo written by Kathleen Kirby, who may be well known by one of our panelist, of the law firm Wiley Rein and submitted to Rosemary Harold serving as legal counsel to FCC Commissioner Robert McDowell. And this was the document that Ms. Kirby presented basically detailing her thoughts on the Fairness Doctrine and its cousins, in my view.

In the document, which was distributed internally at the FCC, Ms. Kirby advises that the Fairness Doctrine would do well to stay dead, but Ms. Kirby then turns her attention to localism advising that such a policy could represent a stealth enactment of the Fairness Doctrine. Ms. Kirby states – she asked convened advisory boards give aggrieved listeners more straightforward guidance on how individual can directly participate in the license renewal process. That sounds mild but then again, so does the Fairness Doctrine.

One thing is for certain though. These documents show that we’re going to have to keep an eye on the FCC. In my view, the last thing this country needs is bureaucrats in the Obama administration stumping on the First Amendment rights of conservatives, or frankly anyone else who doesn’t buy into the government’s view of the way the world ought to work.

So I said, one would be hard-pressed to have better experts on the controversies surrounding the Fairness Doctrine and other FCC regulatory threats to our freedom.

And joining me on my immediate left is Richard Wiley who’s a partner at Wiley Rein who presently employs Ms. Kirby or still does. Mr. Wiley is a real great expert to have. He heads the firm’s 80 attorney communications practice which is the largest in the nation. As the chairman of the Federal Communications Commission he advocated increased competition and lesser regulation in the communications field.

Mr. Wiley played a pivotal role in the development of HDTV in this country. All of us sports fans can thank him for that. Serving nine years as chairman of the FCC’s Advisory Committee on Advanced Television Service, he represents a number of major communications oriented organizations including Verizon, AT&T, the Newspaper Association of America, Viacom, CBS, and Sirius Satellite Radio. And he’s obviously also a recent frequent author on telecommunications and information law.

And to my far left but not to my far right is Jerry (sp) Fritz. For the past 22 years, Jerry Fritz has been the senior vice president for legal and strategic affairs for Arlington Virginia-based Allbritton Communication Company where he serves as general counsel, director of strategic planning and head of government relations for a media group with eight ABC affiliates, a cable news channel, several newspapers and various other media

interests including web hosting in a newly created web/print combo publication, “Politico.com” which is – congratulations on the success of that new news organization.

Jerry joined Allbritton in 1987 after serving as chief of staff to FCC Chairman Mark Fowler at the time. And at the FCC, he had helped to kill the Fairness Doctrine. And prior to joining the chairman’s staff, he had practiced communications law and taught at George Mason University of Law School. And he’s been intimately involved in establishing new platforms for broadcast programming including the first independent local cable news channel in news services and platform-agnostic content distribution which I think will be interesting to discuss in terms of the debate over Internet neutrality.

And he’s a former director of the National Association of Broadcasters and testified many times for Congress on their behalf. And he also worked with ABAs and chaired their communication law forum which is obviously – you can see why the expertise of our guests is so valuable to have for us.

Joining us later – he’s been delayed by votes – is Congressman Mike Pence and maybe I’ll just introduce Congressman Pence when he comes along, but he’s been a leader in Congress in trying to make sure that the Fairness Doctrine stays dead and buried, and has been a leader generally on press freedom and First Amendment freedom in terms of protecting it from government overreaching.

So with that, I will turn it over to Mr. Wiley.

MR. RICHARD WILEY: Tom, thank you very much. And good afternoon, ladies and gentlemen. It’s a pleasure to participate in this panel today, but since it’s been about 30 years since I served as chairman of the FCC, it’s really a pleasure to be anywhere today. (Laughter.) But beyond that, it’s going to be good to be with Mike Pence, an outstanding congressman and also, of course, with my old FCC colleague and very experienced broadcast attorney, Jerry Fritz.

We’re all here, of course, to discuss the Fairness Doctrine, as Tom suggested, and the policy and constitutional implications that might be involved in its potential reinstatement. I thought it might be useful to begin with a little brief description of our subject. Tom has given us some but I want to expand on it a little bit.

What in the world is, or should I say, was the Fairness Doctrine? And how could it be that 22 years after its abolition we are all gathering this afternoon to discuss it? Well, if you’re a little hazy about the answers to that, you should be forgiven because even members of the broadcast industry and their attorneys have not thought seriously about this issue for over two decades and they haven’t thought and haven’t had to think about the practical and legal implications of perhaps restoring that doctrine.

Let’s start by saying what the Fairness Doctrine is not. It’s often confused with equal opportunities or, as it’s more commonly called, equal time which is in Section 315 of the Communications Act. That provision deals with candidates for public office. And

it says those candidates had to be accorded equivalent opportunities for time on broadcast stations under comparable terms and conditions.

In other words, if candidate Obama was running in the last election and he got half an hour on a particular station to discuss something, candidate McCain would have to be offered an equivalent period of time.

By contrast, the Fairness Doctrine does not deal with candidates. It deals instead with – this is in quotes – “controversial issues of public importance,” for example financial bailouts as we were talking about earlier, the Middle East wars, abortion, you name it.

And the doctrine never dealt with equal time. It never required equal time. Instead, what the Fairness Doctrine did do is it imposed a twofold obligation on broadcast licensees.

First, they were mandated to provide a reasonable amount of coverage to these controversial issues that I just mentioned, some reasonable amount of time. And second, in doing so, their coverage was expected to be fair, that is to provide some reasonable balance as the commission called it in the time being recorded to opposing points of view. And incidentally, the balancing material didn't have to be in the same program. It could be somewhere in their overall program schedule. So there was a little alleviation there.

And due to the First Amendment sensitivities are always involved when you're dealing with broadcast speech, broadcasters historically were provided broad editorial discretion on three things: what controversial issues they had to cover, who might be the appropriate opposing speakers representing contrasting points of view and even for there was a reasonable balance in the presentations.

Now, when I served at the FCC way back there in the 1970s, this might surprise you, but my view was that the first element of the Fairness Doctrine, again, coverage of broadcasters of important public issues, represented not only good public policy but the very essence of good journalism. And as a communications attorney that represents a lot of different companies and different industries, that is still, incidentally, my view. I think the American public in particular viewers and listeners to broadcast stations deserve an opportunity to receive that kind of coverage.

And incidentally, in my experience, they are receiving it in full measure. In fact, I think it would be hard pressed for any of us to name a controversial issue of public importance and use that phrase, I wish the American people today are somehow being left uninformed.

Extensive coverage of all public issues are being provided today, not only by broadcasting but by a plethora of other electronic alternatives, cable, satellite, now the telephone industry is into this field, and certainly, on that universal medium of

information and entertainment, the Internet. And I'm not even talking about the print medium here in which there is vast coverage of all of these issues.

The problem is not, I think, and never was with the first element of the Fairness Doctrine, coverage of these issues. But it really comes with the second element that is the determination and the determination by government that there was a fair and reasonable balance of broadcast coverage.

In the overwhelming number of cases that I am familiar with, the FCC forcing did give editorial coverage – editorial discretion to broadcast stations. For example, when I was there, we considered probably several thousand Fairness Doctrine complaints a year, that there would come in over the – (inaudible).

Frankly, we dismissed almost all of them because of a widespread failure to present even a prima facie, in other words, a preliminary case that a violation occurred. Somebody would just say, throw in the phrase, I saw this program and I didn't think it was fair, and they didn't really state the kinds of terms that I've talked about. Was it a controversial issue of public importance? Was there fair and balanced coverage? Was there not contrasting views presented? None of that, usually.

Now, the very few that the commission was required to make a formal ruling on, I would say that usually, over the years, a very small fraction of violations perhaps and in some years, none at all. The fact is the vast majority of the complaints simply didn't meet the review standards that the agency and the courts required.

Thus, the public, and the industry, and the government were expending a great deal of time, effort and expense with frankly little or no results. And over time, at least I, and I think many other members of the commission, both on the Democratic and the Republican side, came to view that the entire Fairness Doctrine complaint process was a colossal waste of time for all considered.

So if the Fairness Doctrine was such a toothless tiger, Tom, I guess one would ask, why did it potentially represent a serious problem for mischief? Why are we here even talking about any concern in bringing it back?

I think the answer is that some of the complaints, and in fact, most of the complaints were brought against smaller less financially secure stations. The major outlets – and I can remember a big case that was brought against NBC when I was there, they were willing to spend the money, the time, the effort to mount vigorous legal challenges both at the commission and the courts against the charges that might have been brought against them.

But the smaller stations, when they got a complaint that the commission was investigating, they just threw in the towel. They just said it's not worth it or not going to present the programming. We're out of here on that situation.

As a result, I think what happened often times, because these are expensive administrating proceedings and even legal proceedings is that the public was going to be deprived of programming that might have been very informative, interesting and useful to them because nobody wanted to get involved in a situation which was going to bring about a federal case, so to speak.

Moreover, past history – and I say this sadly – suggests that both political parties on occasion have demonstrated and unfortunate willingness to use the doctrine as a sword to suppress the speech of their opponents.

Now we're going back into the '70s because this doctrine had been around, as you know, for almost a generation. But during the Kennedy-Johnson election – if you can remember that one – Democratic operatives discovered to their delight that if they flooded smaller stations with Fairness Doctrine complaints, a substantial number of the stations would simply discontinue the programs that had been the targets of the original complaints. And the Nixon candidacy on the Republican side also had its share of tricks in that regard. So both sides knew how to play the game if they needed to do so.

But putting aside all of the policy and the politics that might be involved in the Fairness Doctrine, I think there is a much more important equation involved in this whole issue. And that is we're talking about freedom of speech and freedom of the electronic press. And that is traditionally suggested in this great country of ours an absence of government oversight and control. And when you've got the FCC enforcing a Fairness Doctrine concept and even with the kind of modest proposals that I've talked about, modest past attempts to find an appropriate balance of discussion, I think the government, in those days, was perilously entering an area of protected speech.

Having said that, I do want to say that the Supreme Court did uphold the constitutionality of the Fairness Doctrine in the Red Lion case, but that was back in 1969. If you read the decision, it was determined and predicated on the existence of a specific set of public interest threats.

The key concern that the court identified, and most people say spectrum scarcity, but instead, what the court really talked about was a concern and a very – and I'll quote here – “A very small number of licensees might monopolize the marketplace of ideas in a way,” as the justice put it, “would usurp the right of people to receive suitable access to social, political, esthetic, moral and other ideas and experiences.”

But ladies and gentlemen, today's technologically advanced and intensely competitive electronic marketplace, with so many informational and educational outlets including, as I mentioned earlier, the Internet, it seems to me that the concerns expressed by the high court in Red Lion are not longer even remotely realistic.

And indeed, I think it's fair to say that no other society in the history of the world has even enjoyed such a diverse, vibrant and rich media environment today both electronic and print.

And in these circumstances, I think it's prudent for the FCC to keep in mind the old axiom, that while you've got a regulation that might be legitimate in the face of a given problem; if that problem no longer exists, the regulation is perhaps not at all acceptable.

I think this is one of these relatively rare cases that come along in which government officials would do the right thing by doing nothing at all. For a long time, the Fairness Doctrine has been sound asleep. And my view and advice is let it rest in peace. Thank you very much, ladies and gentlemen. (Applause.)

MR. FITTON: Thank you, Rich. We really appreciate that presentation. Mr. Jerry Fritz, please.

MR. JERALD FRITZ: You know, I always love following my friend, Dick Wiley. He was my inspiration to get into the communications field. This is my 41st year in and around television and it seems to me I'm always in Dick Wiley's shadow.

It's been said that the effectiveness of the sort of Damocles is not that it falls, but that it hangs. The goal of the Fowler administration at the FCC in the early 1980s when I was chief of staff was to cut the horse hair that supported the Fairness Doctrine. That was the sore that we sought to get rid of in the name of the First Amendment. Its impact was stifling and we set out to get rid of it.

It will be four decades this year since the Supreme Court ruled on the Fairness Doctrine in the controversial Red Lion case that Dick mentioned. We thought we had ousted 22 years ago. The question is: does anyone have a wooden stake for this zombie of a policy? (Laughter.)

Let me set the stage. Dick did a terrific job. The origins of the Fairness Doctrine lie in the FCC's report on editorializing by broadcast stations. It was issued 60 years ago this year. Over time, the doctrine evolved into these two primary elements that Dick mentioned: (1) stations had to cover controversial issues; and (2) they had to give a right of reply to the other side even if that right had to be free. Those were the two elements.

The problem arose from the federal enforcement based upon the challenges to FCC-granted licenses and those were granted at the time every three years. You had to come in for renewal and people could petition to deny your license.

When Dick was chairman 35 years ago, he gave a speech that I recall to the Ohio University in which he noted there had been 2,500 Fairness Doctrine complaints filed in 1973, 2,500. This sort of is reminiscent of indecency complaints today. That resulted in 109 formal rulings. You sort of wonder what happened to the other 2,391. My guess is lots of broadcasters as Dick alluded to when scurrying to show the other side lest they spend anymore money on lawyers. Former FCC commission, a friend of Dick's and

mine's, Glenn Robinson is now a professor down at the University of Virginia aptly called it "interregnum control."

When the constitutionality of the doctrine was challenged in 1969 in the Red Lion case, the Supreme Court relied very heavily on the FCC's promise that the net effect of the doctrine was to increase coverage of controversial issues, increase coverage.

As if inviting reconsideration based on newer better data, the court added, quote, "If experience indicates that the doctrine has the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications." end quote.

Well, Chairman Fowler accepted the invitation. In its 1985 Fairness Doctrine report, the FCC found that the net effect of the doctrine was not to expand coverage at all of controversial issues by broadcasters but reduce it creating a chilling effect on speech which is protected by the First Amendment.

The commission's report also documented explosive media growth and questioned the scarcity rationale that underlies content regulation. Nothing, nothing in the world is available in limitless quantities; not land in New York City which would justify content controls of billboards or trees for newsprint condoning regulation of newspapers.

With the advent of cable and satellite television, not to mention the unknown Internet at the time, there was every reason in 1985 to point out that scarcity was a question of law – I'm sorry – a question of fact, not a question of law as it was determined in Red Lion. The Red Lion scarcity premise was sand foundation that was eroding.

About this time, Meredith broadcasting, the owner of a television station in New York City was found to have violated the Fairness Doctrine by running a paid ad advocating construction of a nuclear power plant. The station declined to run a piece opposing construction. In its court challenge, Meredith essentially argued, why is the FCC enforcing a doctrine it believes disserves the public interest and is probably unconstitutional? The D.C. Court of Appeals unloaded on the FCC for ducking the constitutional issue although both houses of Congress had by then voted to codify the Fairness Doctrine into law. A veto by President Reagan put the issue back on our plate.

We took the court at its word and decided to finally abolish the doctrine. In May of 1987, Chairman Fowler had announced his intention to finally leave the FCC after serving longer than any chairman in history and I convinced him to let the new Chairman Denis Patrick preside over the doctrine's demise arguing that everyone would know it was Mark's work but to let Dennis begin his administration on a high note.

The day after the commission ruled, all hell broke loose. House Commerce Committee Dingell held a press conference to call us all lickspittles. Senate Commerce

Chairman Fritz Hollings called us wrongheaded, misguided, and illogical. And then it got ugly. (Laughter.)

Oversight hearings were held. Investigations were conducted. Motives and processes were questioned. But in the end, the Congress found that the four FCC commissioners had complied with a court order to resolve a constitutional challenge to one of their own regulations and that in doing so they had essentially voted their conscience.

The offspring of that decision, conservative radio hosts Rush Limbaugh, Sean Hannity, Laura Ingraham, Neal Boortz, Ann Coulter, Michael Savage, Bill O'Reilly, Glenn Beck, and liberal hosts, Rachel Maddow, Al Franken, Randi Rhodes, Ed Schultz, Stephanie Miller, Bill Press, Alan Colmes, on and on. Hopefully, that's the wooden stake that we are all looking for. But, as Tom said, stay tuned. There may be more to come.

MR. FITTON: I appreciate those presentations, gentlemen. Thank you very much. (Applause.) Many of us may know more about the FCC operations than I think most everyday Americans do. And if you could provide us a little guide to the FCC, who is its membership, how is it appointed, how does it operate? I think that might be useful to educating the public.

MR. WILEY: The commission has about 2,000 employees. It's a very small agency for the tremendous jurisdiction it has, all electronic communications by a wire or radio wave. It's headed by five commissioners who are appointed by the president, confirmed by the Senate. No more than three can be from the party in power so currently we have – in the near future, three Democratic appointments and there will be two Republicans.

The commissioners serve for five years on standard terms. Every June 30th, a term comes up. Currently, we only have three members of the commission. We're waiting a new chairman. The president has nominated Julius Genachowski who formerly served as a legal assistant to Chairman Hunt during the Clinton years. He's awaiting confirmation by the Senate and the Republicans have an open seat also.

One of the existing sitting commissioners is going to be leaving to go to the Department of Agriculture on broadband stimulus and there will be another Democratic appointment coming along. So it's a busy government body.

It deals, as I said, primarily with broadcasting, cable, satellite, telephone, wireless, international, and I think it's by and large a very effective organization to both Republican and Democratic ears.

MR. FRITZ: I will say that the agency, while it has five commissioners, the commissioner staffs are very small. They're only about a handful of people, six, eight people, something like that. The majority of the work done by the agency are done by

bureaus. There's a media bureau. There's a wireless bureau. There's an international bureau. There's enforcement bureau.

But for purposes of this conversation today on the Fairness Doctrine we focus on the media bureau. And the media bureau had set out several rules that govern the day to day operation of radio and television stations.

Our licenses, as I indicated, are for eight years. Every eight years – we now – it used to be three years and five years. It's now eight years. Every eight years we have to submit an application for renewal and people can file petitions to deny against our licenses.

What's pernicious about what's pending at the FCC today is that we've sort of gone – there's a pendulum in regulation in Washington, as I'm sure you know. We started out in 1912 with the Radio Act. It went to 1927 to 1934, and in those time periods in the 1960s, highly regulatory, telling broadcasters, this is what you have to do to ascertain your community. This is what you have to do to program in the public interest. You have to meet these certain guidelines and we'll give you a pass on your license renewal if you have this much news, this much public affairs, this much non-entertainment programming.

And then we sort of went on a pendulum the other way into the Reagan era, into the 1980s where we said, "Gees, all of that stuff is collapsing under its own weight. We're going to let the public's interest determine the public interest." In other words, not let the government be the one determining what programming is.

And then, of course, in the 1990s during the Clinton administration and certainly on recently, you've seen the pendulum swing back the other way. And there are pending rules that the commission has adopted that have not yet been finalized – they've been challenged in court – that would sort of reinstitute – if you read in sort of holistically, bring us back almost like Rip van Winkle to 1960 because here we are again with a government determining what it is that broadcasters should air and that's sort of the things that we're most afraid of.

I think Dick was absolutely right. I don't think the Fairness Doctrine – and President Obama has said it's – the Fairness Doctrine isn't coming back in the form that Dick and I knew in the '60s and '70s. What concerns us is sort of impingements on the First Amendment through the backdoor.

MR. WILEY: And I think one of the things that the audience may be interested in is that a lot of these regulations like the Fairness Doctrine and indecency regulations apply to broadcasting and not to its wired competitors like cable or even to satellite, telephone.

And the reason is it's because broadcasting uses – at least that's been the traditional justification – uses scarce public frequencies, public resources, and therefore

broadcasters regulated much more heavily regulated as public trustees to provide programming that fits the entire community. Whether or not that theory is still appropriate or not it is the theory of regulation.

I would say the one thing that the government has to be careful about is that broadcasting no longer is the center of the universe, in all fairness, Jerry's client and employer, because you do see these great – broadcasting is essentially a one channel advertising supported service that is competing increasingly in a multi-channel (sp) subscription-oriented world. Most of us have a cable or satellite or something. We're paying a monthly fee and we get a lot of channels as a result of it.

And it is more difficult I think for broadcasting, over-the-air broadcasting to compete under those circumstances. I think they're doing pretty well in doing so both radio and television. I think it's in the public interest to do so because, for example, we have 15 percent of the population relies on television, over-the-air television. And we want to make sure those folks still get their television and they'll get it when the June 12th, which is the key day, ladies and gentlemen, when we go digital. I want you to remember that.

MR. FITTON: Are you sure it's June 12th?

MR. WILEY: Well, I think it will be June 12th. And on June 12th you want to make sure you have a digital set, okay? If you don't have a digital set, you're going to a subscriber to cable or to satellite, something like that, or FIOS or U-verse provided by the telephone company or you've got to get a converter box to convert your over the air sets from digital back to analogue service. That's what the converter boxes do. So I hope all of you will be ready for June 12th.

MR. FITTON: You both describe a relatively narrow role that the FCC has in terms of its ability to impact the media, but in my view and the view of many conservatives is that government bureaucracies are never satisfied with that narrow role. And even under Republican administration, certainly the most recent one with Chairman Martin there's been noise about the FCC expanding its reach into these other areas of the media, including the Internet and including cable and satellite. Whether the opportunity is there and how credible is the threat, both regulatory and legislation, in terms of legislation?

MR. FRITZ: I think it was ever so when Herbert Hoover convened the four radio conferences to determine what type of regulation there should be when he was secretary of commerce in 1927, it was clear then that he was taking an expansive look legally at what the government could do in regulating the airwaves.

At the time, there were many court cases including one in Chicago, Illinois, Oak Leaf (sp) Broadcasting versus – it was the Oak Leaf Broadcasting case where the court was essentially granting private property rights to this intangible asset, this intangible broadcast frequency. And left to its own devices, I'm convinced that the court system

would have come up with a law of trespass that would have taken care of delineating the ownership of the airwaves.

But Hoover saw that this was a potentially powerful medium and he wanted the government to control it. And that has not abated in the decades since. Governments look to exercise power.

And Dick's point that it only applies to broadcasting makes that point explicitly. We own Channel Seven, WJLA here in Washington. We also own News Channel Eight, the cable – local 24-hour cable news service. We also own websites for WJLA and News Channel Eight, and we own Politico and Politico.com.

All of the content regulation of all of those platforms of media dissemination, content dissemination of all of those only WJLA is regulated, only WJLA. We can put anything else we want unregulated over the other medium.

And since Hoover in 1927 to here we are in 2009, there are so many different avenues where people can get their information. The concept of scarcity, if it ever had any validity, is sort of pale in its ghostlike image in comparison to all of the other medium and all of the other platforms today.

MR. FITTON: Well, do you think the FCC wants to get into those areas and you think there's a credible possibility that it will in terms of Internet and cable?

MR. WILEY: As far as content goes, I don't think so. I don't think that the government is going to seek to do that. I think it would be very unwise if they were to do so. I think the wonder of our current medium, as I said earlier, is it's so diverse, so vast, and if you don't like a particular station, you don't like a particular channel, you've got plenty of alternatives out there and we do tend to find the kind of program that we all want, each of us wants. And I think that's a wonderful system.

MR. FRITZ: I will say that Dick is absolutely right. There's no commissioner, no member of – well, there may be a few, but no credible member of the government would want to seek direct control over content. But think about all the indirect controls on content that we have today. Right now, we have a mandate to do X number, three hours of children's programming to children 16 and under on broadcast television today.

MR. WILEY (?): In broadcasting.

MR. FRITZ: In broadcasting. In broadcasting. We have emergency alert system requirements. We have sponsorship identification requirements. We have close captioning requirements. We have indecency requirements. There are a lot of indirect and direct programming requirements and, and – listen to this – the government has set up a hierarchy of preferred programming.

Think about this. If we wanted to start – use one of our digital sub-channels – Dick talked about going to digital. We have this Channel Seven, 7.0, you can get a high definition picture of ABC programming and WJLA programming. We also have two sub-channels. One's a weather channel that we have – we give 24-hour weather that we have audio from WGOP Radio and we have another channel that does all reruns of old 1960s television programming called RTN.

Suppose we wanted not to do RTN and suppose we wanted to have a channel of 100 percent local political coverage, coverage of Montgomery County, or Fairfax County, or the District of Columbia, 100 percent local electoral coverage. Everyone here would raise their hand and say, that's in the public interest. That's our definition of the public interest.

Yet, the FCC says that there is one type of programming that's even better than 24-hour local political coverage. What's that? Children's programming. No matter what you put on your television station, you still have to do three hours of children's programming.

So the government directly – this is not indirect – this is the government directly tells us broadcasters, because have this scarce frequency, tell us that we have to have one type of programming preferred over another type of programming.

MR. FITTON: Dick, could you talk a little bit and certainly Jerry – Jerry touched on it more indirectly about these backdoor ways of impacting speech in the media, the concern that people talk about terms of diversity requirements and the localism requirements. I guess I'm concerned about localism and these advisory boards is that regular folks aren't going to go on them but ACORN activists will and we know what their agenda lies as opposed to the agenda of true representatives of the local community. What's your view on that?

MR. WILEY: Let me start from the standpoint that I think broadcasters provide local programming because they have to in order to survive. The one thing that broadcasters have that other media do not foster and that is that programming in the local community, local news; if you want to find out what the weather is, you want to find out how the capitals did, you can get on your local station. And they know they have to do that because that's their bread and butter, I think, so to speak.

So I've looked at these provisions that the commission has to require more disclosure, more localism as really being questionable because I don't think they're needed. I've looked at them. Unless it's a stalking horse for the Fairness Doctrine, but it's something that's expensive, it's really unworkable that would lead to more homogenization of programming rather than diversity and really more to government direction of what kind of programming the local station should have.

And so I think they're unwise. I think one size does not fit all. And I think to the extent that the government is making a decision in Washington that we want this kind of

programming, I don't think that's the kind of system that we want in this country, in my view.

So I personally hope that the government looks very carefully at these provisions. These are just recommendations and they not become actual regulations. I'm hopeful that the government will recognize it. Setting up community advisory boards is going to be a very expensive proposition. I think you're right. You don't necessarily going to represent the entirety of the community. I'm not going to go on one of those advisory boards. Perhaps you're not and our view may not get hurt. So I just think they're unnecessary. That's the way I see it.

MR. FRITZ: Look, I – as always –

MR. FITTON: I think you've got to point the stations that will have to have community advisory boards. You're looking forward to that?

MR. FRITZ: As always, I agree with my friend, Dick. And you have to ask yourself what's behind this? Why are they doing this? You know, in the 1980s we got rid of ascertainment. Ascertainment was this very complex process. It had renewal time.

You had to do a random phone survey to find out what your community was interested in. You had to go through all of these community leaders, talk to the farmers, talk to the teachers, talk to the clergy, talk to gay rights activists. You had to talk to everybody. And if you didn't talk to the right people, then your survey, your ascertainment survey was suspect and people would file petitions to deny against your license based upon the unfairness of your ascertainments.

So form became the important thing, not the substance. And the commission said, "Look. This is collapsing under its own weight. We think broadcasters are pretty smart people and we think that the broadcasters can figure out what is their public interest in their communities," so we got rid of it. Now they've come back.

And let me just list what it is that broadcasters are supposed to now do this. This is pending at the FCC. It hasn't become a final rule. It hasn't even been sent to the government yet.

MR. FITTON: Go ahead. Finish your point.

MR. FRITZ: This is what the FCC is going to want broadcasters to record on a program by program basis on a segment by segment basis, the amount of national news, local station produce news, civic affairs, local electoral, non-network produced programming, local non-news, free PSAs – public service announcements – paid public service announcements, close captioning, the amount of video captioning, the amount of programming – get this – to underserved community – whatever underserved community means – how much free religious programming and how much emergency programming. That's what the broadcasters are going to have to do on a program by program basis.

Now, sit back and ask yourself: why? What's the commission going to do with this information? Well, what the commission is going to do with this information is make the broadcasters put it on their website and every single public person has access to this.

And come renewal time, guess who's going to be filing petitions to deny the license of the station and what does that mean? That means the government gets to sit in judgments of whether or not it thinks the broadcaster used reasonable judgment in program its station. So the government gets to judge the public interest qualifications of the broadcaster to retain its license.

Now, juxtapose that with the First Amendment. So I ask the question again: why are they requesting this information? And I think it will fall on the sword of the first amendment.

MR. FITTON: Well, I appreciate that, Jerry. And as you can see, we've been joined by our third panelist, Congressman Mike Pence who is a very busy individual and we appreciate his time especially today.

He was born and raised in Columbus, Indiana, and he graduate college there, I guess and attended law school in Indiana too and graduated law school. So we have another lawyer on the panel. We're pleased to have him.

And in 1991, he was named president of a conservative think tank based in Fort Wayne known as the Indiana Policy Review Foundation. And Mike began also his career in radio broadcasting shortly thereafter 1992 and he later was syndicated throughout the state and was on 18 stations in Indiana and maybe beyond Indiana as well. And he also hosted a local political talk show in Indianapolis back then.

He was finally elected to Congress in year 2000 and has rocketed through the ranks there and was most recently elected to a fifth term in November of 2008. He was elected unanimously by the House Republicans to serve as the House Republican Conference chairman in November 2008, and in his role as conference chairman, he helps to develop and disseminate the message of the Republican Conference and to promote its members. So key role there for the Republican Caucus.

Congressman Pence has consistently and aggressively fought for the protection of our constitutional freedoms of speech and the press. His work in this area includes the Broadcasters Freedom Act which he coauthored with Congressman Greg Walden who was another former broadcaster. So we're pleased to have Congressman Pence here.

And congressman, you missed some great presentations by your co-panelists both of whom, Jerry Fritz with Allbritton Communications and Dick Wiley of Wiley Rein who was a former FCC chairman obviously expressed some tremendous analysis on the Fairness Doctrine and it's kissing cousins, as I like to call them. And you could imagine

where they're coming from. But we appreciate your hearing an update from you as to what's happening in the Congress and where you think things are going in these important areas.

REP. MIKE PENCE (R-IN): Thank you, Tom. Thank you for everything Judicial Watch does to ensure transparency, accountability, integrity in government, and particularly today bringing together such a distinguished panel to talk about this issue that is very much alive on Capitol Hill. And it's been an interesting dance that's taken place on Capitol Hill since just a few years back I brought an amendment to ban the so-called Fairness Doctrine for one year in the appropriations process. And that is that every time somebody – every time a leading Democrat says that it's not something that they're interested in doing, one of them, shall we say delicately, gets off message. (Laughter.)

And I want to allude to some of that today to make sure people know just how grateful we ought to be to Judicial Watch for the fact that they are remaining vigilant in the defense of our freedom of the press, freedom of expression and I'm personally grateful for that, Tom, and for your role in the public debate.

Chairman Wiley and Mr. Fritz, it's an honor to be on the panel with all of you. And I appreciate everything both of you have done to preserve and protect the freedom on the airways of America.

I will not try and add to what my staff that's been present have said. It's been very illuminating presentations. They're presentations that will carry back on Capitol Hill to inform our members.

Let me take just a couple of minutes to share what I think will buttress my central point, that this is real. This is an objective of many on the Left, both within the quarters of power from the White House to the Congress and also many on the Left around the country. I'll say emphatically, bringing back the Fairness Doctrine would amount to government control over political views expressed on the public airwaves.

I want to say I believe it is dangerous to suggest that the government should be in the business of rationing free speech but that's precisely what the Fairness Doctrine in any iteration that it would be returned would do. We don't need to speculate about that because, as you've heard from these experts, that's what it did do for four decades, when it enforced a tyranny of banality and mediocrity on the airwaves of America – (laughter) – until 1987. President Reagan thankfully freed us from that, but there are many people that would like to bring it back.

And House Republicans, as I mentioned, just a few short years ago began a process of running to the sound of the guns on this fight. It really all began for me when, in the aftermath of the rejection, the proper rejection, in my judgment in 2007 of an amnesty bill authored in the Senate, I remember hearing a Republican member of the U.S. Senate that said in an interview, this is all – “Talk radio is to blame for this and we're going to do something about that.” Well, being an old radio guy, which Tom read

my bio like I was impressive, I'm just an old radio hand from Indiana. I slept around my tapes and got people to carry my radio show. I used to have to hassle these general managers of stations. And in the immediate aftermath of the Fairness Doctrine, I saw firsthand what a chilling effect government regulation has on broadcast.

I lost count – chairman, I lost count of the number of times I sat down with the general managers and said, well, I've got this thing called the Mike Pence Show. It was about 1993. I said we talk about political issues; we talk about Bobby Knight, whatever you want to talk about. And they went, "Oh, we can't – if we have you on, then we'd have to have the other side." And I go, "No, no, no," my lawyer thing kicked in, and I said, "No, you don't have to do it anymore. You can just put me on the air. It's okay." But I had to overcome a hurdle to get people to carry my show. And I will explain to the young people in the room, when I say I left tapes behind – (laughter) – just think of it as a download in a plastic case. Anyway, I explain that to my kids.

But anyway, we started to hear members of the Senate begin to talk about this and the list of people on the Democrats side who have openly advocated a return of the Fairness Doctrine is rather impressive. House Speaker Nancy Pelosi last summer openly advocated a return of the Fairness Doctrine in an interview with the *Christian Science Monitor*. House Majority Leader Steny Hoyer, Senate Majority Whip Dick Durbin has filibustered efforts during the last Congress to prevent the return of the Fairness Doctrine and has gone to the floor of the Senate and openly advocated the return of content based regulation to the airwaves of America. Senator John Kerry, Senator Debbie Stabenow, even former President Bill Clinton have all openly advocated restoring this archaic form of regulation known as the Fairness Doctrine, not even alluding to some newer, updated 2.0 version of it. They actually have advocated going back to the old thing.

And so Greg Walden and I put together legislation called the Broadcaster Freedom Act that would essentially take the power away from the FCC to ever regulate the content of American talk radio under the Fairness Doctrine. And it's a permanent ban. When I brought an amendment that was a one year ban, as Tom knows, to the floor, it passed by 309 votes. I want to tell you all, if the Broadcaster Freedom Act, which Democrats are now going on two years of preventing a vote on, if the Broadcaster Freedom Act was brought to the floor of the House of Representatives, I have no doubt it would pass, because my amendment which secured a one year moratorium on the Fairness Doctrine passed 309 to 115. That's 309 members of Congress, including more than 100 Democrats in Congress who have gone on the record in opposition to the Fairness Doctrine. But Speaker Nancy Pelosi said last summer she would not permit a vote on the Pence-Walden Broadcaster Freedom Act. Well, I'll leave to you why she would not permit a vote, but I will tell you, I have every confidence it would pass.

It would pass not only because of the record but it also would pass because I've got to tell you, it's a source of pride for me as American. Every freedom gets an up or down vote on the floor of the people's House, freedom wins, okay? And so our objective and what this forum and others have been very helpful in doing is help us bring the

Broadcaster Freedom Act to the floor and go away with this archaic regulation once and for all.

I will say that since the first of the year, Jim DeMint, my cherished colleague and friend in the U.S. Senate and I have reintroduced the Broadcaster Freedom Act in the House and in the Senate. And most recently, at the end of February, the Senate took up Senator DeMint's amendment on the DC voting legislation that would outlaw the Fairness Doctrine, and again, it passed 87 to 11.

However, Senator Dick Durbin also won approval the same day by a vote of 57 to 41 for an alternative amendment to the bill that would order the Federal Communications Commission to encourage radio ownership diversity. Now, the DC voting legislation hasn't been signed into law, but as we all learned, and as I'm sure it's no doubt been discussed here, April 22nd the Federal Communications Commission announced a diversity – a federal advisory commission on diversity for communications in the digital age. And while we assume best intentions, I must say I'm unimpressed by the diversity of the Federal Advisory Committee on Diversity. (Laughter.)

Let me say a couple of other factoids and then I'd be happy to go to questions. Earlier in the month, we heard similar calls for the old Fairness Doctrine. Senator Debbie Stabenow in a radio interview on the *Bill Press Show*, ironically, said, "I think it's absolutely time to pass a standard. Now whether it's called the fairness standard, whether it's called something else, I absolutely think it's time bringing accountability to the airwaves of America." And so I guess my role here, Tom, is, number one, to say thanks to Judicial Watch for being on a rampart again for freedom, but not to try and compete with the legal acumen of the people – of the distinguished leaders on this panel, but to add in from the trenches along the marginal line of the First Amendment. And that this is real and that I really do believe in my heart of hearts in a free and independent press. I don't think our founders put a free and independent press in the First Amendment because they got good press. I've read enough American colonial history to know otherwise.

I think our founders put the freedom of the press in the First Amendment because they understood that the only check on government power in real time is a free and independent press. Probably – I would argue that maybe the free and independent airwaves and the vigorous debate that happens on them every day in every jurisdiction in this country may be one of the richest legacies of the Reagan administration, because it has afforded Americans, left, right, and center, to have real time information on what their government is doing is and to be able to hold people accountable in government, not only in the ballot box, but also at the town hall meeting and outside the grocery store. And we simply cannot stand idly by while that freedom is diminished. And so we're going to continue in the fight, but rest assured, Democratic leadership in the Congress is categorically opposed to bringing up the DeMint-Pence bill in the House or the Senate for a fair up or down vote. Jim's had some success on his amendment. But if the American people will rise up with one voice and demand an up or down vote on freedom – Broadcaster Freedom Act or any iteration thereof to battle this new form of regulation of

the airwaves, I believe we'll pass it because every time freedom gets an up or down vote on the floor of the people's House, freedom always wins.

So we ask you for your help. We've covet your activism and your prayers. And with that, confident of that, I'm confident freedom will win again.

And so I am encouraged but not content because we're getting mixed signals out of the administration. And frankly, we're trying to analyze and understand this diversity committee, because while I think we may have had some success in beating back a return of the traditional Fairness Doctrine, there's no doubt in my mind that there're forces marshalling on Capitol Hill under the rubric of diversity encouraging diversity of ownership, diversity of content that are prepared to bring a different form of legislation or to support the creation of new regulations at the FCC that might be rhetorically palpable to the American people but they would amount to nothing more than a stealth version of the Fairness Doctrine.

What we need the president to say – and again, I don't believe I recall the president ever being on the record saying he was opposed to the Fairness Doctrine. I've heard his spokesman say it, which I respect. But I think we need to say – the President of the United States ought to seize some opportune moment to categorically reject any Federal Communications Commission regulation of content of the airwaves of America in the 21st century.

MR. FITTON: Well, of course, in theory the commission can reinstitute the Fairness Doctrine on its own. Have you perceived any intelligence, Dick and Jerry, from – as to what the views of the new leadership that the president's going forward, the FCC? I forget the incoming chairman's name.

MR. WILEY: His name is Genachowski and no, I have no information on his specific views in this area. I don't think he's been heard as to say it.

MR. FRITZ: We do know that the current acting chairman, Chairman Copps is fully behind the efforts to increase diversity of ownership and increase the diversity of content that federal regulators would deem to be more appropriate. He wants to, for example, mandate a certain number of hours of local programming, as if local programming is to be favored over any other type of programming. Mind you. There's nothing in the Communications Act that says that broadcasters have to program locally. There's nothing certainly in the Constitution that says that or indeed in the statute, the Communications Act.

But think about this. Let's suppose that we do an ascertainment of our community and we say that teenage pregnancy is a controversial issue of public importance, not controversial, just an issue of public importance. We saw just yesterday the number of births to unwed mothers has just skyrocketed. Let's suppose that that's an issue. Why is it any better that the broadcast station addresses that issue with programming on its local news or Oprah Winfrey that we buy from Chicago? Why is it

any better? If you're addressing the issue of public importance, why does it matter? And the broadcaster is making that decision. I don't need for WJLA or News Channel, or Politico, or any of our websites, I don't need the government to tell me that that's a controversial issue that I'm going to address. But the commission seems to suggest in this localism report that local programming is to be preferred with no statutory basis, no constitutional basis, and no regulatory basis.

MR. FITTON: But to be frank, this localism effort is a product of the left. This is ACORN, Rainbow PUSH, they specialized in this and they finally have got the ear of the FCC and the staff there, whoever's promoting this. So I don't want to pretend in my – I don't want – from my perspective, I don't want to pretend there's any legitimate government interest here. I think this is a vehicle for ideological warfare at the – in the media, but that's my view.

REP. PENCE: I think that's been a very real concern, Tom, and let me – with apologies to my panelists and the attendees, we have a vote imminent in about 20 minutes away by driving – but I think that's the concern, is the ability of organizations who have demonstrated a great capacity to mobilize, to be able to then utilize new arteries of input and ascertainment to affect programming.

The reality is in all of this you sit there thinking well, but yes, but I think until you push away from the table and say well, why don't we have an ascertainment diversity committee for the local newspaper? And people would be horrified by that. Why would we do that? Good Heavens, it's a freedom of the press. I've authored legislation that I hope is signed into law this year that protects a reporter's right to keep sources confidential. And I believe that's about accountability as well. (Applause.)

But I've looked some of my favorite liberal reporters right in the eye and I've said to them, you know what, the editorial page is a part of the newspaper. And commentary on the radio is just as much enshrined and protected in the freedom of the press and the Constitution as any other aspect of the press. And we need to – I think our challenge, as Americans, is to frame this debate in those terms and the stakes, I think, are just that high. But we'll have to rely on experts like these two distinguished panelists and on Judicial Watch as this – if we have in fact succeeded in stopping the Fairness Doctrine from rising from the grave from a regulatory standpoint, we're going to need to be able to respond in a substantive way to some new iteration of it because it really is all about freedom. But thank you for permitting me to be a part of this.

MR. FITTON: I appreciate it Congressman, please go and vote. Vote the right way, of course. (Laughter.) (Applause.)

REP. PENCE: Thank you.

MR. FITTON: A quick question for you both and then we have a little bit of time for questions. We've been looking at TARP and all of the implications of that and there's been talk of allowing certain media companies to benefit from TARP funding.

And as the banks have learned and people who haven't even taken TARP funding are going to learn that with that comes government control. Have you all considered this from a legal perspective, or am I just coming out of what you feel on it?

MR. FRITZ: It's certainly water cooler coffee talk that gees, with all of the pressures on the newspaper industry and the broadcast industry, it's tough. There's not very many newspapers that are making money anymore and broadcasters are a single source revenue stream. We get advertising and when the economy goes south, the first thing advertisers do is cut their advertising budgets. Our primary three advertisers are, one, the auto industry, down 25 percent; two, home furnishings, down 18 percent; and three, home electronics, and with the loss of Circuit City, you can imagine what's happening to our advertising revenue.

So, we're down, the economy is down, newspapers are down. But to take the mammoth leap to say okay, we're down, we're going to look to the public trough to fund ourselves is not certainly where we want to go, because think about this, look at this from the bank's perspective. You take government money and you get government control. And the last thing I want is someone from the media bureau at the FCC calling me up as a shareholder and demanding that my news report a certain way. That's not what I'm looking for. And I guess more fundamentally, we look to the only example where the government does control directly the media, public broadcasting, and the last thing I want to do is turn the commercial broadcasting industry into PBS.

MR. FITTON: Any reaction to –

MR. WILEY: I understand what Jerry's saying. I doubt that TARP money is going to be extended to the media field. I think that would be unwise and not a good use of our government funds. And so I don't expect that.

MR. FITTON: Even if it's dangled to the media, do you think will resist the temptation?

MR. WILEY: I think Jerry has spoken there. (Laughter.)

MR. FITTON: Okay, well, we have a few minutes for questions and if you have any questions for a panelist, let me – raise your hand now or forever hold your peace. Yes, right.

Q: You've talked about around the edges of this. Of course as a retired journalist, I'm concerned as I see our newspapers really struggling with economic problems. And then I see John Kerry staying up there and we – over the demise of the *Boston Globe* and so forth, which I wrote for one time. But anyway, the point is would you like to comment on how the situation in the newspaper industry sort of feeds into this idea on the left of stepping in and saving the public – (laughs) – the public's right to know? Because that's the sense I got when Kerry, last week, stepped forward and commented about the situation in the newspapers.

MR. FITTON: Jerry, I could imagine a good argument to be made, though not persuasive, that well, there's no local newspaper in Boston, and so we've got to be sure that there's local news coverage and hence the localism role getting a little puff of wind behind it.

MR. FRITZ: Look, the government's always going to look out for itself. And if Senator Kerry thinks that – the *Boston Herald's* not going to be enough to replace the *Boston Globe*, I don't know where the government's going to come. Dick makes the right point. The government missed a very significant opportunity, when Chairman Powell was the chairman, to modify these ownership rules to allow broadcasters to own newspapers. Dick talked in 1975 about this newspaper broadcast cross-ownership rule that was supposed to increase diversity. And so Joe Albritton came in to Washington DC and he bought *The Washington Star* newspaper, an afternoon newspaper that was losing a million dollars a month. He used the money from WJLA to pump into the newspaper and he broke even. The FCC said no, we want you to break that up.

So he sold the radio stations that he owned to ABC. That improved diversity. (Laughter.) He then had to sell WJLA or the newspaper. And he wanted to keep the newspaper. So he worked out a swap. He was going to swap with an outfit out of Phoenix that owned a station in Oklahoma. And Albritton's going to get the Oklahoma City station and this outfit was going to get Washington, but they weren't equivalent markets, so Albritton was going to get some boot, something extra. And the something extra he was going to get was \$55 million in nonvoting preferred stock in the company that owned the station here in Washington. And the FCC says well, okay, we'll let you do it, but we don't like it. So we're going to think about changing the rules. And, oh, by the way, Albritton, if we change the rule, we might make it retroactive to you. Well, who does a \$200 million-deal on the strength that the egg's going to get unscrambled. So Albritton said no thank you, and he sold the newspaper that afternoon to *Time Magazine*. *Time Magazine* kept it for what, a year or so and then shut it down.

So in the name of diversity, in Congress' backyard, in the shadow of the FCC, we have a monopoly newspaper town. Where in the world is the legal thought that goes – or the policy thought that goes behind that unintended consequence? We missed a golden opportunity to change those rules. And Dick's client, the Newspaper Association of America, is hurting as a direct result. Look, broadcasters and newspapers are going to morph, are going to use their web content. Maybe there is a business model where we have micropayments for stories the way the *Wall Street Journal* is looking at. And maybe the newspaper industry morphs into something different.

We started *Politico* three days a week printed. We really wanted it to be just a website. We said three days a week we'll publish a paper. Now it's five days a week because there is a demand for it, a niche newspaper. Maybe that's how the newspaper business comes. Maybe there's a sports publication and a political publication. I don't know. But I think that the government has to be very careful about getting into ownership of the media.

MR. WILEY: Well, I agree.

MR. FITTON: Any other questions? Yes.

Q: I'm a psychologist and I'm from Washington DC and I have never in my life felt such, not just diversity, I feel like I'm living in two countries because I talk to colleagues all over the country during the week, particularly up in Princeton, and when I tell them things that I have heard, particularly on the conservative talk radio shows, they are absolutely stupefied. They don't know half of the things that I have learned and they don't seem to care. And I'm really concerned as an American citizen and as a Washington DC person that this country has never been more split from what I'm seeing, and I wonder how all of you think about this.

MR. FITTON: Well, that's a big question. Is that the danger of the mix media, Jerry, that depending on what you read, you're never going to learn about certain things that are probably important to your life?

MR. FRITZ: I think it's a function of the internet and the multiplicity of voices. It sort of goes right to the heart of the arguments of scarcity that we worry about one entity owning everything. Now, we have the reverse. There are so many opportunities for us to learn and we have a limited amount of time, so we tend to listen to what we agree with. So we're in this echo chamber. We might just listen to Rush or somebody might just listen to Maddow. And so we're in this situation where there are so many choices, so little time, you want to just watch Fox or just watch MSNBC. So you're in an echo chamber and you're only hearing what you want to hear. And I what – the results that you're seeing is that people are from the – that are watching MSNBC talking to somebody who watches Fox might not be hearing the same thing – (laughter) – and that's this diversity that you're seeing. But I'm not sure that there's something – certainly there's nothing for the government to do about it, but I'm not sure that that's a citable problem.

Q: (Off mike) – it's not just that they don't know or possibly could know, it's that they haven't even woken up, they don't know what's going on and they seem to be somewhat sometimes appreciative that other people are telling to these things, but they haven't the vaguest idea what's happened, like they've been asleep.

MR. FITTON: What you're saying, Jerry, is almost an argument for diversity on each platform, rather than each platform providing diversity.

MR. FRITZ: What, are you in some way deprived of tuning in to a different station? You can't flip the radio dial?

MR. WILEY: I think that's the answer.

MR. FRITZ: That's the answer.

MR. WILEY: There's just so much out there.

MR. FITTON: Did I hear someone wanted to get something in quickly? Okay, yes, one more question, please.

Q: You've spoken about what the potential rationale is for implementation of some type of this regulation. The question in my mind though is, from what I hear, is that there seems to be an effort to try to silence one of the other, that is either the right or the left, and in most cases it seems that'd be towards the right that they're trying to silence. And my question on that is, if in fact the majority of these talk shows are more conservative than liberal, that must mean, to me at least, that the public is more interested in that than they are in the more liberal aspects of things. So maybe – so I don't understand why people keep talking about that it's equal. It's not equal. The right is much more represented and there must be a reason for it.

MR. FITTON: Well, is that true that the right – the right nationally seems more represented in terms of success, but locally I think there's more – anecdotally, and I think as people pointed this out, there is more diversity in opinion –

MR. WILEY: Well, absolutely. There're lots of left wing talk shows, if you want to call it that way. And many of them cover across the issues. So I frankly think that it's not true that the right dominates one form of the media. I don't see that. How about you, Jerry?

MR. FRITZ: I agree. Look, we started out – if you remember Pat Buchanan and Tom Braden had their *Crossfire* show in the '80s, and then that sort of morphed into just one person taking over. Rush and the conservative radio host took hold quickly and they had a good business model, a good business plan. But if you look at Air America that faulted at first, now sort of finding its sea legs and you find that that list that I had of Rachel Maddow and Al Franken before he ran for the Senate, Randi Rhodes, Ed Schultz, Stephanie Miller, Bill Press, Alan Colmes, go to the internet, google liberal radio talk shows and you will see a list of the top 50 radio shows and a number of them are liberal.

Look, that's the answer. That's the answer. Get as much as you can. Go to the web and that's the answer. Increase diversity, not regulation, to make every donut look like the same donut.

MR. FITTON: I'd like to wrap this up. Do you have – could you provide some signposts and timelines, either in terms of appointments and decisions on appointments or regulatory decisions as to when people should be alert for these decisions?

MR. WILEY: Well, I think the appointments are coming very soon. And I think they're going to be on both sides of the aisle pretty impressive people. And I think as long as you have educated, informed, and capable government officials, I think regressive

regulations like the Fairness Act are not going to come back. I'm confident and pretty optimistic about that.

MR. FITTON: What about the diversity regulation that you were highlighting – where the localism matters – whatever you want to call it?

MR. FRITZ: The localism and the new forms of data collection that the commission has asked for are pending now. My guess is that there aren't – there are petitions for reconsideration pending at the full commission. That will wait for the new chairman and the new commissioner. This is the first time in history that we will have had 80 percent of the entire FCC change in the same year at the same time when we have new members – new leaders in the Senate and in the House on both the full committee and the subcommittee. This is a dramatic change in personnel that oversees the communications business. So there's a ramp up time for everybody to come up to speed. My guess is that we'll have a full commission by the end of the summer and that we will have these new regulations put out, at least back up to the commission probably in the fall.

MR. FITTON: And citizens and groups can comment on those new regulations?

MR. WILEY: Oh yes, absolutely. Yes, they should.

MR. FITTON: So now you know what to do. Keep an eye out and be sure to comment and oppose or support the regulations depending on your point of view and your proclivities.

Well, I appreciate greatly – as I intimated at the beginning, you can tell we couldn't have had any better luck in terms of the expertise that we're able to bring to our panel today: Dick Wiley and Jerry Fritz, of course, and in extension Congressman Mike Pence. And of course, I appreciate your thoughtful questions and participation as well. And this material will be available on the internet, wonderfully. And we usually have some written follow up materials as well. So if you're interested in that, be sure to leave your name with us so we can give you that material once we publish it. But I appreciate your time and expertise very much.

MR. WILEY: Thank you very much. Thank you, ladies and gentlemen.
(Applause.)

MR. FITTON: I appreciate it.

(END)