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Federal Communications Commission, Administrative Law, CBS, Inc. v. F.C.C.

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TELECOMMUNICATIONS

Federal Communications Commission • Administrative Law

CBS, Inc. v. F.C.C., 101 S. Ct. 2813 (1981)

THE BROADCAST MEDIA has an obligation to permit a legally qualified candidate for federal office to purchase reasonable amounts of time on behalf of his candidacy.[1] In so holding, the Supreme Court went beyond a mere codification of the public interest standard.[2] Pursuant to section 312(a)(7) of the Communication Act of 1934, as amended,[3] candidates for federal office have an affirmative right of reasonable access to the broadcast media.[4] In addition, the Court found that the statutory right of access provided by section 312(a)(7), as defined and applied by the Federal Communications Commission (FCC),[5] was not violative of the first amendment rights of the

[1]101 S. Ct. 2813 (1981).

[2]The grant of broadcast licenses is conditioned on the overall public interest standard which originates from statutory language. Note, *The Right of "Reasonable Access" for Federal Political Candidates under Section 312(a)(7) of the Communications Act*, 78 Colum. L. Rev. 1287, 1291 n. 16 (1978) [hereinafter cited as Note, *Right of Reasonable Access*]. The FCC is required, when granting or renewing a license, to find that the "public convenience, interest or necessity will be served thereby." 47 U.S.C. § 307(a); *see also*, 47 U.S.C. § 307(d) (The FCC may not, by rule, preclude the grant or renewal of a license for a shorter period then that prescribed for other stations in the same class if the public interest would be served thereby). Although broadcast licensees are expected to devote a portion of their total programming to political broadcasts under this standard, they are not specifically required to afford reasonable access to broadcast time for the use of federal candidates. Note, *Right of Reasonable Access, supra*, at 1290-91.

[3]47 U.S.C. § 312(a)(7) (1976) (amending 47 U.S.C. § 312(a) (1970 & Supp. V 1975)). Section 312 provides in pertinent part:

> (a) The Commission may revoke any station license or construction permit —
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> (7) for wilfull or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

47 U.S.C. § 312(a)(7) (1976).

In 1972 Congress added section 312(a)(7) to the Communications Act of 1934 as part of the Federal Election Campaign Act of 1971. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 103(a)(2)(A), 86 Stat. 3, 4 (1972). Title I of that bill contained section 312(a)(7) and was known as the Campaign Communications Reform Act, *id.* It was considered the broadcast reform section of the law. CBS, Inc. v. F.C.C., 629 F.2d 1, 6 n. 1 (1980).

[4]"'An affirmative right of access exists regardless of the actions of the broadcast licensee. A contingent access right, in contrast, must be activated by some prior event, . . ." e.g., an editorial commentary giving rise to a right of reply. Note, *Right of Reasonable Access, supra* note 2, at 1287 n.2 (citing B. SCHMIDT, JR., FREEDOM OF THE PRESS VS. PUBLIC ACCESS 17 (1976)).

[5]In 1978, the FCC issued a Report and Order in which the Commission articulated reasonable standards to guide broadcasters in the determination of whether to grant federal candidates' specific requests for access. Commission Policy in Enforcing Section 312(a)(7) of the Communications Act, 68 F.C.C.2d 1079, 1090-94 (1978) [hereinafter cited as 1978 Report and Order]. The FCC declined to adopt formal rules to implement section 312(a)(7) since "there are no formalized rules which would encompass all the various circumstances possible during an election campaign." *Id.* at 1089. Instead, the FCC decided to evaluate on a case-by-case basis whether the broadcaster had provided reasonable access to individual candidates. To aid broadcasters in determining what constitutes reasonable access, the FCC formulated some appropriate guidelines which include: (a) a consideration of the candidate's individual needs (as determined by the candidate); (2) the amount of time previously provided to the candidate; (3) the likelihood of rival candidates' requests for equal access; and (4) the potential for substantial disruption of the regular broadcast

broadcaster.[6]

The case arose when the three major broadcasting networks sought judicial review of FCC orders finding that the broadcasters failed to comply with section 312(a)(7) by denying a federal candidate the purchase of reasonable amounts of time for use in his campaign.[7] In the late fall of 1979, the Carter-Mondale Presidential Committee [hereinafter referred to as C.M.P.C.] attempted to purchase from each of the three networks a prime-time block of thirty minutes during the first week of December to be used in conjunction with President Carter's formal announcement of his candidacy for re-election. The networks refused to make the requested time available.[8] The C.M.P.C. filed a complaint with the FCC charging that it had been denied reasonable access to the broadcast media under section 312(a)(7).[9] The FCC, in its memorandum and order,[10] ruled that the networks had violated section 312(a)(7) because the reasons they gave for refusing to sell the requested time did not measure up to the FCC's standard of reasonableness.[11] The networks petitioned the FCC for reconsideration of their order, but the reconsideration was denied.[12] A second FCC decision was issued to clarify the first.[13] The networks then petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the FCC's decision; the court of appeals affirmed the FCC's orders.[14]

In a majority opinion written by Chief Justice Burger, the Court held that section 312(a)(7) grants to legally qualified candidates for federal office a special individual right of access to the broadcast media.[15] It found that in enacting section 312(a)(7), Congress adopted a reasonableness standard and charged the FCC with its enforcement on a case-by-case basis.[16] The right of access under section 312(a)(7), as defined and applied by the FCC, did not violate the broadcasters' first amendment rights but rather properly balances the first amendment rights of federal candidates, broadcasters, and the public.[17] This

schedule. 101 S. Ct. at 2825 (citing 1978 Report and Order, *supra,* at 1089-92, 1094). As an example of what it considered unreasonable, the FCC proscribed banning access by a federal candidate to those classes and lengths of programs that broadcasters offered to commercial advertisers. 1978 Report and Order, *supra,* at 1090.

[6]101 S. Ct. at 2830.

[7]Carter-Mondale Presidential Committee, Inc. v. ABC, CBS, and NBC Television Networks, 74 F.C.C.2d 631 (1980) and Carter-Mondale Presidential Committee, Inc. v. ABC, CBS and NBC Television Networks, 74 F.C.C.2d 657 (1980).

[8]101 S. Ct. at 2817-19.

[9]*Id.* at 2819.

[10]74 F.C.C.2d at 631.

[11]1978 Report and Order, *supra* note 5, at 1094.

[12]74 F.C.C.2d at 674.

[13]*See* 74 F.C.C.2d 657.

[14]CBS, Inc. v. F.C.C., 629 F. 2d 1 (D.C. Cir. 1980). The court of appeals held that section 312(a)(7) created in candidates for federal office an affirmative right of access, and that the FCC's standards of review were reasonable and did not violate the networks' first amendment rights. *Id.* at 28.

[15]101 S. Ct. at 2820-25.

[16]*Id.* at 2825-29.

[17]*Id.* at 2829-30.

case provided the first opportunity for judicial interpretation of section 312(a)(7). Prior interpretation of the statute had occurred only through the FCC administrative process on a case-by-case basis.[18]

The networks argued that section 312(a)(7) did not create a new right of access but merely codified FCC policies developed prior to 1971 under the public interest standard.[19] To support their contention, the networks relied on dicta in the Supreme Court's decision in *Columbia Broadcasting System, Inc. v. Democratic National Committee*[20] which applied the public interest standard and held that neither the first amendment nor the Communications Act required broadcasters to accept paid editorial advertisements from citizens at large.[21] However, the Court in the instant case pointed out that the two cases were clearly distinguishable. The dicta in *Democratic National Committee* did not purport to address the responsibilities imposed by section 312(a)(7), whereas, in the instant case, that issue was precisely addressed.[22] The Court held that this section provided a new affirmative right of access by candidates seeking federal office.[23]

In further support of its decision, the majority looked to the law prior to 1971, and the statutory language and legislative history of section 312(a)(7).[24] Before 1971, candidates conceivably could claim an affirmative right of access to the broadcast media under three traditional bases of broadcast law:[25] (1) section 315 of the Communications Act,[26] (2) the fairness

[18]Note, *Right of Reasonable Access, supra* note 2, at 1294 and n. 33. One federal district court had before it a claim under section 312(a)(7), which because of procedural insufficiency never reached the substantive issues. Morrisseau v. Mt. Mansfield Television, Inc., 380 F. Supp. 512 (D. Vt. 1974).

[19]*See supra* note 2. The public interest standard has found ample suport in several Supreme Court decisions. *E.g.*, Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 379-80 (1969).

[20]412 U.S. 94 (1973). Therein, the Court stated that:

> In 1959, as noted earlier, Congress amended § 315(a) of the Act to give statutory approval to the Commission's Fairness Doctrine. Very recently, Congress amended § 312(a) of the 1934 Act to authorize the Commission to revoke a station license "for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy." This amendment essentially codified the Commission's prior interpretation of § 315(a) as requiring broadcasters to make time available to political candidates.

Id. at 113-14 n. 12 (citations omitted).

[21]*Id.* at 121-32.

[22]101 S. Ct. at 2820-25.

[23]*Id.* at 2825.

[24]*Id.* at 2820-24.

[25]Note, *Right of Reasonable Access, supra* note 2, at 1287-88.

[26]47 U.S.C. § 315(a) (1976). Section 315 states in pertinent part:

> (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided,* That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is 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 subjects covered by the news documentary), or
> (4) on-the-spot coverage of bona fide news events (including but not limited to political conven-

doctrine,[27] and (3) the public interest standard.[28] However, these doctrines did not provide an affirmative right of reasonable access to the media as interpreted by the FCC and, at best, provided only a contingent right of access.[29] Congress provided a remedy to the deficiencies in the doctrine of affirmative access by enacting section 312(a)(7).[30]

The Court said that it was clear from the face of section 312(a)(7) that Congress was focusing on the "individual 'legally qualified candidate' seeking air time to advocate *his* candicacy."[31] Section 312(a)(7) guarantees reasonable access for the candidate enforceable by specific governmental sanctions, namely, revocation of the station's license.[32] The Court found that the obligations imposed by section 312(a)(7) were much stronger than the limited duty of broadcasters imposed by the public interest standard.[33] In addition, the rights afforded candidates for federal office and those of candidates for state and local office were the same prior to enactment of section 312(a)(7).[34] The Court construed section 312(a)(7) as changing the standard with respect to legally qualified *federal* candidates,[35] providing them with a special right of access on an individual basis. Therefore, the Court concluded that section 312(a)(7) was more than a simple codification of the public interest standard.[36]

The Court then looked to the legislative history of section 312(a)(7) for guidance.[37] Section 312(a)(7) was enacted in 1972 as part of Title I of the Federal Election Campaign Act of 1971 [hereinafter referred to as F.E.C.A.].[38] The Senate Commerce Committee stated that one of the primary purposes of Title

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> tions 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 doeumentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

47 U.S.C. § 315(a) (1976).

[27]The fairness doctrine controls a broadcaster's coverage of controversial issues. *See Right of Reasonable Access, supra* note 2, at 1289. Under FCC guidelines, the doctrine requires a broadcaster to give coverage to controversial issues of public importance and to air contrasting views on the issue. *Id.* (citing Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 377 (1969) and Editorializing by Broadcast Licensees, 13 F.C.C. 1246, 1257-58 (1949)). The "doctrine has received statutory recognition in the final sentence of [section] 315(a), . . ." Note, *Right of Reasonable Access, supra* note 2, at 1289 n. 10.

[28]*See supra* note 2.

[29]*See supra* note 4.

[30]*See* Note, *Right of Reasonable Access, supra* note 4, at 1287. *See also* Law of Political Broadcasting and Cablecasting, 69 F.C.C.2d 2209 (1978) [hereinafter cited as 1978 Primer].

[31]101 S. Ct. at 2821.

[32]*Id.*

[33]*Id.*

[34]Section 312(a)(7) has no bearing on the rights of candidates for state and local offices. With respect to these elections, the public interest standard governs. *Id.* at n. 6 (citing 1978 Primer, *supra* note 30, at 2290)).

[35]See *infra* note 53 for a description of a "legally qualified" candidate under FCC guidelines.

[36]101 S. Ct. at 2821.

[37]*Id.* at 2821-24.

[38]Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972). *See supra* note 3.

I was "to give candidates for public office *greater access* to the media so that they may better explain their stand on the issues and thereby more fully and completely inform the voters."[39] In addition, the Committee's report provided a detailed discussion of F.E.C.A.[40] Section 312(a)(7) was characterized as a statutory attempt to "emphasize" the existence of a broadcaster's obligation to make time available to candidates.[41] The goal was to discourage broadcasters from reducing access in response to restrictions on the rates broadcasters could charge candidates during pre-election periods.[42] The report, however, provided neither a specific congressional interpretation of the statutory language of section 312(a)(7) nor a discussion of its intended impact. This was emphasized by Justice White in his dissenting opinion.[43]

The Court found that the most compelling argument for congressional intent was the contemporaneous amendment of section 315(a) which the Conference Committee described as a "conforming amendment" necessitated by the adoption of section 312(a)(7).[44] The Court felt that if section 312(a)(7) were merely a codification of the pre-existing public interest standard, there would have been no need to enact the conforming amendment to section 315(a).[45]

Turning to the administrative construction of section 312(a)(7), the Court noted with approval its previous guidance that "the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong, especially when Congress has refused to alter the administrative construction."[46] The Court noted the consistency of

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[39]S. REP. No. 96, 92d Cong., 1st Sess. 20, *reprinted in* 1972 U.S. CODE CONG. & AD. NEWS 1773, 1774 (emphasis added).

[40]S. REP. No. 96, 92d Cong., 1st Sess. 34, *reprinted in* 1972 U.S. CODE CONG. & AD. NEWS 1773.

[41]S. REP. No. 96, 92d Cong., 1st Sess. 20, *reprinted in* 1972 U.S. CODE CONG. & AD. NEWS 1773, 1782.

[42]The rate restrictions were also included in F.E.C.A. Campaign Communications Reform Act, Pub. L. No. 92-225, § 103(a)(1), 86 Stat. 3, 4 (1972) (codified as amended at 47 U.S.C. § 315(b) (1976). Section 315 states in pertinent part that:

> (b) The charges made for the use of any broadcasting 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 —
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> (1) during the forty-five days preceding the date of a primary or primary runoff election and during the sixty 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
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> (2) at any other time, the charges made for comparable use of such station by other users thereof.

47 U.S.C. § 315(b) (1976).

[43]101 S. Ct. at 2831, 2833-35 (White, J., dissenting). *See infra* note 70 and accompanying text.

[44]101 S. Ct. at 2822 (citing S. CONF. REP. No. 580, 92nd Cong., 1st Sess. 22 (1971) and H. CONF. REP. No. 752, 92d Cong., 1st Sess. 22 (1971)). Prior to 1971, the second sentence of section 315(a) read: "No obligation is imposed upon any licensee to allow the use of its station by any such candidate." 47 U.S.C. § 315(a) (1970), amended by 47 U.S.C. § 315(a) (1976). "This language made clear that broadcasters were not common carriers as to affirmative, rather than responsive, requests for access." 101 S. Ct. at 2822. The second sentence of the amended version of section 315(a) reads: "No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate." 47 U.S.C. § 315(a) (1976).

[45]101 S. Ct. at 2823.

[46]*Id.* (quoting Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969) (footnotes omitted)).

the FCC's construction of section 312(a)(7) as extending beyond the public interest standard.[47]

The second challenge raised by the networks was that the FCC's implementation of section 312(a)(7) was arbitrary and capricious and that the FCC improperly substituted its judgment for that of the broadcasters on what constituted reasonable access.[48] Although Congress enacted section 312(a)(7), it did not provide any specific guidelines to the FCC on its implementation.[49] The Court noted that, in essence, "Congress adopted a 'rule of reason' and charged the Commission with its enforcement."[50] The standards used by the FCC in "implementing [section] 312(a)(7) have evolved principally on a case-by-case basis and are not embodied in formalized rules."[51] The Court discussed the relevant criteria that the FCC has used to determine whether broadcasters have provided reasonable access.[52]

Before a campaign begins, broadcasters are free to deny the sale of broadcast time.[53] However, once a campaign has commenced, broadcasters "must give reasonable and good faith attention to access requests of 'legally qualified' candidates for federal elective office."[54] Although the FCC must make the threshold determination that a campaign has begun before the obligations of section 312(a)(7) attach, it must take into account objective factors and cannot make a purely editorial judgment.[55]

In determining the reasonable access standard under section 312(a)(7), additional considerations have been mandated by the FCC.[56] The candidate's desire for broadcast time must be carefully balanced with the editorial interests of the broadcaster; the broadcaster must respond to individual requests by can-

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[47]101 S. Ct. at 2823. *See generally* 1978 Report and Order, *supra* note 5, and 1978 Primer, *supra* note 30.

[48]629 F.2d 1,14 (D.C. Dir. 1980).

[49]101 S. Ct. at 2825.

[50]*Id.* The FCC's authority to interpret the Communications Act is derived from "47 U.S.C. § 303(r), which empowers the Commission to '[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of [the Communications Act] . . .' " *Id.* (quoting 47 U.S.C. § 303(r) (1976)).

[51]101 S. Ct. at 2825. *See also* 1978 Report and Order, *supra* note 5.

[52]101 S. Ct. at 2825-26. *See* 1978 Report and Order, *supra* note 5; 1978 Primer, *supra* note 30; 74 F.C.C.2d 631 and 74 F.C.C.2d 657.

[53]101 S. Ct. at 2825.

[54]*Id.* Under FCC guidelines a "legally qualified" candidate must:

> (a) be eligible under law to hold the office he seeks; (b) announce his candidacy; and (3) qualify for a place on the ballot or be eligible under law for election as a write-in candidate. Persons seeking nomination for the Presidency or Vice-Presidency are "legally qualified" in: (a) those states in which they or their proposed delegates have qualified for the primary or Presidential preference ballot; or (b) those states in which they have made a substantial showing of being serious candidates for nomination. Such candidates will be considered "legally qualified' in all states if they have qualified in 10 or more states.

Id. at n. 11 (citing 1978 Primer, *supra* note 30, at 2216-18).

[55]101 S. Ct. at 2826. For a list of objective factors relied upon by the FCC in determining that a campaign was underway when the C.M.P.C. sought broadcast time, see *id.* at 2828.

[56]74 F.C.C.2d 657. *See also* 1978 Report and Order, *supra* note 5, and 1978 Primer, *supra* note 30.

didates and may not adopt a "blanket" policy; and in responding to an candidate's request, the broadcaster must provide a full explanation of his or her decision taking into account all relevant factors.[57] In the final analysis, the Court determined that the FCC must judge the reasonableness of the broadcaster's response in an objective manner based on the broadcaster's own explanation of his or her decision.[58] In this case, the FCC had determined that the 1980 Presidential Campaign had already begun when the C.M.P.C. had requrested broadcast time.[59] In addition, the FCC found that the broadcasters response to the request for air time by the C.M.P.C. was based on arbitrary blanket policies of the networks which were prohibited by the FCC.[60] Therefore, the Court held that the FCC acted within its discretion in finding that the networks failed to provide the reasonable access required by section 312(a)(7).[61]

The final issue addressed by the Court was the networks' contention that section 312(a)(7), as implemented by the FCC, violated their first amendment rights by infringing upon their editorial discretion.[62] "[T]he broadcasting industry is entitled under the First Amendment to exercise 'the widest journalistic freedom consistent with its public [duties], . . . ' "[63] The first amendment right of the broadcaster must be balanced against the public interest in the free marketplace of ideas: " 'It is the right of the viewers and listeners, not the right of the broadcasters which is paramount . . . It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experience which is crucial here.' "[64]

Against this background, it must be recognized that section 312(a)(7) affects the first amendment rights of the candidates and voters as well as broadcasters.[65] In a prior decision, the Court held that candidates deserve the opportunity to express their views so that voters can make an informed decision on their candidacy.[66] Instead of being an infringement of freedom of expression, section 312(a)(7) actually enhances freedom of expression by providing federal candidates with an increased ability to present their views so that the voting public may receive information necessary for effective decision-making.[67] Furthermore, the Court said that its interpretation of section 312(a)(7) provided only a limited right of "reasonable" access to the media that was vested

[57] 101 S. Ct. at 2827-29.

[58] *Id.* at 2829 and n. 15.

[59] 101 S. Ct. at 2828 (citing 74 F.C.C.2d at 645-47).

[60] 101 S. Ct. at 2828 (citing 1978 Report and Order, *supra* note 5, at 1090).

[61] 101 S. Ct. at 2829 and n. 15.

[62] *Id.* at 2829-30.

[63] *Id.* at 2829 (quoting CBS, Inc. v. Democratic National Committee, 412 U.S. 94, 110 (1973)).

[64] 101 S. Ct. at 2829 (emphasis omitted) (quoting Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969)).

[65] 101 S. Ct. at 2830.

[66] Buckley v. Valeo, 424 U.S. 1, 52-53 (1976).

[67] 101 S. Ct. at 2830.

solely in candidates for federal office to be used in furtherance of their candidacy once a campaign has commenced.[68] Section 312(a)(7) has no bearing on the editorial discretion of broadcasters. The Court held that the right of access embodied in section 312(a)(7), as interpreted by the FCC, was a proper balancing of the first amendment rights of federal candidates, the public, and broadcasters.[69]

In his dissent, Justice White argued that the majority's approach concealed what he considered to be the fundamental issue in the case — whether Congress intended, by enacting section 312(a)(7), to negate its long-standing policy of deferring to broadcasters' editorial judgments that do not contravene the intended goals of the Communications Act.[70] His contention was that the legislative history did not support the majority's interpretation that Congress intended section 312(a)(7) to grant a new right of access to federal candidates. Instead, Justice White's interpretation of the legislative history was that Congress merely intended to codify the pre-existing duty of broadcasters to serve the public interest by presenting political broadcasts.[71] He concluded, therefore, that the FCC exceeded and abused their responsibility in interpreting section 312(a)(7) as providing a new right of access.[72]

Justice Stevens, in his dissent, expressed uneasiness about the broadcasters' ability to remain impartial under the interpretation given to section 312(a)(7) by the FCC and the Court.[73] He argued that the decision of the Court condoning the FCC approach to access rights of federal candidates would create an "impermissible risk" of bias of the part of the FCC in evaluating broadcaster's refusal to provide access to a candidate.[74] Justice Stevens' major concern was that the FCC decisions would be based on political party differences rather than on an objective evaluation of the facts in each case.[75]

CONCLUSION

The Court's affirmation of the decision of the FCC and court of appeals in *CBS, Inc. vs. F.C.C.* serves to provide significant judicial interpretation of section 312(a)(7) of the Communications Act. Section 312(a)(7) confers a special individual right of access to legally qualified candidates for federal elective office which does not infringe on the first amendment rights of broadcasters. By approving the FCC's standard of reasonableness in its analysis of complaints on a case-by-case basis, the Court has provided the FCC with greater flexibility in interpreting section 312(a)(7) in order that it maintain a workable "mid-

[68] *Id.*

[69] *Id.*

[70] *Id.* at 2830-41 (White, J., dissenting).

[71] *Id.*

[72] *Id.* at 2831, 2841.

[73] *Id.* at 2841 (Stevens, J., dissenting).

[74] *Id.*

[75] *Id.* and n. *

dle course" in preserving a delicate balance between private control of the broadcast media and the essential public accountability of the media. When responding to an individual candidate's request for time, broadcasters must give weight to a number of factors: the candidate's individual needs; the amount of time previously afforded the candidate; potential disruption of regular programming; the number of other candidates who may invoke equal opportunity rights; and whether adequate notice of the request is provided by the candidate.[76] If a broadcaster can demonstrate a "good faith" compliance with these guidelines, the FCC will uphold the broadcaster's decision in denying access.

The special right of access vested in federal candidates following this decision is a limited right. Section 312(a)(7) does not "impair the discretion of broadcasters to present their views on any issue or to carry any particular type of programming."[77] A "reasonble access" interpretation of section 312(a)(7) does not necessarily mean that broadcasters *are required* to provide free time to federal candidates.[78]

The decision should have a significant impact on this year's election where there will be a number of hotly contested issues concerning the economy, federal budget, and foreign intervention, among others. We are likely to see a large increase in "paid political broadcasts" by congressional candidates explaining their stand on these controversial matters.

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[76] *See* 1978 Report and Order, *supra* note 5.

[77] 101 S. Ct. at 2830.

[78] *See* Kennedy for President Com. v. F.C.C., 636 F.2d 432, 444-50 (1980).

The editors of the Akron Law Review *respectfully dedicate this issue to The Honorable William H. Victor to commemorate his distinguished service on the Court of Appeals of Ohio.*

DEDICATION

The Honorable William H. Victor, distinguished judge of the Ohio Ninth Judicial District Court of Appeals, will retire on February 8, 1983. This issue of the *Akron Law Review* is dedicated to Judge Victor to commemorate his forty-five years of professional service. In his performance as judge of the Akron Municipal Court, of the Summit County Common Pleas Court and the Ninth Judicial District Court of Appeals, he exemplified the attributes expected of those entrusted with America's legal system. The strength of a society is directly related to the respect its citizens hold for the administration of its laws. Major determinants of this respect are the wisdom, integrity and professional performance exhibited by individuals serving at the heart of its legal system — its judges. Judge Victor epitomized the highest standards of these qualities through the years. He was the recipient of many honors and awards. The high esteem held for Judge Victor by members of the profession, legal educators and the public generally is readily understandable. Though dedicated to his work and extensively involved with his community, he supported and continues to support The University of Akron School of Law. He maintains an intensive interest in the education of future lawyers. The *Akron Law Review* dedicates this issue to The Honorable William H. Victor to honor his years of exceptional judicial service and as an expression of the School of Law's deepest appreciation.

DEAN DONALD M. JENKINS
The University of Akron School of Law