

Journal of Legislation

Volume 12 | Issue 1

Article 8

1-1-1985

Legislative Alternatives to Section 399 of the Public Broadcasting Act; Recent Developments in Public Law

Christopher J. Lynch

Follow this and additional works at: <http://scholarship.law.nd.edu/jleg>

Recommended Citation

Lynch, Christopher J. (1985) "Legislative Alternatives to Section 399 of the Public Broadcasting Act; Recent Developments in Public Law," *Journal of Legislation*: Vol. 12: Iss. 1, Article 8.

Available at: <http://scholarship.law.nd.edu/jleg/vol12/iss1/8>

This Essay is brought to you for free and open access by the Journal of Legislation at NDLScholarship. It has been accepted for inclusion in Journal of Legislation by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

LEGISLATIVE ALTERNATIVES TO SECTION 399 OF THE PUBLIC BROADCASTING ACT

F.C.C. v. LEAGUE OF WOMEN VOTERS OF CALIFORNIA

The United States Supreme Court recently held that § 399 of the Public Broadcasting Act,¹ which barred most² noncommercial, educational broadcasting stations³ from editorializing, violated the first amendment of the United States Constitution.⁴ In *F.C.C. v. League of Women Voters of California*,⁵ the Court held that “the breadth of Section 399 extends so far beyond what is necessary to accomplish the goals identified by the government that it fails to satisfy the First Amendment standards” applicable to the broadcast medium.⁶

Pacifica Foundation, one of the appellees in *F.C.C. v. League of Women Voters of California*,⁷ argued that it had a constitutional right to broadcast its views on various public issues and to classify those views as editorials broadcast on behalf of Pacifica management.⁸ Appellee League of Women Voters of California argued for the opportunity to convince Pacifica to air the League’s views in Pacifica’s editorial broadcasts.⁹ Appellee Henry Waxman, a regular listener and viewer of noncommercial, educational stations, argued that he had a right to hear the editorial opinions of the Pacifica Foundation management.¹⁰

The Supreme Court affirmed the district court’s holding that the prohibition

1. Pub. L. No. 90-129, Title II § 201(8), 81 Stat. 368 (1967). As first enacted in 1967, § 399 provided: “No noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office.” The provision was redesignated as § 399(a) in 1973 when subsection (b), requiring public stations to “retain an audio recording of each of its broadcasts of any program in which any issue of public importance is discussed,” was added. Pub. L. No 93-84, § 2, 87 Stat. 219 (1973). In the 1981 amendments to the Public Broadcasting Act, Congress revised and redesignated former § 399(a) by confining the ban on editorializing to stations receiving Corporation for Public Broadcasting funds, and by separately prohibiting political endorsements by all stations. Section 399 of the Public Broadcasting Act, at the time the Supreme Court decided *F.C.C. v. League of Women Voters*, — U.S. —, 104 S.Ct. 3106 (1984), provided as follows: “No noncommercial educational broadcasting station which receives a grant from the Corporation for Public Broadcasting under subpart C of this part may engage in editorializing. No noncommercial educational broadcasting station may support or oppose any candidate for public office.” 47 U.S.C § 399 (1982). In their amended complaint, the appellees in *League of Women Voters* did not challenge the provision in § 399 prohibiting all noncommercial educational broadcasting stations from supporting or opposing any candidate for public office.
2. In 1981, Congress confined the ban on editorializing to stations receiving Corporation for Public Broadcasting grants.
3. Noncommercial, educational broadcasting stations are also commonly referred to as public broadcasting stations.
4. U.S. CONST. amend. I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the government for a redress of grievances.
5. — U.S. —, 104 S.Ct. 3106 (1984).
6. — U.S. at —, 104 S.Ct. at 3127.
7. *League of Women Voters v. F.C.C.*, 547 F.Supp. 379 (C.D. Cal. 1982). The district court held that § 399 of Public Broadcasting Act, prohibiting editorializing by public television and radio stations which receive grants from the Federal Government through the Corporation for Public Broadcasting, violated the First amendment. The court reasoned that the § 399 violation of the first amendment was two-fold: first, the fear that funded noncommercial broadcasters would become propaganda organs for the government was too speculative to provide a compelling interest to justify the restrictions on speech; and second, the desire to ensure a balanced presentation of opinions by broadcasters also failed to provide a sufficiently compelling interest to justify the ban on editorializing.
8. — U.S. at —, 104 S.Ct. at 3112.
9. *Id.*
10. *Id.*

against editorializing in 47 U.S.C. § 399 violated the first amendment.¹¹ The Court rejected the F.C.C.'s contention that § 399 protected public broadcasting stations from becoming propaganda instruments of the government and privileged outlets for the political and ideological opinions of the station owners and management.¹² The Court characterized § 399's restriction as one specifically directed at a form of speech—namely, the expression of editorial opinion.¹³ Because editorializing lies at the heart of first amendment protection, the Court concluded that § 399's ban was content-based regulation of speech¹⁴ and was both too broad and patently over and under inclusive.¹⁵

There is a present need for legislation which promotes the policy considerations previously addressed by § 399 of the Public Broadcasting Act before it was nullified by *League of Women Voters*. This comment will trace the legislative history of § 399 of the Public Broadcasting Act. It will then reexamine the constitutionality of § 399. Finally, it will discuss the ramifications of *F.C.C. v. League of Women Voters* and explore legislative alternatives to § 399 of the Public Broadcasting Act.

§ LEGISLATIVE HISTORY AND F.C.C. INTERPRETATION OF SECTION 399

In 1967, the Carnegie Foundation created a commission to study the problems of noncommercial television.¹⁶ Two years later, the commission issued the Carnegie Report.¹⁷ The Carnegie Report recommended that Congress create a non-profit, nongovernmental corporation for public television which would receive and disburse federal and private funds and shield public broadcasters from improper governmental and political pressure.¹⁸

Legislative History of Section 399

In 1967 Congress enacted the Public Broadcasting Act¹⁹ to establish the Corporation for Public Broadcasting that the Carnegie Commission had previously recommended.²⁰ The Act contained two major parts. Title I extended for three years a program²¹ which provided federal funding for the construction of educational television broadcasting facilities.²² Title II provided for the establishment of the Corporation for Public Broadcasting.²³ The Corporation for Public Broadcasting is a nonprofit, private corporation governed by a ten person, bipartisan board of directors appointed by the President with the advice and consent of the Senate.²⁴

Although the proposal had considerable support in Congress, it was not with-

11. *Id.* at 3128.

12. — U.S. at —, 104 S.Ct. at 3126.

13. — U.S. at —, 104 S.Ct. at 3118.

14. — U.S. at —, 104 S.Ct. at 3118.

15. — U.S. at —, 104 S.Ct. at 3127.

16. *Id.* at 3111. See generally, Note, *The Public Broadcasting Act: The Licensee Editorializing Ban and the First Amendment*, 13 U. MICH. J.L. REF. 541, 544 (1980).

17. See CARNEGIE COMMISSION ON EDUCATIONAL TELEVISION, PUBLIC TELEVISION: A PROGRAM FOR ACTION (1967).

18. *Id.* at 36-41.

19. Public Broadcasting Act, Pub. L. No. 90-129, Title II § 201(8), 81 Stat. 365 (1967).

20. *Public Television: A Program for Action*, *supra* note 17, at 36.

21. Educational Television, Pub. L. No. 87-447, 76 Stat. 64 (1962).

22. *Id.* This legislation authorized a total of \$3.8 million for construction of facilities between 1968 and 1970. Pub. L. No. 90-129, Title I (1967).

23. Public Broadcasting Act, Pub. L. No. 90-129, Title II § 201(8), 81 Stat. 365 (1967).

24. 47 U.S.C. § 396 amended by Pub. L. No. 97-35, Title XII, § 1225(a)(1), 95 Stat. 726 (1981).

out controversy. Many favored the establishment of such a corporation because of the possibility that political or governmental pressures might influence the corporation's activities.²⁵ For example, during the House debate of the bill, Representative Albert W. Watson (R-S.C.) and other critics expressed concern that the Corporation for Public Broadcasting would become a propaganda outlet for the political party in power.²⁶ Supporters of the legislation, however, replied that several of the bill's provisions prevented such governmental and political control of noncommercial, educational broadcasting stations.²⁷ As a result of such debate, the bill as approved by Congress required that the corporation follow a standard of objectivity and balance in all controversial programs.²⁸ Second, and more importantly, Congress also added § 399 to the Public Broadcasting Act to prohibit noncommercial educational broadcasting stations from editorializing and supporting or opposing a candidate for political office.²⁹

Section 399's ban on editorializing was initially added³⁰ in the House of Representatives version of the Public Broadcasting Act.³¹ The House Committee on Interstate and Foreign Commerce found the § 399 ban on editorializing consistent with the other sections of the Act.³² In Joint Conference, the Senate conferees agreed to accept the House provision.³³

The Senate conferees emphasized that § 399 was "not intended to preclude balanced, fair, and objective presentations of controversial issues. . . ."³⁴ The conferees intended to limit the provision's scope by prohibiting editorials representing the opinion of the management of such stations.³⁵

In short, the legislative history of § 399 shows that Congress enacted § 399 to prevent broadcasting stations that received Corporation for Public Broadcasting funds from becoming propaganda outlets for the political party in power.

F.C.C. INTERPRETATION OF SECTION 399

In *In re Complaint of Accuracy in Media Inc.*,³⁶ the Federal Communications

25. See 113 CONG. REC. 26,377-91 (Sept. 21, 1967).

26. Rep. Brontzman's (R-Colo.) statement expresses critics' concern:

The fear of government control was recurrent during consideration of this bill by my committee. In my mind it was and is a justifiable fear. However, Mr. Chairman, I believe we were successful in adding amendments which — along with a reasonable degree of vigilance on the part of Congress — will prevent this Corporation from becoming a Government tool.

For example, one amendment provides that not more than eight of the 15 directors of the Corporation can be members of the same political party. Another amendment prohibits editorializing and endorsement of political candidates by noncommercial stations.

113 CONG. REC. 26,394 (1967)

27. See 113 CONG. REC. 26,387-88 (1967) (remarks of Rep. Springer (R-Ill.)); See also 113 CONG. REC. 26,384-385 (1967) (remarks of Rep. Friedel (D - Md.) and Rep. Staggers (D - W.Va.)).

28. 47 U.S.C. § 396(g)(1)(A) (1982) requires "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature."

29. 47 U.S.C. § 399 (1982). See *supra* note 1 for the history of § 399.

30. The Senate accepted the House's provisions when it was explained that the prohibition against editorializing was limited to the stipulation that no noncommercial, educational broadcast station may broadcast editorials representing the opinion of the management of such station. It should be emphasized that these provisions are not intended to preclude balanced, fair and objective presentations of controversial issues by noncommercial broadcasting stations. S. Rep. No. 794, 90th Cong., 1st Sess., reprinted in, 1967 U.S. CODE CONG. & AD. NEWS 1834,1835.

31. H.R. 6736, 90th Cong., 1st Sess., § 201, reprinted in 1967 U.S. CODE CONG. & AD. NEWS 1792 Representatives Keith, (R-Mass.), Joelson, (D-N.J.), and Brontzman, (R-Colo.).

32. H.R. Rep. No. 572, 90th Cong., 1st Sess., reprinted in 1967 U.S. CODE CONG. & AD. NEWS 1799, 1810. (Testimony showed that no noncommercial educational station at that time editorialized).

33. S. Rep. No. 794, 90th Cong., 1st Sess., reprinted in 1967 U.S. CODE CONG. & AD. NEWS 1834-35.

34. H.R. Rep. No. 572, 90th Cong., 1st Sess., reprinted in 1967 U.S. CODE CONG. & AD. NEWS 1799, 1810.

35. S. Rep. No. 794, 90th Cong., 1st Sess., reprinted in 1967 U.S. CODE CONG. & AD. NEWS 1834-35.

36. 45 F.C.C. 2d 297 (1973).

Commission (F.C.C.) interpreted § 399 to preclude only editorializing by public broadcasting station licensees, their management, and those speaking in their behalf. Nevertheless, the F.C.C. emphasized that “such prohibition should not be construed to inhibit any other presentations on controversial issues of public importance.”³⁷

The F.C.C. held that § 399 did not prohibit station employees from expressing their personal views in their individual capacity. Addressing this issue, the F.C.C. explained:

To so interpret Section 399 as to prevent any and all expression of employee views would in our judgment require an unnecessarily broad construction of its proscription of editorializing by licensees, contrary to the Congressional policy of fostering a vital public affairs medium in public broadcasting³⁸

The literal terms of section 399 of the Public Broadcasting Act prohibit all editorializing by noncommercial educational broadcasting stations. Nevertheless, the F.C.C. had narrowly construed section 399 as prohibiting only the “use of noncommercial educational broadcast facilities by licensees, their management or those speaking on their behalf, for the propagation of the licensees own views on public issues”³⁹

SUPREME COURT RULINGS ON THE RIGHT TO EDITORIALIZE

Despite the F.C.C.’s narrow construction of section 399, in *League of Women Voters*, the Supreme Court held that the ban on editorializing involved serious first amendment questions because it limited the means by which certain noncommercial licensees could participate in the debate of issues of public interest.⁴⁰ In its discussion of the first amendment implications⁴¹ of section 399, the Supreme Court recognized that when Congress acts pursuant to the commerce clause,⁴² it can regulate the broadcast media without showing a compelling government interest for its regulation.⁴³ The Court reasoned that because the broadcast medium is a “scarce and valuable national resource,” Congress can freely regulate this medium.⁴⁴

The Supreme Court has upheld Congressional regulations restricting the broadcast media when Congress has narrowly tailored the restrictions to further a substantial governmental interest.⁴⁵ In *Red Lion Broadcasting Co. v. F.C.C.*,⁴⁶ the Supreme Court held that F.C.C. orders enforcing the “fairness doctrine”⁴⁷ en-

37. *Id.* at 302.

38. *Id.*

39. *Id.*

40. — U.S. at —, 104 S.Ct. at 3115.

41. *Id.* at 3115. Justice Brennan, writing for the majority, stated: “But as the Government currently notes, because broadcast regulation involves unique considerations, our cases have not followed precisely the same approach that we have applied to other media and have never gone so far as to demand that such regulations serve compelling governmental interests.” Such is not true in its regulation of the print media. *See, e.g., Mills v. Alabama* where the Supreme Court held that “no test of reasonableness can save a state law from invalidation as a violation of the First Amendment when that law makes it a crime for a newspaper editor to do no more than urge people to vote one way or another in a publicly held election.” 384 U.S. 214, 220 (1966).

42. U.S. CONST. art. I § 8, cl. 3 confers upon Congress the power “[t]o regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes.” *See also, League of Women Voters*, — U.S. at —, 104 S.Ct. at 3116.

43. *Id.* at 3115. *See also, infra* note 44 and accompanying text.

44. *Id.* at 3116.

45. *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 210-214 (1943).

46. 395 U.S. 367 (1969).

47. *Id.* at 390. The “fairness doctrine” provides in part that “If any [broadcast] licensee shall permit any

hanced rather than abridged the protected freedoms of both speech and the press.⁴⁸ In so holding, the Court found that the right of the viewers and listeners to politically balanced broadcasts outweighed the right of the broadcasters to freely choose the subject matter of the broadcasts.⁴⁹ As Justice White stated, the first amendment should not "countenance monopolization of that market, whether it be by the Government itself or a private licensee."⁵⁰

Four years after *Red Lion*, the Court addressed the issue of whether a broadcaster may, under the first amendment, refuse to sell broadcast time to an organization that wishes to editorialize on public issues. In *Columbia Broadcasting System Inc. v. Democratic National Committee*,⁵¹ the Court held that the licensee's policy against accepting editorial advertising was compatible with the broadcaster's obligation to provide a balanced treatment of controversial questions.⁵² Furthermore, the Court specifically recognized the "substantial danger . . . that the time allotted for editorial advertising could be monopolized by those of one political persuasion."⁵³

Through § 399 Congress hoped to prevent the Federal Government from coercing broadcasting by means of their financial support of the stations.⁵⁴ Congress was aware of the substantial danger that the political party in power could monopolize public broadcasting editorials.

In *F.C.C. v. League of Women Voters*, unlike the *Red Lion* and *Columbia Broadcasting* cases, the Supreme Court did not uphold the Congressional regulation promulgated in § 399. Instead, the Court stated:

[E]ven if some of the hazards at which § 399 was aimed are sufficiently substantial, the restriction is not crafted with sufficient precision to remedy those dangers that may exist to justify the significant abridgement of speech worked by the provision's broad ban on editorializing. The statute is not narrowly tailored to address any of the government's goals.⁵⁵

A relatively small portion of Justice Brennan's majority opinion in *F.C.C. v. League of Women Voters* is spent distinguishing it from the Court's recent decision in *Regan v. Taxation With Representation*.⁵⁶ Noting that a broadcasting sta-

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. . . ." 47 U.S.C. § 315(a) (1982).

48. 395 U.S. at 391.

49. *Id.* at 389-90.

50. *Id.*

51. 412 U.S. 94 (1973).

52. *Id.* at 132.

53. *Id.* at 123.

54. — U.S. —, 104 S.Ct. at 3123.

55. *Id.* at 3127.

56. 461 U.S. 540 (1983). In *Regan*, the appellee Taxation With Representation of Washington (TWR), a nonprofit organization, had organized to promote its beliefs in the area of federal taxation through lobbying. It applied for and was denied tax-exempt status because it appeared to the Internal Revenue Service that a substantial part of TWR's activities would consist of lobbying, a prohibited activity for a tax-exempt organization. As a result, TWR filed suit against the Commissioner of the Internal Revenue Service and the Secretary of the Treasury claiming that the prohibition against substantial lobbying was unconstitutional under the First Amendment.

Writing for the majority, Justice Rehnquist equated a tax exemption to a cash grant, equal to the amount of the tax that the organization would have had to pay on its income had it not had tax-exempt status. The Court interpreted the section of the Internal Revenue Code dealing with tax-exempt status as a Congressional refusal to pay for the lobbying activities of organizations with public monies. The Court held that Congress had not violated the First Amendment by declining to subsidize First Amendment activities. In dicta, the Court recognized that TWR could still qualify for tax-exempt status by adopting a dual structure of two organizations, where only the organization which was not tax exempt could participate in lobbying activities.

In joining the concurring opinion of Justice Blackmun, Justice Brennan, along with Justice Mar-

tion is not able to segregate its activities according to the source of its funding, the Court stated that "[t]he station has no way of limiting the use of its Federal funds to all non-editorializing activities, and, more importantly, it is barred from using even wholly private funds to finance its editorial activity."⁵⁷

LEGISLATIVE ALTERNATIVES

Because the Supreme Court held section 399 of the Public Broadcasting Act unconstitutional, all noncommercial educational broadcasting stations are now free to engage in editorializing, even though they are financed, in whole or in part, by the federally funded Corporation for Public Broadcasting. Under this ruling, the management and employees of these stations are free to use federally funded air time to voice editorials that the viewing public may construe as the Government's official position.

Because governing bodies often serve as a major source of the station's funding, station managers may feel compelled to broadcast only those editorials that are flattering to the political party in power at the Federal, State or local government levels. Individual station managers may now use the "scarce and valuable national resource" of the broadcast medium to air their personal opinions.⁵⁸ Viewers and listeners are now forced to fund the broadcasting of views that they would rather not subsidize.

In enacting Section 399 of the Public Broadcasting Act, Congress intended to prohibit editorials representing the opinions of the management of noncommercial educational broadcast stations.⁵⁹ Congress sought to protect against governmental interference in federally-funded stations and to prevent viewers from assuming that the editorials represented the official views of the Government.

Although section 399 was held unconstitutional,⁶⁰ the original policy concerns of Congress remain important today. The following legislative proposals are offered to effectuate important policy concerns while fulfilling the requirements setdown by the Supreme Court in *F.C.C. v. League of Women Voters*.

PROPOSAL I. Section 399

No noncommercial, educational broadcasting station which receives a grant from the Corporation for Public Broadcasting may engage in editorializing unless both prior to and following each such editorial the broadcasting station presents the following disclaimer:

The following editorial represents only the views of the station's management or

shall, agreed that the "First Amendment does not require the government to subsidize protected activity." Under 26 U.S.C. § 501(c)(3) the exemption is granted to:

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition. . . , or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder, or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

461 U.S. at 542.

57. — U.S. at —, 104 S.Ct. at 3125.

58. — U.S. at —, 104 S.Ct. at 3116. *See also*, *F.C.C. v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 799-800, (1978).

59. For a discussion of the legislative history of § 399, *see supra* notes 16-37 and accompanying text.

60. — U.S. —, 104 S. Ct. 3128 (1984).

employees and does not in any way reflect the views of the Federal, State or local governments which supply funding for this station.

Such legislation would serve to promote the Congressional policy of assuring that the viewer does not assume the editorial to be the official view of the government. It would not, however, prevent potential coercion by the political party in power that supplies the station with at least a portion of its financing. Moreover, this legislation does not address the fundamental policy concerns recognized by the Supreme Court in *Regan v. Taxation With Representation*,⁶¹: that the Federal Government has no obligation to finance an individual's exercise of first amendment rights. The disclaimer proposal would permit the station management and employees to engage in broad editorializing on all subjects including governmental affairs.

PROPOSAL II. Section 399

No noncommercial, educational broadcasting station that receives Federal, State, or municipal funds may engage in editorializing in which the subject of the editorial involves Federal, State or local governmental affairs.

Proposal II would narrowly tailor the editorial prohibition to encompass only those topics which Congress envisioned as potential sources of government coercion.⁶² This proposal would also limit section 399's prohibition to those noncommercial educational broadcasting stations which receive financial support from the Federal, State or local government.

PROPOSAL III. Section 399

[a] No noncommercial, educational broadcasting station which receives a grant from the Corporation for Public Broadcasting may engage in editorializing unless otherwise provided in this section.

[b] A noncommercial, educational broadcasting station may establish an affiliate organization which may solicit funds from sources other than the Corporation for Public Broadcasting, and may use such funds to finance editorials.

[1] Such affiliate stations, financed completely by funds separate and distinct from the funds supplied by the Corporation for Public Broadcasting, must broadcast a disclaimer both prior to and following each such editorial.

[2] The disclaimer shall state: "The following [previous] editorial represents only the views of the affiliate station's management and does not in any way reflect the views of the Federal, State or local government."

By revising § 399 to allow broadcast affiliates to editorialize freely, Congress could avoid the first amendment objections to § 399 raised in *F.C.C. v. League of Women Voters*. Such an affiliate would be free to editorialize so long as the editorial broadcast was not funded by the Corporation for Public Broadcasting. Funds from the Corporation for Public Broadcasting would be utilized only for noneditorial activities and broadcasts. The affiliate would be free to editorialize, funded solely by nongovernmental contributions. The affiliate system would, however, still require the use of a disclaimer to warn the viewing public that the editorial views are not the government's official views. The disclaimer is necessary to inform those who would otherwise have no way of knowing the source of the editorializing affiliate's funding.

By enacting a section 399 which provides for the establishment of noncommer-

61. See *supra* note 56.

62. The topics of such editorials would inevitably include commentary on matters of public policy and governmental operations.

cial, educational broadcast affiliates, Congress could effectively prohibit the use of government funds to finance editorials and inform the viewers that the editorials are not the government's official views.

CONCLUSION

Section 399's ban on editorializing was added to the Public Broadcasting Act as a method of preventing those stations which receive Corporation for Public Broadcasting funds from becoming propaganda outlets for the political party in power. In *F.C.C. v. League of Women Voters*, the Supreme Court held that the prohibition against editorializing contained in section 399 of the Public Broadcasting Act failed to satisfy first amendment standards applicable to the broadcast medium. Because editorializing lies at the heart of first amendment protection, the Court concluded that section 399's ban was both too broad and patently over and under inclusive. Although section 399 was held unconstitutional, the congressional policy concerns of its origin remain important today. Congress should answer the Supreme Court's holding in *League of Women Voters* with legislation which both promotes its underlying policy concerns and satisfies the first amendment standards applicable to the broadcast medium.

*Christopher J. Lynch**

* B.A., University of Notre Dame, 1982; J.D. Candidate, Notre Dame Law School, 1985.