CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

***Post Office Box 8101*** ***Tel. (914)421-1200*** ***E-Mail: mail@judgewatch.org***
***White Plains, New York 10602*** ***Website: www.judgewatch.org***

July 7, 2025

TO: U.S. Department of Justice
ATT: Assistant U.S. Attorney Carmen M. Banerjee

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc.

RE: Assisting you, yet again – now by analysis of the *amicus curiae* briefs filed in support of the NPR and PBS summary judgment motions

This follows up my June 27th letter to you entitled "Assisting, with Evidence, Your Slam-Dunk Defense of President Trump & U.S. Taxpayers in the NPR & PBS Lawsuits – & Your Cross-Motions for Summary Judgment & for Sanctions Pursuant to Rule 11 and FRCP 56(h)", requesting your response by July 4th and stating that I would "get busy on preparing a supplemental presentation, analyzing the *amicus curiae* briefs filed on June 20th in support of plaintiffs."

I received no response from you – nor from *cc*'d Assistant U.S. Attorney Jeremy S.B. Newman as to the Justice Department's determination of the unconstitutionality of the Public Broadcasting Act of 1967 by reason of the corruption of CPB's 'internal governance and operations' and the absence of congressional oversight – the subject of my unresponded-to May 22nd e-mail to him.

To further assist you and Mr. Newman, below is my analysis of the five June 20th *amicus curiae* briefs – reinforcing the correctness of my June 27th letter and May 22nd e-mail.

To enable you to submit these as evidentiary declarations in support of your opposition to plaintiffs' June 13th summary judgment motions and in support of your own summary judgment cross-motions, due July 11th, I attest to their truth under penalties of perjury.

Should you not submit them, I will attach them to a motion for leave to file an *amicus curiae* brief in support of your opposition/cross-motion. Pursuant to the briefing schedules, here and here, the motion would need be filed by July 18th.

Finally, in addition to the suggestion in my June 27th letter that you request evidentiary declarations from the Media Research Center and Committee for Accuracy in Middle East Reporting and Analysis (CAMERA), I suggest you also request evidentiary declarations from Accuray in Media (AIM) and Professor Robert Lichter/Committee on Media and Public Affairs – and they are herein *cc*'d.

My signature follows the below analysis.

* * *

**Analysis of the Five June 20th *Amicus Curiae* Briefs**
**Supporting Plaintiffs' June 13th Summary Judgment Motions**

With the exception of the American Civil Liberties Union's *amicus* brief (NPR #25; PBS #16, #20)[1], the four other *amicus* briefs make no reference to the mandatory provision of §396(g)(1)(A) of the Public Broadcasting Act of 1967 requiring "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature". The ACLU's *amicus* brief refers to it once – toward the end, stowed in a footnote (fn 3), reading:

> "…the Act also purports to require CPB's 'strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.' 47 U.S.C. §396(g)(1)(A). The D.C. Circuit, sitting *en banc*, has already determined that the 'objectivity and balance' language 'is applicable only to the CPB itself, and even there only to a narrower category of programming dealing with controversial issues.' *Cmty. Serv. Broad. of Mid-Am., Inc. v. FCC*, 593 F.2d 1102, 1117–18 (D.C. Cir. 1978) (*en banc*). *See also Accuracy in Media, Inc. v. FCC*, 521 F.2d 288 (1975) (upholding FCC's determination that it lacked authority to enforce the 'objectivity and balance' language in part because any other conclusion would raise substantial constitutional questions). If the Act were instead meant to impose this requirement on local broadcasters—or, perhaps worse yet, creators and distributors of broadcast content— 'then it is clear that we have moved . . . to [the realm] of regulation aimed at suppressing free speech, which may be justified only by reference to the most compelling government interests.' *Cmty.-Serv. Broad. of Mid-Am*, 593 F.2d at 1122. Thus, that provision of the Act cannot justify any viewpoint-based discrimination against Plaintiffs here." (underlining added).

This is false, as there is nothing "purport[ed]" about §396(g)(1)(A)'s requirement of "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature." Indeed, the cited-to 1975 D.C. Circuit Court of Appeals' decision in *Accuracy in Media, Inc. v. FCC* states:

> "Since the Section is clearly directed to the Corporation and its programming activities, we have no doubt that the Corporation must respect the mandate of the Section. However, we conclude that nothing in the language and legislative history of the Federal Communications Act or the Public Broadcasting Act of 1967 authorizes the FCC to enforce that mandate against the CPB.

[1] The separate NPR and PBS *amicus* briefs are identical except for the differing captions and referred-to plaintiffs. Citations herein are from the NPR brief.

> …
> We leave the interpretation of this hortatory language [‘strict adherence to objectivity and balance in all programs or series of programs of a controversial nature’] to the Directors of the Corporation and to Congress in its supervisory capacity. We hold today only that the FCC has no function in this scheme of accountability established by §396(g)(1)(A) and the 1967 Act in general other than that assigned to it by the Fairness Doctrine. Therefore, we deny the petition for review and affirm the Commission’s decision rejecting jurisdiction over the Corporation for Public Broadcasting.” (underlining added).

Tellingly, the ACLU brief does not reveal how “the Directors of the Corporation and…Congress in its supervisory capacity” thereafter interpreted the “horatory language” that is CPB’s statutory “mandate”.

Clear, however, from the legislative history furnished three years later, in 1978, by *Community Service Broadcasting of Mid-America, Inc. v. FCC*, and, most powerfully, by the two dissenting opinions (1135-1150 [Levanthal/Tamm];1150- 1154 [MacKinnon/Robb]) to which the ACLU does not cite – and which made the referred-to “*en banc*” a 5-4 split – is that Congress meant what it said, lest “federal funds…create a propaganda machine that could be manipulated by any political party or ideological clique” (at 1137).

16 years later Congress would reinforce, statutorily, the “horatory language” of “strict adherence to objectivity and balance” by the Public Telecommunications Act of 1992, whose Section 19 entitled “Objectivity and Balance Policy, Procedures and Report” reads:

> **“Pursuant to the existing responsibility of the Corporation for Public Broadcasting under section 396(g)(1)(A) of the Communications Act of 1934 (47 U.S.C. 396(g)(1)(A))** ‘to facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, **with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature**,’ the Board of Directors of the Corporation shall:
>
> (1) review the Corporation’s existing efforts to meet its responsibility under section 396(g)(1)(A);
>
> (2) after soliciting the views of the public, establish a comprehensive policy and set of procedures to

(A) provide reasonable opportunity for the members of the public to present comments to the Board regarding quality, diversity, creativity, excellence, innovation, **objectivity and balance of public broadcasting services, including public broadcasting of a controversial nature**, as well as any needs not met by those services;

(B) review, on a regular basis, national public broadcasting programming for quality, diversity, creativity, excellence, innovation, **objectivity, and balance**, as well as for any needs not met by such programming;

(C) on the basis of information received through such comment and review, take such steps in awarding programming grants ... that it finds necessary to meet **the Corporation's responsibility under section 396(g)(l)(A), including facilitating objectivity and balance in programming of a controversial nature**; and

(D) disseminate among public broadcasting entities information about its efforts to address concerns about **objectivity and balance** relating to programming of a controversial nature so that such entities can utilize the Corporation's experience in addressing such concerns within their own operation; and

(3) starting in 1993, by January 31 of each year, prepare and submit to the President for transmittal to the Congress a report summarizing its efforts pursuant to paragraphs (1) and (2)." (bold added).

This is the law, as exists today – essentially concealed, as if it does not exist, including on CPB's website which obscures CPB's decades of nonfeasance with respect thereto – and Congress' virtually non-existent oversight. The result, for decades, is that the statutory requirement of "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature" has been window-dressing, hiding the fact that the very inclusion of the requirement in the Public Broadcasting Act of 1967 renders the Act unconstitutional, *as written* – at least if the First Amendment arguments of NPR, PBS and the *amici* are to be credited, seeming to claim that <u>any</u> enforcement of "objectivity and balance" is unconstitutional.[2]

[2] Incomprehensibly, the 5-4 *en banc* D.C. Circuit Court decision in *Cmty. Serv. Broad. of Mid-Am., Inc. v. FCC* was not appealed to the Supreme Court. As for the D.C. Circuit Court decision in *Accuracy in Media*, the ACLU brief does not reveal that it was appealed to the Supreme Court, which denied *cert*, 425 U.S. 934 (1976). Another notable D.C. Circuit Court case, also denied *cert*, was *The Network Project, et al. v. CPB, PBS…Pat Buchanan*, 561 F.2d 963 (D.C. Cir. 1977), *cert* denied, 434 U.S. 1068 (1978). All three cases were an opportunity for the Court to confront the constitutional issues here at issue.

It is because the stated basis of President Trump's May 1, 2025 Executive Order is "biased and partisan news coverage" – the truth of which is a flagrant violation of §396(g)(1)(A) – that the ACLU brief does not acknowledge the Executive Order's factual legitimacy in any way[3], instead distorting and mischaracterizing the situation for purposes of its fraudulent First Amendment argument, as:

> p. 1 "he does not like [NPR's] journalistic and editorial choices…"; "[he] accuses NPR of providing 'biased and partisan news coverage.'"; p. 2 "[his] disagreement with NPR's programming"; "[he] disagrees with [NPR's] views"; p. 5 "NPR's viewpoint, which President Trump openly despises"; p. 6 "President Trump
>
> considers its news coverage to be 'biased and partisan'"; President Trump's personal disapproval of NPR's programming; "accusing NPR of leftwing bias…"; p. 8 "punishing NPR for purported bias", "disfavored expression"; p. 10 "President Trump disapproves of NPR's programming"; p. 13 "he considers it 'biased'".

This is replicated by the *amicus* brief of Digital Content Next, The Intercept Media, Pro Publica, Radio Television Digital News Association (NPR #22-1; PBS #13, #19):

> p. 1 "speech the President dislikes"; "disfavored speech"; p. 3 "his dislike of their speech"; p. 5 "disfavored speech"; p. 6 "The President does not want NPR, PBS, and their member stations to broadcast the content of their choosing – he wants them to broadcast content *he* prefers", "perceives as 'Biased Media', "claiming falsely that 'NPR and PBS have fueled partisanship and left-wing propaganda.'", p. 7 "disfavored reporting"; p. 8 "the President's 'factual mistake' of characterizing Plaintiffs as 'radical, woke propagand[ists],'; p. 14: "their perceived viewpoints."

Also, by the *amicus* brief of Reporters Committee for Freedom of the Press and 29 NPR Member Stations (NPR #26-1):

> p. 5 "disagreement with their reporting"; "claiming NPR is 'biased' and 'left-wing

---

3 The ACLU's rejection of the stated factual basis of the Executive Order is as follows:

> "President Trump's viewpoint-based animus against NPR is evident on the Executive Order's face. Although Section 1 of the Order purports to disavow any interest in '[w]hich viewpoints NPR … promote[s],' this disclaimer is belied by the rest of the Order. The next sentence states that NPR does not 'present[] a fair, accurate, or unbiased portrayal of current events,' and the following sentence directs all 'agencies to cease Federal funding for NPR[.]' Exec. Order No. 14290 §1. Section 2 of the Executive Order similarly asserts that NPR's funding is being cut because President Trump considers its news coverage to be 'biased and partisan.' *Id.* §2(a). And the Order itself is titled 'Ending Taxpayer Subsidization of *Biased* Media'" (pp. 5-6, italics added by ACLU).

propaganda'"; p. 9 "displeasure"; "complained of bias or unfair treatment"; "Accusations of bias"; p. 21 "what the Administration perceives to be NPR's viewpoint."; p. 2 "perception that NPR is 'biased' and possesses a 'left-wing' viewpoint"; p. 24 "reporting and content that the President dislikes"; p. 25 "speech it does not like."; "stories he does not like".

This is the same *modus operandi* that is evident in the NPR and PBS complaints and summary judgment memoranda:

> NPR complaint: ¶92 "hostility toward the perceived viewpoints expressed by NPR and PBS"; ¶94 "the President's disapproval of the content of the speech and news reporting by NPR and PBS"; ¶134 "editorial discretion in ways disfavored by the Administration";
>
> NPR's summary judgment memo: p. 22 "disfavored content"; p. 25 "the President's dislike of NPR's journalism and other speech"; "NPR is, in the President's view, 'biased.'; "the President disapproves"; p. 27 "the views expressed by NPR do not align with the President's", "what the President views as 'left-wing propaganda"; p. 31 "his own editorial judgment – *his viewpoints* – for NPR's and the Local Member Stations";
>
> PBS complaint: ¶1 "disagreements"; ¶3 "perceived political slights in news coverage"; ¶49 "his disagreement with the purported views expressed through its programs and editorial decisions"; ¶102 "the President believes PBS provides 'biased and partisan news coverage'"; ¶103 "he disagreed with the content and viewpoint of its speech"; ¶134 "based on allegations that PBS provides 'biased and partisan news coverage'";
>
> PBS summary judgment memo: p. 1: "simply because the President disagrees with the speech"; "the President believes that PBS content is not 'fair, accurate, unbiased, and nonpartisan"; "the speech of public media he disfavors"; pp. 2-3: "perceived political slights in news coverage"; p. 15: "his disagreements with the views purportedly expressed through PBS's programs and editorial decisions"; p. 17: "the President's view"; p. 18 "accuses PBS"; p. 30 "the President believes", "he disagrees with PBS's viewpoint"; [see 30-31]; p. 33 "programming the President 'doesn't like'".

Simultaneously, the *amicus* briefs – as, likewise the NPR and PBS complaints and summary judgment motions – are packed with hyperbolic rhetoric about the First Amendment, the vital role of the press in our democracy, and unsworn assertions about how NPR and PBS discharge their role by their supposed "quality", "fact-based", "truthful reporting on matters of public concern".[4]

[4] Digital Content Next, The Intercept Media, Pro Publica, Radio Television Digital News Association

As for the *amicus* brief of America's Public Television Stations (PBS #18, #21) and the *amicus* brief of the Attorneys General of 22 states (NPR #23, PBS #14), these are not so much briefs as unsworn factual recitations. The AGs' *amicus* brief mentions the Executive Order once (at p. 2), but not its basis – "biased and partisan news coverage". The American Public Television Station's *amicus* brief refers to the Executive Order as "E.O. 14,290", but not its basis.

The *amicus* brief of the AG's does not get to the subject of "news coverage" until its page 18, at the very bottom, carrying over to page 19:

> "Finally, Plaintiffs serve an important role in distributing information regarding state and local politics and voting rights. Broad access to information and diverse opinions is nowhere more critical than in the electoral context….But independent reporting on state and local politics has been on decline for years.[fn49] Public broadcasting, however, continues to fill this need by showcasing state and local politics in All Amici States. *Id.* This includes some of the only content informing voters on the actions taken by their elected officials. *See id*. at 3. And in 80% of states, NPR provides voter guides to assist voters in understanding the issues they consider in the voting booth. *See id*. at 8…"

The annotating fn 49 is:

> "Corp. for Pub. Broad. & Edison Research, State Government Coverage in Public Media: Edison Media Research Survey 1 (2021), https://cpb.org/sites/default/files/CPB_SCCS_2021_FINAL.pdf."

Aside from the fact that the indicated link is incorrect, the referred-to 2021 survey is of public media radio and television stations whose self-reporting about their own state and local journalism is NOT evidence of the true facts. As relates to New York, the true facts, established by primary-source, documentary evidence, spanning decades, are of "*knowingly* false, corruption-abetting, election-rigging journalism" by the local New York NPR and PBS member stations, identical to New York's other non-profit and for profit media, covered up and abetted by the NPR and PBS public editors, presidents/CEOs, boards of directors, counsels, and other management and, thereafter by the CPB's inspector general – a situation that Congress has been aware of since February 18th and CPB's executive vice-president/general counsel since May 2nd – which was when I first furnished them with my February 18th letter "Defunding NPR, PBS – & firing the CPB Inspector General, for starters".

That New York's AG Letitia James is one of the 22 AGs on the *amicus* brief, purporting that "Amici States have a strong interest in the safeguarding of constitutional values[fn3]" is a fraud on both counts, as AG James is, with New York's judiciary, the pivotal corrupter of constitutional governance in

---

*amicus* brief: p. 1 "NPR, PBS, and their member stations play a vital role in the nation's media landscape…providing fact-based reporting on national news"; p. 2 "the vital role of a free press in our democracy"; p. 5 "fact-based news coverage…truthful reporting on matters of public concern".

New York and a top beneficiaries of the "*knowingly* false, corruption-abetting, election-rigging journalism" of local New York NPR and PBS member stations and other New York media – so-highlighted by my February 18th letter (at pp. 6-8), as follows:

> "…the election of New York Attorney General Letitia James in 2018, her re-election in 2022, and the election in 2021 of Manhattan District Attorney Alvin Bragg, a top deputy to A.G. James' predecessors, Eric Schneiderman and Barbara Underwood, were achieved by the collusion of New York's non-profit and for-profit media, in willfully not reporting on the evidence of their corruption, presented by the record of the citizen-taxpayer action, *CJA v. Cuomo, et al.*, suing the highest constitutional officers of New York's three branches, the A.G., among them, for corrupting state governance, involving the massive, policy-laden, 'OFF THE CONSTITUTIONAL RAILS' state budget, rife with constitutional, statutory, and legislative rule violations and billions of dollars of larcenies of taxpayer monies,[fn4] including for their own salaries – a lawsuit commenced in September 2016 and which, in the absence of any legitimate defense, the A.G. defended by litigation fraud and was rewarded by fraudulent decisions, 'throwing' the case, at every level, up to the New York Court of Appeals which, exactly five years ago today, February 18, 2020, issued the last of its five fraudulent orders, denying review by right and by leave – and which, since June 2022, has been continued by *CJA v. JCOPE, et al.*, and, since March 2023, by *CJA v. Commission on Legislative, and Executive Compensation, et al.*. A.G. James is a named respondent/defendant in both lawsuits, sued for corruption – and she has defended each by litigation fraud, for which she has been rewarded by fraudulent judicial decisions, 'throwing' the cases. Both are still LIVE, however, pending before the New York Court of Appeals, on appeals of right (here and here), with A.G. James, once again, as in 2019-2020 in *CJA v. Cuomo, et al.* (here), being unremitting in her litigation fraud, before the state's highest court.
>
> In that connection, to no avail, in 2021 and 2023, I tried to alert then former President Trump to the situation – constructing for that purpose two webpages on CJA's website. The first, a 'June 4, 2021 Message to Mr. Trump', pertaining to A.G. James and to then Manhattan D.A. Cyrus Vance, Jr., and the second, an 'April 3, 2023 Message to Mr. Trump' pertaining to successor Manhattan D.A. Bragg.
>
> The framing paragraphs of the June 4, 2021 Message summed up what was going on, none of which had been reported by New York's press then – or since:

"[fn4] 'About 40% of the state budget is supported by the federal government", so-reported by [NY Public Radio's] February 16, 2025 article '*NY comptroller warns of potential federal cuts, questions rebate checks*'. An August 2024 article '*Which states rely the most on federal aid?*' puts New York second, at $110.2 billion, after California."

'DEAR MR. TRUMP:

Your NY Democratic prosecutors – NY Attorney General Letitia James & Manhattan D.A. Cyrus Vance, Jr. – who are pursuing you because '*no one is above the law'*, are themselves '*above the law*' – and while you were still president, the FBI & your acting US Attorneys for NY had the OPEN-and-SHUT, *prima facie* EVIDENCE to indict them & scores of other NY public officers for corruption and fraud involving the NY state budget and 'false instrument' pay raises they stole for themselves. The highest of these public officers – ALL Democrats – are Governor Andrew Cuomo and the heads of NY's Legislative and Judicial branches.

…

MR. TRUMP, the reason you know nothing about any of this is because NY's mostly left-leaning press has, for years, been complicit in the systemic corruption of NY's governance – involving all three government branches. It has concealed, totally, the EVIDENCE of what has been going on and, by its knowingly false reporting and editorializing, has sped the collapse of constitutional checks and balances, including by its rigging of NY's elections. Here's CJA's 30-year archive chronicling this – and here's our two lawsuits aimed at securing media accountability, the first vs The New York Times, and the second vs Gannett – both 'thrown' at trial and appellate levels by fraudulent judicial decisions of NY's state courts because there was NO legitimate defense to either lawsuit. Here's also CJA's most recent and IMMEDIATELY relevant chronicling of the 'fake news', corruption-abetting, election-rigging journalism that has deprived the People of the State of New York of what they have needed to know about their public officers and state governance: last year, before the 2020 elections and, after, in November and in December, and this year: in January, February-March, April-May, and thus far, in June.

Mr. Trump, from this website, you have the EVIDENCE to PROVE that you are being invidiously and selectively investigated by AG James and DA Vance who have corrupted their offices and are pocketing fraudulent pay raises for their crimes – and that the media has known about this, but reported NOTHING. You have a slam-dunk opportunity to not only help yourself, but, simultaneously, to do a great public good: to 'drain the swamp' that is NY's governance and expose – definitively and beyond all doubt – its 'fake news' press. Go to it!" (italics, capitalization, and hyperlinking in the original).[fn5]

---

"[fn5] The 'swamp' of corruption that is New York's governance is enabled by the corruption of its 'public protection' oversight entities, such as the Commission on Judicial Conduct, the Appellate Division Attorney Grievance Committees, and the Unified Court

Suffice to add that among the other non-profit media colluding in the "*knowingly* false, corruption-abetting, election-rigging journalism" that has wiped out constitutional, lawful state governance in New York are Pro Publica and The Intercept, which are also *amici* before the Court, on the same *amicus* brief as Digital Next Content and Radio Television Digital News Association. The true facts as to Pro Publica and The Intercept, putting the lie to the descriptions about themselves at the outset of their brief, are established by the primary source, documentary evidence furnished by my June 16, 2023 complaint to the Institute for Nonprofit News, to which they are members – a complaint summarized by pages 5-6 of my February 18th letter.

As for the 29 NPR Members who are *amici* on the same *amicus* brief as the Reporters Committee for Freedom of the Press (NPR #26-1), these include four local New York stations whose "*knowingly* false, corruption-abetting, election-rigging journalism" gave rise to my May 8, 2023 complaint and then my September 17, 2024 complaint to NPR Public Editor Kelly McBride underlying the February 18th letter. These four are New York Public Radio, WXXI, WAMC, and WLIW (owned by WNET Group) – and the consequence of what they have been doing, for decades, in tandem with New York's other nonprofit and for profit media – and involving the SAME complained-against New York Public Radio reporters, editors, and management – has now directly resulted in the New York City Democratic mayoral primary win of Zoharan Mamdani, whose unworthiness as an Assembly candidate and corruption as an Assembly member I alerted its Albany reporters to by a March 18th e-mail entitled "The NYS Budget – & the 6 NYS Legislators Running for NYC Mayor, NYC Public Advocate, Manhattan Borough President, & NYC Council", *cc*'ing Mamdani and other candidates – then twice re-sent to New York Public Radio on March 19th due to a block, here, and here[5] – this following a February 22nd election "heads up" to New York Public Radio pertaining to the New York City races, contained in a second re-sending, due to blocking, of my February 21st e-mail to the 12 member stations of the New York Public News Network, WXXI, WAMC, and WLIW, among them, entitled "OVERSIGHT REQUIRED: Corruption-abetting, election-rigging, 'fake news'/fraudulent, agenda-driven journalism by your new Capitol Bureau hire, Jeongyoon Han & her colleagues Jimmy Vielkind & Jon Campbell, enabled by NY Public Radio leadership".[6]

System's Inspector General, to which Congresswoman Elise Stefanik and others filed complaints on behalf of former President Trump. For more than 30 years, I have furnished the media with the evidence that these entities are corrupt 'window-dressing', as, for instance, the record of my February 11, 2021 complaint to the Attorney Grievance Committees for AG James' disbarment and referral to criminal authorities – the same as hyperlinked by my June 4, 2021 webpage 'Message to Mr. Trump' – but they refuse to investigate and report, instead publishing articles as if they are legitimately functioning, as they did pertaining to Rudolph Guiliani's disbarment."

5 My March 20th e-mail to "New York City's 'local journalism'" – the New York Times, New York Post New York Daily News, New York Law Journal, Wall Street Journal and Associated Press – to which Mamdani and other candidates were *cc*'d, is here, which, following a bounce-back, I successfully resent to the AP, here.

6 This February 21st e-mail is the follow-up to my nearly identically-titled February 11th e-mail to New

New Hampshire Public Radio is also an *amicus* to the brief – and pages 12-14 spotlight its "ground-breaking and award-winning news investigation…additionally notable because of what occurred after it aired" – with a proclamation at pp. 20-21 that "For NPR Member Stations, the quality and independence of their reporting is central to their credibility", quoting from the NPR Ethics Handbook:

> "To secure the public's trust, we must make it clear that our primary allegiance is to the public. … Under no circumstances do we skew our reports for personal gain, to help NPR's bottom line or to please those who fund us".

This is false – proven not only by my above-recited decades of interaction with New York's NPR stations, but by my recent interaction with New Hampshire Public Radio (NHPR). This is chronicled by a series of e-mails to which it was cc'd, beginning May 26th and culminating in my June 2nd e-mail to New Hampshire's congressional delegation entitled "Corruption at NPR, PBS, and CPB, mandating congressional investigation & NO funding until 'heads roll' & safeguards are restored – & the left-wing bias & hypocrisy of NHPR journalism", stating, in pertinent part:

> "is it not concerning to you that NHPR – a recipient of federal funding – has known of the [February 18th] letter and its 'paper trail' odyssey since May 25th, when I sent a first e-mail to its Civics 101 podcasting team, its senior political reporter/editor, its news director, and its president/CEO, with subsequent e-mails to all of them on May 26th, May 29th, and then again on May 29th by the below, but NHPR has not contacted me for further information or reported anything. How does this accord with NHPR's posted Code of Ethics about 'fair, independent, accurate, complete and honest' news reporting and its May 2nd message '*The Independence of Public Media Cannot Be Compromised*' from its President/CEO Jim Schachter, about reporting 'in the public interest, holding the powerful to account without fear or favor.'
>
> Based thereon and the profusion of assertions by the NHPR Civics 101 podcasters about their integrity and their unbiased, reliable, truth-telling journalism – including at Dartmouth's May 20th forum '*Effective Journalism in a Polarized World*' – wouldn't your New Hampshire constituents reasonably expect NHPR to be reporting on the February 18th letter and its cover-up, assisted by experts and scholars, such as from Dartmouth? What an outrage to see what NHPR has chosen instead, such as its misleading, money-focused, left-tilted, and hypocritical May 28th '*Refresher Course: What can be done about corruption in politics?*' – part of its "*Every other Tuesday*" series when '*the team behind Civics 101 joins NHPR's All Things Considered to talk about how our democratic institutions actually work.*'

---

York Public Radio's Senior Vice President of News/Editor in Chief Audrey Cooper, recited at page 4 of my February 18th letter.

> By the way, do you have any content analysis of NHPR journalism, whose left-wing bias is readily discerned – or have you not asked your constituents about this?"

As is the *modus operandi* of New York's NPR member stations, I received no response from New Hampshire Public Radio, whose President/CEO Schacter, formerly employed by New York Public Radio (WNYC), posted a facebook VIDEO about NHPR's participation in the *amicus* brief "because press freedom is on the line".

Suffice to add that I also received no response to this same June 2nd e-mail from the palpably left-leaning New Hampshire PBS, to whose president, vice-president for content, and "The State We're In" host and director of the Granite State News Collaborative, I forwarded it by a June 4th e-mail entitled "Defunding NPR & PBS is NOT a partisan issue, it's a corruption issue – & New Hampshire's congressional delegation has the evidence". It read:

> "Apart from the PBS News Hour, has there been any local journalism by New Hampshire PBS on the question of defunding NPR and PBS? I assume this would have been by *The State We're In*, but I have not found any episode on it.
>
> Please advise – and deem my below June 2nd e-mail to New Hampshire's congressional delegation, alerting it, with evidence, that defunding NPR and PBS is NOT a partisan issue, but a corruption issue, a proposal for your investigative journalism. …"

My further June 4th e-mail, to the Granite State News Collaborative, to which I also received no response, read:

> "…kindly review and advise, as soon as possible, whether the Granite State News Collaborative will undertake investigative reporting – and, if not, whether you will forward to ALL the Collaborative's partners – seemingly the entirety of New Hampshire journalism – for their collective and individual consideration.
>
> Please also advise how much New Hampshire "local journalism" you have been able to find on the NPR/PBS defunding issue – and your assessment of NPR and PBS national reporting on the topic.

I also received no response from them to three further e-mails pertaining to the News Hour's coverage of the NPR/PBS defunding issue, to which they were *cc*'d along with PBS' public editor, senior management and board of directors:

- my June 6, 2025 e-mail to PBS News Hour – "FACT-CHECKING THE PBS NEWS HOUR (1) your referred-to 'independent analyses' that PBS/ NPR journalism is 'objective and reliable' & not 'leftist news'; (2) the scholars & experts you have interviewed opposing federally-funded public media"

- my June 12, 2025 e-mail to Professor Victor Pickard/University of Pennsylvania – "Fact-Checking the PBS News Hour – & Your Scholarship"

- my June 12, 2025 e-mail to Associate Professor Allison Perlman/University of Califorinia-Irvine – "Your Co-Update to the 'official history of public broadcasting... for the Corporation for Public Broadcasting' – Fact-Checking the PBS News Hour & More".

*To preserve the above hyperlinking, signature & cc's on next page*

In short, here established is that New Hampshire's local NPR and PBS member stations, whose left/progressive bias is palpable from content examination of its journalism, operate in the same completely non-responsive, unaccountable fashion, suppressing, *in toto*, major news stories of public corruption, reaching their own New Hampshire congressional delegation, as New York's local NPR and PBS member stations, whose left/progressive bias is identically palpable from content examination of its journalism.

This, according to the amicus briefsAccording to the amicus briefs,  the NPR/PBS complaints and summary judgment memoranda – and the amicus curiae briefs – which puports their the First Amendment shields them

---------------------------------

After receiving a one-year extension, the CPB delivered its first report on "objectivity and balance" to Congress on January 31, 1994.

November 2005 report of the CPB's Inspector General, at the request of the ranking members of the Committee on Appropriations and the Committee on Energy and Commerce, CPB's Inspector General conducted a review
Executive Summary
"Our review of the creation of the ombudsman function showed that by expanding the public's ability to have issues of objectivity and balance addressed, CPB's actions were consistent with their responsibilities under the Public Telecommunications Act of 1992"

p. 6:  "On January 26, 1993, the Board adopted a resolution to address implementation of the Public Telecommunications Act of 1992, but id did not specifically address how objectivity and balance could be evaluated.  The memorandum attached to the resolution, dated January 23, 1993, stated that CPB would conduct a general review of national programming for quality, diversity, creativity, excellence, and innovation, but it also did not specifically address the review of objectivity and balance.

In a November 19, 2002 resolution, the Board reaffirmed its commitment to objectivity and balance. The resolution

The ACLU brief does not reveal how "the Directors of the Corporation and…Congress in its supervisory capacity" thereafter interpreted the "horatory language" that is CPB's "mandate". That Congress intended such language to mean what it said lest "federal funds…create a propaganda machine that could be manipulated by any political party or ideological clique", is clear from

*infra.* at 1137) is clear from the two dissenting opinions in *Community Service Broadcasting of Mid-Am., Inc. v. FCC* – of Judge Harold Levanthal (at 1135- ), to which Judge Edward Tamm joined, and of Judge George MacKinnon, to which Judge Roger Robb joined – to which the ACLU does not quote or reference, making the *en banc* ruling a 5-4 split. In any event, clear from that case and from the earlier unanimous *Accuracy in Media* case, whose three-judge panel included Justice Levanthal, is that:

– and from the D.C. Circuit's 1977 decision *The Network Project, et al. v. CPB, PBS, ...Pat Buchanan*, *561 F.2d 963*,

Reliance on the Fairness Doctrine as one element of the CPB regulatory scheme is evident in the following exchange between Senator Thurmond and Senator Pastore:

Mr. THURMOND. . . . (W)ould the fairness doctrine promulgated by the Federal Communications Commission provide for the airing of philosophies or ideas contrary to those which may be expressed in programs prepared by the Corporation?

Mr. PASTORE. Well, the licensee who accepts the program is subject to the Communications Act, and the fairness doctrine thus applies . . . .

Mr. THURMOND. Would the time be offered free of charge, as is now required under the fairness doctrine to give the opposing view?

Mr. PASTORE. Absolutely. If anyone feels he is offended under the fairness doctrine, he can appeal to the FCC and he will receive the same privileges and the same courtesies which he receives under commercial television.

> At issue in that case was "a challenge to 399(b) of the Federal Communications Act, and to the rules promulgated to that section by the Federal Communications Commission. Section 399(b) requires any noncommercial educational television or radio station that receives federal funding to make audio recordings of all programs in which any issue of public importance is discussed.fn2 These recordings must be maintained for sixty days and made available at cost to any person who requests them.

1137: “Congress also sought to ensure that federal funds would not create a propaganda machine that could be manipulated by any political party or ideological clique. … 1137

1138: As the keystone in the structure that it designed, Congress placed itself in a direct and continuing relationship with CPB by imposing on CPB annual reporting[16] and auditing requirements.[17] Congress did not establish the trust fund recommended by the Carnegie Commission.[18] The Carnegie Commission had urged that CPB be financed by an excise tax on television sets, the revenue to be channeled to CPB through a trust fund. The Commission regarded Congress’s ordinary budgetary and appropriations procedures as “not consonant with the degree of independence essential to Public Television.” [19] Congress, however, perceived the appropriations process, and its role in that process, as necessary to assure CPB’s accountability and to safeguard against its capture by a self-serving group. Congressional oversight through the appropriations process would achieve this end without governmental interference in ongoing programming operations.[20]

Fn. 20: “The debates reflected the emphasis, in both Houses and on both sides of the aisle, that Congress placed on its role vis-a-vis CPB and the problem of political abuse:

> If Congress maintains close scrutiny and carries out its oversight function as it should, I think the problem can be kept in manageable proportions.[21]

> [I]f, as time goes on, we have occasion to feel that there is a slanting, a bias, or an injustice, we instantly and immediately can do something about it. First, we can make very uncomfortable, and give a very unhappy experience to, the directors of the corporation. Second, we can shut down some of their activities in the Appropriations Committee and in the appropriating process of Congress The corporation is much more readily accessible ... to the Congress, if it is desired to correct any injustice or bias which might appear.[22]

> The fear of government control of programming was recurrent during consideration of this bill by my committee . . . 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 propaganda tool.[23]

> [W]e will create a monster only if we fail in our responsibility to keep it from becoming a monster . . . . Provision is made in the bill . . . for constant review by Congress of the activities of the corporation and the conduct of the program.[24]

1139: Congress did not assume authority to direct or interfere with CPB's day-to-day programming decisions. What Congress contemplated was a reserved power, an ability to alter the level of appropriations if CPB's overall performance strayed from statutory mandates.[25]"

CPB was instructed to maintain especially high standards for the programs it would obtain with federal funds. Section 396(g)(1)(A) provides that such programs are to be 'of high quality, obtained from diverse sources, . . . with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.'[28] This specification of 'strict adherence to objectivity and balance,' applicable to each program (or series of programs) created with federal funds, reflects a more rigorous requirement than that imposed by the fairness doctrine on licensees generally.[29] There is no need to itemize the differences in standards. It suffices here to point out that §396(g)(1)(A), even after it was liberalized in the conference committee to permit the objectivity and balance requirement to be satisfied by a series of programs instead of each individual program,[30] is more rigorous than the fairness doctrine, which requires only that a licensee's overall programming result in balanced presentation of controversial issues of public importance.[31] The fairness doctrine thus incorporates a looser standard of rough overall balance for a licensee as contrasted with a standard of adherence to strict objectivity and balance for each program (or series).
Fn 29 – citing to Accuracy in Media…

1140?: Public affairs programming by noncommercial educational stations was deemed "uniquely fitted to offer [the] in-depth coverage and analysis which [would] lead to a better informed and enlightened public."[32] Congress was eager to encourage such programs, yet it recognized that they presented a great danger of political bias or propaganda. The elevated standards of objectivity and balance were designed to forestall the use of federal funds for partisan expression.[33]

fn. 33: A typical statement of Congress's purpose in passing § 396(g)(1)(A) is the following by Representative MacDonald of the House Interstate and Foreign Commerce Committee: '[T]he Corporation must not become overwhelmingly an organ of one party or the other. Governmental and political interference or control must be kept at an absolute minimum. Along these same lines, the committee amended the section of title II pertaining to programming to provide for strict balance between opposing viewpoints on controversial matters.' 113 Cong.Rec. 26380 (1967). The House version of the Act, H.R. 6736, contained the objectivity and balance provisions. They were incorporated in conference into the final bill. H.R.Rep.No.794 (Conf.Rep.), 90th Cong., 1st Sess. 13 (1967), *reprinted in* [1967] U.S.Code Cong. & Admin.News, pp. 1834, 1835."

?? This court has fully respected Congress's reservation to itself of the critical role of overseeing compliance with the mandate embodied in §396(g)(1)(A). We upheld the FCC's determination that it had no authority to monitor compliance with § 396(g)(1)(A). Accuracy *in Media, Inc. v. FCC,* 172 U.S.App.D.C. 188, 521 F.2d 288 (1975), *cert. denied,* 425 U.S. 934, 96 S.Ct. 1664, 48 L.Ed.2d 175 (1976). And in *Network Project* v. *Corporation for Public Broadcasting,* 183 U.S.App.D.C. 70, 561 F.2d 963 (1977), *cert. denied,* 434 U.S. 1068, 98 S.Ct. 1247, 56 L.Ed.2d 770 (1978), we refused to find an implicit private right of action under the Act because we determined that Congress did not intend any judicial assist**1141*anee in overseeing adherence to §396(g)(1)(A). As Judge Robinson pointed out, the House Committee Report referring to the role of 'interested citizens' 'anticipated that citizen participation through the political process would assist Congress in its oversight function.' 183 U.S.App.D.C. at 82, 561 F.2d at 975.

In these cases we stressed the careful framework designed by Congress to balance public accountability with maximum freedom from governmental interferences. Congressional oversight was the means to maintain that balance. While the exact manner in which Congress would review CPB's performance had not been specified, it was understood that such scrutiny would occur through the annual reporting and appropriations processes.

II. TAPING REQUIREMENTS TO AID CONGRESS IN THE ASSURANCE OF 'STRICT OBJECTIVITY AND BALANCE'

Section 399(b) was enacted in 1973 as a little-noted part of Public Law 93-84.[34] The prominent feature of that law was its authorization of a two-year financing appropriation for CPB, and most of the legislative history focuses on that financing provision. The Senate and House reports simply described the taping requirement, with no statement of its rationale.[35] To discern Congress's purpose in enacting § 399(b), all counsel have looked to a single colloquy during the Senate hearings and a single statement from the House floor.

During these 1973 Senate hearings, Senator Robert Griffin, the sponsor of §399(b) and *amicus* in this case,[36] discussed the taping requirement with the then president of the Public Broadcasting Service, Hartford Gunn. They agreed it would assist appraisals of the "strict objectivity and balance" provision.

> Fn: 36 Senator Griffin advocated a taping requirement for years before its enactment in 1973. In 1970 the Senate adopted Griffin's amendment as part of pending public broadcasting finance legislation, but the taping requirement was deleted in conference after it was disclosed that the amendment had not been the subject of hearings in either house. H.R.Rep.No.1466 (Conf.Rep.), 91st Cong., 2d Sess. 3 (1970), *reprinted in* [1970] U.S.Code Cong. & Admin. News, pp. 3963, 3964.

> Senator Griffin: During this committee's consideration of the 1970 Public Broadcasting authorization bill, I offered an amendment which was quickly opposed by many people in Public Television — an amendment which would have provided that audio tapes of public affairs programs would be available at the expense of the person requesting a copy. There is the provision in the 1967 act which states that one of the purposes of the act is to facilitate the development of high-quality programs "with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature." You certainly agree with that part of the act, I would think?
>
> Mr. Gunn: Yes.
>
> Mr. Griffin: And you don't want Government censorship of your programs?
>
> Mr. Gunn: No, sir.
>
> Senator Griffin: But it would seem to me that private individuals who are interested in trying to assess the objectivity of those programs should have some way of finding out what was on the air.
>
> Mr. Gunn: I agree, yes, sir.

Senator Griffin said that his interest in the issue arose out of a concern that the requisite balance had been lacking in a nationally distributed program concerning the Anti-ballistic Missile System, a controversial issue decided in the Senate by one vote. He continued:

> Senator Griffin: I had heard about this program and that it was biased and unbalanced. Unfortunately, I did not get to see it, but, of course, you can't be watch*1142ing all the channels all the time. At the time, I asked for a transcript or a tape and indicated that I would be glad to pay for whatever expense was

> involved, but the answer was no, even though I was a Member of Congress, and even though I was a member of this committee.
>
> Mr. Gunn: Was that request made of the Public Broadcasting Service or was it made of the producer of the program? I am trying to recall.
>
> Senator Griffin: I can't recall either. In any event, I did not get any help. Frankly, your letter to the Wall Street Journal only keeps me going, because you are going to make these tapes available only to people that you consider have proper credentials in research or journalism. Now, if you believe that policy is a substitute for my legislation, I don't. To avoid any kind of Government censorship, you should make programs broadcast over-the-air available to the public as is the case with material that is printed in the newspaper. It is in the public domain at that point. I don't see how any broadcaster can refuse or make it difficult to find out what has been put on the air.
>
> Mr. Gunn: I agree with you absolutely. *Public Broadcasting* — Hearings *on S. 1090 Before the Subcommittee on Communications of the Senate Committee on Commerce,* 93d Cong., 1st Sess. 113-114 (1973).

Petitioners contend that this dialogue reveals an intent of censorship. The exchange does not support that view. There was no suggestion of advance clearance. Senator Griffin's remarks arose in the context of a statutory mandate that CPB fund programs that meet the "strict objectivity and balance" requirement. That mandate, as already noted, must be met by every program (or series, if the program is part of a series) as contrasted with the fairness doctrine's loose standard pertaining to the general programming of a licensee.

Senator Griffin was interested in a means of providing information about program content to permit assessment of the required objectivity and balance. His further reference to the taping requirement as a means of avoiding governmental censorship was not explicated. It is reasonably read as indicating a belief that general access to tapes would obviate the need for Congress to institute any kind of formal monitoring in order to oversee compliance with the strict objectivity and balance standard of § 396(g)(1)(A).[37]

The thrust of Senator Griffin's position during the 1973 hearings was essentially identical to, and is illuminated by, his position the previous year. Appearing before the House Subcommittee on Communications, Senator Griffin stated that adoption of a taping requirement would "ensure greater objectivity and balance." He continued:

> At present, there is no procedure whereby broadcasts of public interest can be monitored to insure that both the spirit and the letter of the law are carried out. It is inconceivable to me how these provisions of the Public Broadcasting Act can ever have any meaning when the public is denied the right to examine what is broadcast over government regulated air waves by broadcasters who are subsidized with public funds.

> Of course, I am aware of the fact that the Corporation for Public Broadcasting *1143has recently reiterated its intent to be objective and fair in public affairs programming. I am also aware that the Corporation can require a station to provide copies of all programs to the Corporation which are underwritten by grants from the latter.
>
> But this procedure needs to be expanded so that all the public can have a reasonable opportunity to review controversial programs. *Hearings on Financing for Public Broadcasting Before the Subcommittee on Communications and Power of the House Comm, on State and Foreign Commerce,* 92d Cong., 2d Sess. 241-243 (1972).

We turn to the only other fragment of legislative history attending the passage of §399(b). On the House floor Congressman Van Deerlin stated:

> The 2-year authorization period serves notice that we intend to protect an institution of free expression that is the property of the American people, and not the instrument of a partisan unit of government. This does not mean that the legislative branch must surrender all its responsibilities. The oversight and appropriations processes will continue to assure that legislative responsibility is being met.
>
> In addition, section 2 of the proposed legislation stipulates that any station receiving assistance from CPB make audio transcriptions of programs in which any issue of public importance is discussed. These tapes must be maintained by the station for 60 days, for possible public scrutiny. Of course, no commercial broadcaster is saddled with this requirement — it comes dangerously close to censorship. For this reason, I must point out that as far as I am concerned the provision in question is in no way a "hunting license" for the Federal government. Rather, it is a housekeeping device, which I anticipate will be rarely if ever used.
>
> 119 Cong.Rec. 25175 (1973).

Plainly, Mr. Van Deerlin found the rationale for the taping requirement in Congress's responsibility for the appropriations and oversight processes. In the absence of that responsibility as to commercial broadcasters, who do not produce or broadcast programs funded under the Act, Mr. Van Deerlin thought that application of the taping requirement to commercial broadcasters might be deemed a threat to editorial freedom. Whatever the merits of that observation, Mr. Van Deerlin's statement cannot be read as suggesting that a taping requirement is censorial when Congress has oversight responsibility and concern that the funded programs comply with the special standard of strict objectivity and balance.

When relevant legislative history appears in oral rather than written exposition, as it does here, some imprecision in the formulation of Congress's objective is hardly extraordinary. However, the history fairly reveals one purpose for §399(b) — to facilitate monitoring by the public and Congress of compliance with the strict objectivity and balance requirement of §396(g)(1)(A). That purpose is entirely consistent with Congress's legitimate interest in ensuring that the expenditure of federal funds is consistent with statutory mandates, an interest emphasized in the Senate and House reports.[38] Congressmen may look to the *1144assistance of citizens in discharge of the oversight function. See *Network Project v. CPB,* 183 U.S.App.D.C. 70, 82, 561 F.2d 963, 975 (1977)."

FN 38 . S.Rep.No.117, 93d Cong., 1st Sess. 7 (1973):

As long as Federal funds are being given to public broadcasting, your Committee strongly believes Congress not only has the right but the obligation to assure itself they are being expended as it intends. The Committee's own oversight responsibility, and the necessity of an annual appropriation assures this. There should, therefore, be no misgivings that a two-year authorization would permit the Corporation to ignore or otherwise disregard its statutory mandates.

Similarly, the House report stated:

Your Committee believes that as long as federal funds are given to public broadcasting, Congress has the obligation to ensure their proper expenditure. This obligation can be fully satisfied by resort to our oversight powers and responsibilities as well as through the appropriations process. Congress has ample authority to ensure that CPB satisfies its statutory mandate without the necessity of a crippling annual authorization.

H.R.Rep.No.324, 93d Cong., 1st Sess. 9-10 (1973).

The content standards of §396(g)(1)(A) are requirements of objectivity and balance. These standards were enacted to minimize the possibility of a governmental or politically partisan perspective in federally funded programs. Congress has a substantial interest in avoiding the use of government *1149funds to endorse a "political" message.[63] "...

...

Congress has made an effort to support public affairs programming while ensuring that federal funds are not spent on propaganda directed at U.S. citizens. This is not constitutionally impermissible. Federally funded producers are not required to forego the exercise of rights they would otherwise enjoy. They remain free to express themselves as they choose in programs developed without public funds.

...

In our view, the government has authority to set standards of objectivity and neutrality for the programs it funds through CPB, and § 399(b), providing a taping requirement for those programs, is a non-intrusive and non-discriminatory means to monitor compliance with those standards.

Dissent of MacKinnon

Educational broadcasting, supported in whole or in part by federal assistance given under the Act via the Corporation, is required to meet the standard of "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature."[6] As Judge Leventhal observes:

That standard is more rigorous than that applicable to licensees generally under the fairness doctrine, which provides a loose standard of general balance in a licensee's overall programming and has no requirement for individual programs.

Leventhal, J., dissenting op. at--of 192 U.S.App.D.C., at 1136 of 593 F.2d. The justification for this different treatment is perfectly, obvious and adequate — one licensee operates in part on government funds and the other does not. If this is not adequate justification, then a great many requirements imposed by statutes on recipients of appropriated funds or participants in Government programs will necessarily be negated.[7] I would hold that it is adequate justification. Congress, with special cognizance of the important role to be performed by the public in assisting it in the discharge of its function, reserved for itself the oversight responsibility of assuming that programs produced with federal funds or broadcast by stations relying upon federal assistance for their operation conform to the strict objectivity and balance standard.[8] The right to impose the standard has never been questioned. In my view this is a legitimate and substantial government interest.[9] Thus, I agree with the result reached by Judge Leventhal with respect to federally funded programs. However, I would also reach this same result and apply the plain language of that statute to all programs broadcast by any licensee "which receive[d] assistance under sections 390 to 399 [of the Public Broadcasting Act] ... in *1152which any issue of public importance is discussed." *47 U.S.C. § 399*(b)(1).

The history of section 399(b), which Judge Leventhal has incisively probed,[10] demonstrates that the purpose of the provision is to facilitate monitoring by the public and by Congress of compliance, by licensees who broadcast programs discussing issues of public importance with the assistance of federal funds, with the strict objectivity and balance requirement of section 396(g)(1)(A).[11] That purpose is entirely consistent with Congress' interest in ensuring that federal funds are expended consistently with statutory mandates (Leventhal, J., dissenting op. at - of 192 U.S.App. D.C., at 1146 of 593 F.2d). And it is clear that *Congress contemplated the assistance of citizens in the discharge of the oversight function.* As stated in the House Committee Report,

The educational stations must not be permitted to become vehicles for the promotion of one or another political cause, party, or candidate. It is assumed that the normal checks and balances within our political system will insure that this principle *will be constantly safeguarded by interested citizens*.

H.R.Rep. No. 572, 90th Cong., 1st Sess. (1967), *reprinted in* [1967] U.S.Code Cong. & Admin.News, pp. 1799, 1810 (emphasis added).

The Act's legislative history demonstrates that Congress did not intend to involve the federal government in the programming decisions of local stations.[12] It did not seek to authorize any prior restraint. Yet Congress was genuinely concerned that additional public affairs broadcasting was needed and that the use of public funds to that end carried with it the obligation to insure "strict adherence to objectivity and balance in all programs" (*47 U.S.C. § 396*(g)(1)(A)). Thus, by authorizing the "full amount" for recording requirement, Congress sought to help insure objectivity and to enlist the public's involvement in furtherance of that objective.

**"Objectivity & Balance in Public Broadcasting"**

> "In the Spring of 1992, Congress debated whether to reauthorize funds for the Corporation for Public Broadcasting (the CPB).3 Congress had created the CPB, a private, nonprofit corporation, in 1967, as the mechanism to disburse federal funds to public broadcasting stations and program producers, and as a buffer or "heat shield" between Congress and the public broadcasters. In 1992, conservatives extended the "culture war" they had earlier declared against public funding for the arts,' and launched a full frontal assault upon public broadcasting,5 seeking to withdraw all federal support for the CPB.6 Opponents of public broadcasting leveled four charges against the institution: (1) that public television had been rendered obsolete by the explosion of cable channels offering programming traditionally found on PBS; (2) that in an age of budgetary constraint, it was indefensible to expend federal funds on a system that served mostly elitist preferences; (3) that programming on public broadcasting stations was frequently "indecent," and such programming should not be paid for with tax revenues; and (4) that public affairs programming on public broadcasting stations evinced a consistently liberal bias.7 By far the most sustained criticism of public broadcasting focused on the alleged liberal bias of news and information programming.

During the floor debates, several congressmen ridiculed specific programming choices of public television officials8 and accused public broadcasting of promoting a "left-wing ideology."' Typical of this sentiment was the opinion expressed by Senate Minority Leader Robert Dole (R-Kansas), that public television presented a "steady stream of documentary cheerleading for leftwing interests."10

Ultimately, in August 1992, Congress voted to reauthorize funding for the CPB for three years." However, the harsh criticism from conservative members of Congress12 cast a pall over the proceedings, and resulted in an amendment to the reauthorization legislation that requires the CPB to monitor and ensure that national programming on public broadcasting stations is "balanced" and "objective."[13] Under the amendment, the CPB is required to report annually to Congress on its policy and procedures for evaluating and promoting objectivity and balance.[14] Not surprisingly, the acrimonious legislative battle and resulting "objectivity and balance" amendment produced a dramatic chilling effect. The CPB has already signaled its intention to avoid further political battles by curtailing the coverage of controversial programming on public broadcasting stations. In May 1993, the CPB sent letters to public radio broadcasters urging them to publicize a new national toll free telephone comment line, because "[n]egative comments might vindicate a station's decision not to carry controversial programming.""15 Furthermore, critics of public broadcasting have pointed to the Public Broadcasting Service's (PBS) refusal to air a number of documentaries critical of corporate America as a logical and foreseeable response to the 1992 congressional wrangling.'16

13. Pub. L. 102-356, § 19, 106 Stat. 949, 955-56 (1992). The stated purpose of the amendment was "to promote programming objectivity and balance." 138 CONG. REC. S7341 (daily ed. June 2, 1992) (statement of Sen. Inouye) (introducing amendment for floor debate). The text of the amendment reads in pertinent part:

> **Pursuant to the existing responsibility of the Corporation for Public Broadcasting under section 396(g)(1)(A) of the Communications Act of 1934 (47 U.S.C. 396(g)(1)(A))** "to facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, **with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature**," the Board of Directors of the Corporation shall:
>
> (1) review the Corporation's existing efforts to meet its responsibility under section 396(g)(1)(A);
>
> (2) after soliciting the views of the public, establish a comprehensive policy and set of procedures to
>
> > (A) provide reasonable opportunity for the members of the public to present comments to the Board regarding quality, diversity, creativity, excellence, innovation, **objectivity and balance of public broadcasting services, including public broadcasting of a controversial nature**, as well as any needs not met by those services;

(B) review, on a regular basis, national public broadcasting programming for quality, diversity, creativity, excellence, innovation, **objectivity, and balance**, as well as for any needs not met by such programming;

(C) on the basis of information received through such comment and review, **take such steps in awarding programming grants ... that it finds necessary to meet the Corporation's responsibility under section 396(g)(l)(A), including facilitating objectivity and balance in programming of a controversial nature**; and

(D) disseminate among public broadcasting entities information about its efforts to address concerns about objectivity and balance relating to programming of a controversial nature so that such entities can utilize the Corporation's experience in addressing such concerns within their own operation; and

(3) starting in 1993, by January 31 of each year, prepare and submit to the President for transmittal to the Congress a report summarizing its efforts pursuant to paragraphs (1) and (2).

Fn.14. Pub. L. 102-356, §19, 106 Stat. 949, 955-56 (1992). After receiving a one-year extension, the CPB delivered its first report on "objectivity and balance" to Congress on January 31, 1994.

15. Sandy Tolan, Dial 1-800-CENSOR, N.Y. Times, May 5, 1993, at A21.

FN 20 "For a history of public broadcasting in America prior to 1967, see FCC v. League of Women Voters, 468 U.S. 364, 367 (1984)…"

[IT SEEMS that 1992 amendment reduced board to 9—fn 31
1975—three year funding made 2 year in advance – fn. 44

p. 197: "The "objectivity and balance" provision of the 1967 Act was the focus of attention in the 1992 reauthorization debate, in which conservative senators repeatedly referred to public broadcasting's failure to live up to its existing congressional mandate.79 The resulting "objectivity and balance" amendment explicitly incorporated the language of the 1967 Act. Thus, it is important to understand what obligations the original language imposed upon the CPB, and how the 1992 amendment altered those obligations. II. THE "OBJECTIVITY AND BALANCE" MANDATE: THEN AND Now Although their language is similar, the "objectivity and balance" provision of the 1967 Act and the 1992 "objectivity and balance" amendment have quite different meanings and effects. The legislative history and subsequent judicial interpretation of the 1967 language reveal that Congress originally provided the CPB with broad, general, aspirational language that Congress could us

p. 215 C. The Government's First Purported Goal: Enhancing Robust Public Debate

**It is not readily demonstrable whether requiring "objectivity and balance" in all nationally broadcast controversial programs will expand or contract public debate.** Lacking empirical data, it is informative to consider the impact of a similar broadcasting policy aimed at the same goal: the Fairness Doctrine.

The Fairness Doctrine is a series of regulations promulgated, but no longer enforced, by the FCC against all broadcast licensees.'63 It imposed two related requirements on all broadcast licensees: (1) to devote a reasonable portion of programming to discussion of controversial issues of public importance and (2) to do so in a way that fairly presented contrasting viewpoints on those issues. 1" In 1969, in Red Lion Broadcasting Co. v. FCC,15 the Supreme Court upheld the constitutionality of two of the Fairness Doctrine regulations relating to political candidates who were the subject of on-air personal attacks and to political editorials. However, the Court explicitly reserved the right to revisit the constitutionality of the Fairness Doctrine should regulatory experience with the doctrine demonstrate that it has "the net effect of reducing rather than enhancing" the vitality of public debate. 166

Beginning in 1987, the FCC discontinued its enforcement of the Fairness Doctrine, because under the direction of Reagan Administration appointees Mark Fowler and Dennis Patrick, the Commission had determined that the doctrine disserved the public interest by "chilling" broadcasters coverage of controversial issues. 167 The argument put forth by the FCC, and accepted by the D.C. Circuit Court in Syracuse Peace Council v. FCC,168 was that the Fairness Doctrine no longer could be understood to serve "the public interest" because it was counterproductive: It resulted in less robust discussion, not more.169 The D.C. Circuit Court did not rule on the constitutionality of the Fairness Doctrine, but accepted the FCC's policy as a reasonable exercise of administrative discretion. 70 However, Judge Starr's concurrence, citing Red Lion's ominous caveat of potential future review,17' argued that the Fairness Doctrine was unconstitutional, because it infringes upon the speaker's autonomy without producing any offsetting speech benefit. 7

163. See Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 369 (1969); Fairness Doctrine and Public Interest Standards, 39 Fed. Reg. 26,371, 26,374 (1974); Applicability of Handling of Controversial Issues of Public Importance, 29 Fed. Reg. 10,416 (1964); see also T. BARTON CARTER ET AL., THE FIRST AMENDMENT AND THE FIFTH ESTATE: REGULATION OF ELECTRONIC MASS MEDIA (3rd ed. 1993) 259-313 (discussing the origin, evolution, and constitutional status of the Fairness Doctrine).

164. See Fairness Doctrine and Public Interest Standards, 39 Fed. Reg. 26,372 (1974). The Fairness Doctrine, an FCC-promulgated regulation, was distinct from the statutory requirement on all licensees to provide "equal time" to all qualified candidates for political office. 47 U.S.C. § 315 (1988). See Red Lion, 395 U.S. at 369-70 (discussing distinction between Fairness Doctrine and equal time provision).

165. 395 U.S. 367 (1969).

166. Id. at 393. Thus, Red Lion decided only that the Fairness Doctrine was constitutionally permissible, not that it was required. Furthermore, the Court gave only cautious approval to the doctrine, reserving the right to review its actual effect on the public's "paramount right" to receive a robust public debate on matters of public importance: "[Should licensees actually eliminate their coverage of controversial issues, the purposes of the doctrine would be stifled." Id.

167. See Syracuse Peace Council v. WTVH, Memorandum and Order, 2 FCC Rec. 5043 (Aug. 6, 1987). The FCC found: [The fairness doctrine in operation disserves both the public's rights to diverse sources of information and the broadcaster's interest in free expression. Its chilling effect thwarts its intended purpose, and it results in excessive and unnecessary government intervention into the editorial processes of broadcast journalists. We hold, therefore, that.., the fairness doctrine contravenes the First Amendment and its enforcement is no longer in the public interest. Id. at 5052.

168. 867 F.2d 654 (D.C. Cir. 1989), cert. denied, 493 U.S. 1019 (1990). Yale Law & Policy Review Vol. 12:184, 1994

p. 216

Congress, cognizant of the Fairness Doctrine in 1967, most likely intended something distinct from, and more stringent than, the general fairness standard of the Fairness Doctrine when it imposed the "objectivity and balance" standard upon the CPB funding for controversial programming. 175 Comments from congressmen who proposed and championed the original "objectivity and balance" language of the 1967 Act indicate that they intended something more than just overall fairness in the totality of programming. 176

176. See Note, Fairer Than Fair, supra note 80, at 654-61 ("Congress cannot be presumed to have used objectivity and balance as a synonym for the fairness doctrine . . . . [It is reasonable to conclude that the objectivity and balance language of 47 U.S.C. § 396(g)(1)(A) imposes a heavier burden of 'fairness' on the CPB than that of the fairness doctrine . . . ."); see, e.g., id. at 659 n.83 (quoting statement of Congressman Springer, House sponsor of the 1967 Act, and author of the "objectivity and balance" provision, during 1972 congressional hearings) ("Now this is not the same as the rule applicable to commercial television... You understand, there is a lot more than just fairness here. We went over this with a fine-tooth comb. This has a lot more to do than with just fairness.").

Thus, both the substantive standard and the scope of the "objectivity and balance" amendment suggest a greater intrusion of governmental oversight of broadcasters' editorial decisionmaking than the Fairness Doctrine. Indeed, the D.C. Circuit Court has stated that because "objectivity and balance" is a stricter standard than the Fairness Doctrine, imposing this standard on public broadcasters "would raise serious constitutional questions, particularly in light of the Supreme Court's cautious approval of the more limited fairness doctrine. "180

180. Community-Service Broadcasting of Mid-America, Inc. v. FCC, 593 F.2d 1102, 1117 (D.C. Cir. 1978); see also Accuracy in Media, Inc. v. FCC, 521 F.2d 288, 296-97 (D.C. Cir. 1975) (finding that enforcement of "objectivity and balance" instead of the Fairness Doctrine might require the FCC to conduct a more expanded "inquiry into the factual accuracy of programming" resulting in a "potential enlargement of government control of programming" which would "threaten to upset the constitutional balance struck in [CBS v. Democratic Nat'l Comm., 412 U.S. 94 (1973)1."), cert. denied, 425 U.S. 934 (1976).

181. In June 1987, President Reagan vetoed Congress's attempt to codify the Fairness Doctrine. Ronald Reagan, Veto of the Fairness in Broadcasting Act of 1987, 23 WEEKLY COMP. PRES. Doc. 715-16 (June 19, 1987)

If the Fairness Doctrine is deemed unconstitutional, then a fortiori the "objectivity and balance" amendment is as well. Even if the Fairness Doctrine is rejected exclusively on administrative policy grounds,181 the constitutional argument that has been mounted against it applies with even greater force to the more restrictive standard of the "objectivity and balance" amendment: It chills more speech than it brings into existence, thereby reducing the overall breadth of the public debate. …

181. In June 1987, President Reagan vetoed Congress's attempt to codify the Fairness Doctrine. Ronald Reagan, Veto of the Fairness in Broadcasting Act of 1987, 23 WEEKLY COMP. PRES. Doc. 715-16 (June 19, 1987)

218: …In the 1992 legislation, Congress adopted a Senate Commerce Committee amendment requiring the CPB to prepare an annual public report listing "each organization that receives a grant from the Corporation to produce programming, the name of the producer of any programming produced under each such grant, the title or description of any program so produced, and the amount of each such grant."186

186. Pub. L. No. 102-356, §§ 7 & 14, 106 Stat. 949, 951, 953-54 (1992) (codified at 47 U.S.C.A. § 396(i)(1) (West Supp. 1992)). Unlike the broader mandate of the "objectivity and balance" amendment, "this requirement only binds those programs directly funded by the CPB." S. REP. No. 221, 102d Cong., 1st Sess. 16 (1991); see also 138 CoNG. REC. 52652 (daily ed. Mar. 3, 1992) (statement of Sen. McCain) (explaining that this reporting requirement was intended to allow "Congress and the American people [to] begin to closely monitor the programs to ensure that the mandate of providing balanced viewpoints is met").

…the last minute addition of the "objectivity and balance" amendment on the Senate floor was both redundant with respect to the Commerce Committee's amendment and overbroad with respect to the government's purported objective.188

192. To assist audience members in differentiating privately funded from publicly funded programs, Congress in 1992 required CPB-funded programs to contain a disclosure statement indicating that federal funds were provided through the CPB. Pub. L. No. 102-356, § 14, 106 Stat. 949, 953-54 (1992) (codified at 47 U.S.C.A. § 396(l)(4) (West Supp. 1992)); see 138 CONG. REC. S7344-45 (daily ed. June 2, 1992) (debate regarding amendment "to require disclosure of Federal funding of public television programs"); id. at 57344 (statement of Sen. Inouye): The Corporation should be careful not to specify credit wording that could, in any way, be miscon strued by viewers to mean that the program they have just seen was in any way influenced by the Federal Government.... [Gireat care must be taken to preserve the impression, as well as the fact, that programs aired on public television stations are free from Governmental interference of control.

201. In the Accuracy in Media case, the CPB recognized the unworkability of the "objectivity and balance" standard, arguing in its brief to the court that it could not serve as a substantive standard because "'objectivity and balance' does not meet constitutional muster under the Court's decisions." Brief for Intervenor Corporation for Public Broadcasting at 24, Accuracy in Media, Inc. v. FCC, 521 F.2d 288 (D.C. Cir. 1975) (No. 74-1028), cert. denied, 425 U.S. 934 (1976). **In 1986, responding to criticism and political pressure from congressional conservatives, the CPB requested proposals from 100 social scientists to conduct a content analysis of PBS's programming in terms of "objectivity and balance." CPB Will Not Pursue Study, PR NEWSWIRE, Mar. 9, 1987, available in LEXIS, News Library, Arcnws File. After reviewing the submitted proposals, the CPB board decided not to perform this study, finding that none of the proposals were able to define "objectivity and balance" or to suggest how that standard could be applied to the CPB-funded programs. Id.; No Objectivity Study for Public TV, UPI REGIONAL NEWS, Mar. 6, 1987, available in LEXIS, News Library, Arcnws File. In April 1987, PBS conducted its own analysis and determined that "objectivity and balance" was not a definable standard by which to evaluate programming, and that any attempt to do so "could have a chilling effect on the first amendment rights of public television producers and broadcasters." PUBLIC BROADCASTING SERV., REPORT OF THE SPECIAL COMMrTEE ON PROGRAM POLICIES AND PROCEDURES, 3 App. at 8 (1987); see also supra note 109 (discussing 1988 congressional consideration of a proposed requirement that PBS stations evaluate programming for 'objectivity and balance" and rejection of that proposal because of foreseeable chilling effect).**

109. …In 1988, the House Subcom mittee on Telecommunications and Finance considered and rejected an amendment that would have required each public broadcasting station to establish its own "objectivity and balance review board." In arguing against the amendment, Representative Al Swift (D-Wash.) contended that it would create "a censorship board under the guise of fairness." Storm Brewing on Hill over CPB Reauthorization, BROADCASTING, July 18, 1988, at 66.

173. In the past, PBS interpreted the original "objectivity and balance" provision to be identical to the standard set forth in the Fairness Doctrine. See Note, Fairer Than Fair, supra note 80, at 655-66.

174. Id. at 657 (demonstrating that FCC rulings, memoranda, and regulations concerning the Fairness Doctrine never included any reference to "objectivity"). But see CBS v. Democratic Nat'l Comm., 412 U.S. 94, 117 (1973) ("[T]he initial ... responsibility for fairness, balance, and *objectivity* rests with the licensee.") (emphasis added).

The two cited cases – *Cmty. Serv. Broad. of Mid-Am., Inc. v. FCC*, 593 F.2d 1102, 1117–18 (D.C. Cir. 1978) (*en banc*) and *Accuracy in Media, Inc. v. FCC, 521 F.2d 288 (D.C. Cir. 1975), cert denied, 425 U.S. 934 (1976)* – to which the other *amicus* briefs ALSO do not cite – contain critical legislative history pertaining to the §396(g)(1)(A) requirement of "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature", reflecting that responsibility of enforcement, rests with CPB and Congress.

At issue in *Accuracy in Media* were two complaints filed with FCC alleging violations of Fairness Doctrine & §396(g)(1)(A). The D.C. Court of Appeals ruled that the FCC had jurisdiction over the Fairness Doctrine, but not over §396(g)(1)(A), whose enforcement rested with CPB, to which it was directed, and to Congress. Its concluding words, reflecting this, were

> "We leave the interpretation of this hortatory language ["strict adherence to objectivity and balance in all programs or series of programs of a controversial nature"] to the Directors of the Corporation and to Congress in its supervisory capacity. We hold today only that the FCC has no function in this scheme of accountability established by §396(g)(1)(A) and the 1967 Act in general other than that assigned to it by the Fairness Doctrine. Therefore, we deny the petition for review and affirm the Commission's decision rejecting jurisdiction over the Corporation for Public Broadcasting."

Its footnotes with legislative history from 1967 included its footnote 31:

> fn. 31 "Senator Cotton explained Congressional oversight: If this bill becomes law . . . and if, as time goes on, we have occasion to feel that there is slanting, a bias, or an injustice, we instantly and immediately can do something about it. First, we can

make very uncomfortable, and give a very unhappy experience to, the directors of the Corporation. Second, we can shut down some of their activities in the Appropriations Committee and in the appropriating process of Congress . . . . The Corporation is much more readily accessible . . . to the Congress, if it is desired to correct any injustice or bias which might appear."... Senator Pastore rebutted any inference of Corporation lack of accountability: The whole responsibility here under this law is to the Congress of the United States . . . . (W)e don't have to repeat the appropriation if we feel this is a failure. This is all subject to the scrutiny of the Congress of the United States, and that is the point I want to leave here. Senate Hearings…."

*Accuracy in Media, Inc. v. FCC & USA* -- intervenors included CPB and PBS
*521 F.2d 288 (D.C. Cir. 1975)*

Held that while FCC had jurisdiction over the Fairness Doctrine, it had no jurisdiction over §396(g)(1)(A), which rested with CPB & Congress

"We leave the interpretation of this hortatory language to the Directors of the Corporation and to Congress in its supervisory capacity. We hold today only that the FCC has no function in this scheme of accountability established by §396(g)(1)(A) and the 1967 Act in general other than that assigned to it by the Fairness Doctrine. Therefore, we deny the petition for review and affirm the Commission's decision rejecting jurisdiction over the Corporation for Public Broadcasting."

It analysis of statute included: "Numerous statutory safeguards were created to insure against partisan abuses.[fn28] Ultimately, Congress may show its disapproval of any activity of the Corporation through the appropriation process.[fn29] This supervision of CPB through its funding is buttressed by an annual reporting requirement.[fn30] Through these statutory requirements and control over the "purse-strings," Congress reserved for itself the oversight responsibility for the Corporation.[fn31]

A further element of this carefully balanced framework of regulation is the accountability of the local noncommercial licensees under established FCC practice, including the Fairness Doctrine in particular. This existing system of accountability was clearly recognized in the 1967 legislative debates as a crucial check on the power of the CPB…[fn31]"

Fn. 31 "Senator Cotton explained Congressional oversight: If this bill becomes law . . . and if, as time goes on, we have occasion to feel that there is slanting, a bias, or an injustice, we instantly and immediately can do something about it. First, we can make very uncomfortable, and give a very unhappy experience to, the directors of the Corporation. Second, we can shut down some of their activities in the Appropriations Committee and in the appropriating process of Congress . . . . The Corporation is much more readily accessible . . . to the Congress, if it is desired to correct any injustice or bias which might appear." 113 Cong.Rec. 13003 (1967). Senator Pastore rebutted any inference of Corporation lack of accountability: The whole responsibility here under this law is to the Congress of the United States . . . . (W)e don't have to repeat the appropriation if we feel this is a failure. This is all subject to the scrutiny of the Congress of the United States, and that is the point I want to leave here. Senate Hearings, *supra* note 19 at 123."

Fn. 32: "113 Cong. Rec. 26384 (1967) (emphasis added). See also Hearings on H.R. 6736 & S. 1160 Before the House Comm. on Interstate and Foreign Commerce, 90th Cong., 1st Sess. 188, 221 (1967): …Reliance on the Fairness Doctrine as one element of the CPB regulatory scheme is evident in the following exchange between Senator Thurmond and Senator Pastore: Mr. THURMOND. . . . (W)ould the fairness doctrine promulgated by the Federal Communications Commission provide for the airing of philosophies or ideas contrary to those which may be expressed in programs prepared by the Corporation? Mr. PASTORE. Well, the licensee who accepts the program is subject to the Communications Act, and the fairness doctrine thus applies . . . . Mr. THURMOND. Would the time be offered free of charge, as is now required under the fairness doctrine to give the opposing view?
Mr. PASTORE. Absolutely. If anyone feels he is offended under the fairness doctrine, he can appeal to the FCC and he will receive the same privileges and the same courtesies which he receives under commercial television."

IMPORTANT with respect to FAIRNESS DOCTRINE

Fn. 32: … …<u>Reliance on the Fairness Doctrine as one element of the CPB regulatory scheme is evident in the following exchange between Senator Thurmond and Senator Pastore</u>: Mr. THURMOND. . . . (W)ould the fairness doctrine promulgated by the Federal Communications Commission provide for the airing of philosophies or ideas contrary to those which may be expressed in programs prepared by the Corporation? Mr. PASTORE. Well, the licensee who accepts the program is subject to the Communications Act, and the fairness doctrine thus applies . . . . Mr. THURMOND. Would the time be offered free of charge, as is now required under the fairness doctrine to give the opposing view?
Mr. PASTORE. Absolutely. If anyone feels he is offended under the fairness doctrine, he can appeal to the FCC and he will receive the same privileges and the same courtesies which he receives under commercial television."

With the exception of the ACLU amicus brief, none of them make ANY reference to the mandatory provision of §396(g)(1)(A) requiring "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature". And none of them, including the ACLU brief, furnish any history of oversight and enforcement by CPB and Congress of that provision.

The sole reference in the ACLU's *amicus* brief to §396(g)(1)(A) requiring "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature" is stowed in a footnote, its fn. 3, reading:

The immediately following paragraph of the brief cites to Judge Moss' continuing text of the brief then reads:

> "Congress's determination to prevent government meddling in the selection of programming for public broadcasting is reflected everywhere in the Act's text, as well as its "elaborate structure," which 'operates to insulate local stations from governmental interference.' *League of Women Voters of Cal.*, 468 U.S. at 388. Indeed, the 'unifying theme of the PBA's statutory provisions is that they substantially reduce the risk of governmental interference with the editorial judgments of local stations without restricting those stations' ability to speak on matters of public concern.' *Corp. for Pub. Broad. v. Trump*, No. CV 25-1305 (RDM), 2025 WL 1617191, at *4 (D.D.C. June 8, 2025) (quoting *League of Women Voters of Cal.*, 468 U.S. at 390 (cleaned up)).
>
> 'Throughout the legislative process, and in the legislation itself, Congress made clear that it intended that the Board of Directors perform its duties outside the government and without government or political influence.' *Id*. at *2 (citation omitted). Congress expressly legislated that "no 'department, agency, officer, or employee of the United States' may 'exercise any direction, supervision, or control over the content or distribution of public telecommunications programs and services.'' *Id*. at *2 (quoting 47 U.S.C. § 398(c)). Instead, 'the ultimate decision as to whether an available program is broadcast is left to the local stations, which CPB is foreclosed from owning or operating under the statute." *Cmty.-Serv. Broad. of Mid-Am*, 593 F.2d at 1109."

Actually Judge Moss's decision does not quote *League of Women Voters of Cal.* until page 7.

Decision's p. 5 -- fn. 1

> "The CPB is also a 'designated Federal entity' pursuant to the Inspector General Act, 5 U.S.C. §415(a)(1)(A). Accordingly, the CPB has an Inspector General who conducts 'independent audits, evaluations, and investigations' and reports findings 'to Congress and the public.' See Office of the Inspector General, Overview, Corporation for Public Broadcasting, [https://cpboig.oversight.gov/what-we-do/overview](https://cpboig.oversight.gov/what-we-do/overview)."

p. 18: "Framed in that manner, Plaintiffs' argument barely gets off the ground. To start, § 396(c)(7) does not expressly discuss removal, it discusses forfeiture of membership. But beyond that, it is difficult to fathom that Congress intended to provide the members of the Corporation's Board with essentially irrevocable tenure; in cases that are sufficiently egregious, even the President, members of Congress, and Article III judges can be removed from office under the appropriate procedures. Yet, if Plaintiffs' reading of § 396(c)(7) were correct, that provision of the PBA would implicitly create an immunity from removal, even when, for example, a director "[h]as been convicted of a felony," § 29-406.08(c)(2). See generally D.C. Code § 29-406.08(b), (c). The Court is unprepared to endorse that extraordinary reading of a provision designed to ensure attendance at Board meetings.

CPB's April 29, 2025 memo

p. 11: The D.C. Circuit has explicitly recognized CPB's independence and non government-entity status in affirming a DC District Opinion which found that 28 U.S.C. 1361 (the Mandamus Act) did not apply to CPB: CPB and PBS are not agencies of the United States and the members of the CPB Board of Directors are not Officers of the United States. [47 USC 396(b)] specifically provides that CPB 'will not be an agency or establishment of the United States Government. Network Project v. Corp. for Pub. Broad., 398 F. Supp. 1332, 1339 (D.D.C. 1975), aff'd in relevant part, 561 F.2d 963, 976 (D.C. Cir. 1977). See also Community-Service Broadcasting of Mid-America, Inc. v. Fed. Communications Comm'n¸593 F.2d 1102, 1108-11 (D.C. Cir. 1978) (describing the CPB's founding and purpose, and quoting congressional reporting related to its independence being a key component of CPB);

p. 12 Indeed, the D.C. Circuit has found that the Federal Communications Commission, an executive agency, has no jurisdiction over the CPB: "any FCC jurisdiction over the CPB would constitute a radical extension of the FCC's basic jurisdictional grant." Accuracy in Media, Inc. v. F.C.C., 521 F.2d 288, 293 (D.C. Cir. 1975). As the DC Circuit noted in Accuracy in Media, "Section 398 [47 USC 398] expresses the clear intent of Congress that there shall be no direct jurisdiction of the FCC over the Corporation." Id. at 292 (emphasis added). "Congress desired to establish a program funding agency which would be free from governmental influence or control in its operations." Id. at 293. And the Supreme Court has even recognized the CPB's independent status. In FCC v. League of Women Voters, 468 U.S. 364 (1984), the Supreme Court relied on the statutory independence of the CPB to invalidate a prior version of 47 U.S.C. § 399.

p. 16 The Executive Office of the President, the White House Presidential Personnel Office, and the OMB possess no authority over CPB either. See, e.g., Accuracy in Media, Inc. v. F.C.C., 521 F.2d 288, 293 (D.C. Cir. 1975) (finding FCC has no jurisdiction over CPB).

p. 17 See also Accuracy in Media, Inc. v. F.C.C., 521 F.2d 288, 292 (D.C. Cir. 1975) (expressly finding that FCC had no jurisdiction over CPB).

pp. 23-24 The statute creating CPB specifically states that "it is in the public interest to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes." 47 U.S.C.A. § 396(a)(1). The statute also states that CPB "will not be an agency or establishment of the United States Government" and "should be created" as "a private corporation" "to facilitate the development of public telecommunications and to afford maximum protection from extraneous interference and control." 47 U.S.C.A. §§ 396(a)(10), (b) (emphasis added). Congress, therefore, intended that CPB "would be free from governmental influence or control in its operations. Yet, the lawmakers feared that such complete autonomy might lead to biases and abuses of its own. The unique position of [CPB] is the synthesis of these competing influences." Accuracy in Media, Inc. v. F.C.C., 521 F.2d 288, 293 (D.C. Cir. 1975). "Reference to the legislative history of the 1967 Act shows a deep concern that governmental regulation or control over the Corporation might turn the CPB into a Government spokesman. Congress thus sought to insulate CPB by removing its 'programming activity from governmental supervision.'" Id. (citing H.R.Rep.No.572, 90th Cong., 1st Sess., at 19 (1967), U.S.Cong. & Admin.News 1967, pp. 1772, 1810). As a result of this deep concern, as noted above, Congress explicitly stated that: Nothing [in the acts creating CPB] shall be deemed … to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over public telecommunications, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation. 47 U.S.C.A. § 398 (emphasis added). Additionally, CPB's board cannot have more than five of its nine members from the same political party. 47 U.S.C.A. § 396(c)(1). [CPB] was established as nonprofit and non-political in nature…. Numerous statutory safeguards were created to insure against partisan abuses. Ultimately, Congress may show its disapproval of any activity of the Corporation through the appropriation process. This supervision of CPB through its funding is buttressed by an annual reporting requirement. Through these statutory requirements and control over the 'purse-strings,' Congress reserved for itself the oversight responsibility for the Corporation. Accuracy in Media, 521 F.2d at 294 (citations omitted). CPB, therefore, "is accountable to Congress and the public." Cmty.-Serv. Broad. of Mid-Am., Inc. v. F.C.C., 593 F.2d 1102, 1108–09 (D.C. Cir. 1978). The public, therefore, has an interest in the growth and development of public broadcasting. See 47 U.S.C.A. § 396(a)(1). That interest includes the CPB, as the steward of that growth and development, being free from government influence or control in its operations, lest CPB become a government spokesman. See 47 U.S.C.A. §§ 396(a)(10), 398; Accuracy in Media, 521 F.2d at 293. In other words, the public has an interest in CPB being accountable to the public, rather than the government. See Cmty.-Serv. Broad. of Mid-Am, 593 F.2d at 1108–09. Moreover, as discussed above, Defendants' actions sought to be enjoined are inconsistent with the statutory establishment of CPB as a private corporation accountable to Congress, and are therefore unlawful. See 47 U.S.C.A. §§ 396(a)(10), (b); Accuracy in Media, 521 F.2d at 293; Cmty.-Serv. Broad. of Mid-Am, 593 F.2d at 1108–09.

Moreover, as discussed above, Defendants' actions sought to be enjoined are inconsistent with the statutory establishment of CPB as a private corporation accountable to Congress, and are therefore unlawful. See 47 U.S.C.A. §§ 396(a)(10), (b); Accuracy in Media, 521 F.2d at 293; Cmty.-Serv. Broad. of Mid-Am, 593 F.2d at 1108–09."

The Act's legislative history, too, "clearly indicates that Congress was concerned with 'assur[ing] complete freedom from any Federal Government influence.'" League of Women Voters of Cal., 468 U.S. at 394 (citation omitted). When the Act was passed, it was generally "recognized that [Federal financial] assistance should in no way involve the Government in programming or program judgments," and legislators "state[d] in the strongest terms possible that it is [their] intention that local stations be absolutely free to determine for themselves what they should or 14 Case 1:25-cv-01722-RDM Document 16-1 Filed 06/20/25 Page 20 of 22 should not broadcast." Corp. for Pub. Broad., 2025 WL 1617191, at *3 (internal quotation marks omitted) (quoting S. Rep. No. 222, at 4, 11 (1967)).

Newman – May 6 -doesn't cite Cmty-Serv, at all -- & its citations to are defensive:

pp. 21-22: Plaintiffs cite Supreme Court and D.C. Circuit precedents, but those cases actually support the conclusion that the CPB is governmental for constitutional purposes. For example, in FCC v. League of Women Voters, 468 U.S. 364 (1984), the Supreme Court held that a law restricting public broadcasting stations that received CPB grants from engaging in editorializing violated the First Amendment. Id. at 366, 402. Plaintiffs point to language in the Court's opinion noting the objective of "assur[ing] the maximum freedom [of local stations] from interference with or control of program content," id. at 389 (emphasis added) (second alteration in original), and "that Congress was concerned with assur[ing] complete freedom from any Federal Government influence," id. at 394. But the Supreme Court referred to freedom of government influence over public broadcast stations, explaining that "[c]onsistently with this concern, Congress refused to create any federally 7Since cabinet members such as the Secretary of Health and Human Services are classic principal officers subject to at-will removal by the President, see Seila Law, 591 U.S. at 215, the significant authority given to the Secretary of Health and Human services necessarily invokes Presidential supervision of the CPB. 21 Case 1:25-cv-01305-RDM Document 11 Filed 05/06/25 Page 29 of 38 owned stations and it expressly forbid the CPB to own or operate any television or radio stations." Id. at 394 (citing 47 U.S.C. § 396(g)(3)). That is, because the CPB itself is subject to significant federal government influence through the Act, forbidding CPB from owning broadcasting stations is a way to insulate those stations from federal influence. Therefore, the Supreme Court's analysis underscores that the CPB is governmental. Plaintiffs also cite a D.C. Circuit case relying on § 398(a) to conclude that the FCC does not have general jurisdiction to regulate the CPB's compliance with the Act. Accuracy in Media, Inc. v. FCC, 521 F.2d 288, 292-93 (D.C. Cir. 1975). If anything, the fact that the CPB is not regulated by the FCC in a way that a private media company would be, so that the CPB can better pursue governmental objectives, suggests that the CPB is governmental, not a purely private entity. And the D.C. Circuit acknowledged that despite the lack of general FCC jurisdiction, the federal government exercised substantial influence of the CPB, noting that the Act imposes many "statutory requirements" on CPB's operations and that "the appropriations process" provides a way for the government to influence CPB's activities." Id. at 294.

May 9, CPB's reply pp. 9, 15 no mention of FCC v. League

p. 8-9: "the legislative history of the PBA, which reflected Congress's intention that CPB "would be free from governmental influence or control in its operations" because of its "concern that governmental regulation or control over the Corporation might turn the CPB into a Government spokesman." Accuracy in Media, Inc. v. F.C.C., 521 F.2d 288, 293 (D.C. Cir. 1975) (citing H.R.Rep.No.572, 90th Cong., 1st Sess., at 19 (1967), U.S.Cong. & Admin.News 1967, pp. 1772, 1810).

CPB, therefore, is not a governmental entity.

pp. 14-15

To the extent that CPB could even be considered a governmental entity, it is not wielding executive power, but legislative power. The legislative branch encompasses various entities and offices beyond Congress. The Office of the Architect of the Capitol, the United States Botanic Garden, the Government Accountability Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and "any other agency, entity, office, or commission established in the legislative branch" are part of the legislative branch. 5 U.S.C. § 13101(11). [CPB] was established as nonprofit and non-political in nature…. Numerous statutory safeguards were created to insure against partisan 14 Case 1:25-cv-01305-RDM Document 12 Filed 05/09/25 Page 20 of 32 abuses. Ultimately, Congress may show its disapproval of any activity of the Corporation through the appropriation process. This supervision of CPB through its funding is buttressed by an annual reporting requirement. Through these statutory requirements and control over the 'purse-strings,' Congress reserved for itself the oversight responsibility for the Corporation. Accuracy in Media, 521 F.2d at 294 (citations omitted) (emphasis added). CPB, therefore, "is accountable to Congress and the public." Cmty.-Serv. Broad. of Mid Am., Inc. v. F.C.C., 593 F.2d 1102, 1108–09 (D.C. Cir. 1978). Since CPB would at most be a part of the legislative branch, the President would have no "incidental" removal power to remove CPB's directors. See Myers, 272 U.S. at 126; Severino, 71 F.4th at 1044. Further, it would violate the separation of powers for the President to be able to remove a legislative officer, i.e. a CPB Board member, when "Congress reserved for itself the oversight responsibility for the Corporation." See Accuracy in Media, 521 F.2d at 294. Thus, even if a governmental entity, the President has no removal power over CPB's Board members.

An additional citation to Cmt-Serv. Broad of Mid-Am, follows in Nor are
These two cases – not cited in any of the amicus curiae briefs, not digital content, not 22 states, not Reporters' Committee for Freedom of the Press/Independent NPR member stations;

Indeed, their two complaints do not even refer to the March 26th hearing, let alone identify the findings of fact and conclusions of law that a constitutionally-functioning subcommittee and

Thus, the *amicus curaie* brief of Digital Content Next, The Intercept Media, *Pro Publica*, Radio Television Digital News Association (NPR #20-1):

p. 1 “speech the President dislikes”; “targeting of disfavored speech”; “NPR, PBS, and their member stations play a vital role in the nation’s media landscape,... providing fact-based reporting on national news…”; p. 3 “target news organizations…based on his dislike of their speech”; p. 6 “The President does not want NPR, PBS, and their member stations to broadcast the content of their choosing – he wants them to broadcast content *he* prefers”; p. 6-7 “perceives as ‘Biased Media’; “claiming falsely that ‘NPR and PBS have fueled partisanship and left-wing propaganda.’”; “disfavored reporting”; p. 8 “targets Plaintiffs based on the President’s ‘factual mistake’ of characterizing Plaintiffs as ‘radical, woke propagand[ists],’ …when in fact they are fact-based, nonpartisan broadcasters”; pp. 13-14: “based on their perceived viewpoints.”

**Digital Content Next, The Intercept Media, Pro Publica, Radio Television Digital News Association**

p. 1 “desire to suppress speech the President dislikes”; “targeting of disfavored speech”;

“NPR, PBS, and their member stations play a vital role in the nation’s media landscape,... providing fact-based reporting on national news…”

pp. 1-2: “If the President can target NPR, PBS, and their member stations with impunity, other media organizations may well be next.”

p. 3 “target news organizations…based on his dislike of their speech”

p. 6 “The President does not want NPR, PBS, and their member stations to broadcast the content of their choosing – he wants them to broadcast content *he* prefers.”

p. 6-7 "The Order makes its target clear from the start: what it perceives as 'Biased Media."…The White House 'Fact Sheet'…claiming falsely that 'NPR and PBS have fueled partisanship and left-sing propaganda.'…disfavored reporting"

p. 8 "That the Order targets Plaintiffs based on the President's 'factual mistake' of characterizing Plaintiffs as 'radical, woke propagand[ists],' …when in fact they are fact-based, nonpartisan broadcasters"

pp. 13-14: "…the Order flows from the President's desire to restrict the speech and editorial discretion of NPR, PBS, and their member stations based on their perceived viewpoints…."

**Amicus Curiae Brief of 22 AG's**

p. 18-19 "Finally, Plaintiffs serve an important role in distributing information regarding state and local politics and voting rights. Broad access to information and diverse opinions is nowhere more critical than in the electoral context….But independent reporting on state and local politics has been on decline for years.fn49 Public broadcasting, however, continues to fill this need by showcasing state and local politics in All Amici States. Id. This includes some of the only content informing voters on the actions taken by their elected officials. *See id*. at 3. And in 80% of states, NPR provides voter guides to assist voters in understanding the issues they consider in the voting booth. *See id*. at 8…"

fn49 Corp. for Pub. Broad. & Edison Research, State Government Coverage in Public Media: Edison Media Research Survey 1 (2021), https://cpb.org/sites/default/files/CPB_SCCS_2021_FINAL.pdf.

[Spotlight | Survey Captures Public Media Coverage of State Government in all 50 States | CPB]

*[State Government Coverage in Public Media]*

**[ACLU amicus brief -- NPR] p. 14: fn. 3 [ACLU amicus brief -- PBS] p. 13: fn. 3:**

p. 1"This case is about whether the President may defund NPR explicitly because he does not like its journalistic and editorial choices…"

"As justification, the Executive Order accuses NPR of providing 'biased and partisan news coverage.'"

p. 2 ""disagreement with NPR's programming"; "disagrees with [NPR's] views";

p. 5 "NPR's viewpoint, which President Trump openly despises";

p. 6 “President Trump considers its news coverage to be ‘biased and partisan’”; President Trump’s personal disapproval of NPR’s programming; “The Executive Order attempts to cloak its viewpoint animus by accusing NPR of leftwing bias, suggesting that it is serving as a corrective for distorted media…”

p. 8 “disfavored expression”;

p. 14-15:

fn. 3 In addition to authorizing CPB to facilitate “programs of high quality, diversity, creativity, excellence, and innovation . . . obtained from diverse sources,” the Act also purports to require CPB’s “strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.” 47 U.S.C. § 396(g)(1)(A). The D.C. Circuit, sitting en banc, has already determined that the “objectivity and balance” language “is applicable only to the CPB itself, and even there only to a narrower category of programming dealing with controversial issues.” Cmty. Serv. Broad. of Mid-Am., Inc. v. FCC, 593 F.2d 1102, 1117–18 (D.C. Cir. 1978) (en banc). See also Accuracy in Media, Inc. v. FCC, 521 F.2d 288 (1975) (upholding FCC’s determination that it lacked authority to enforce the “objectivity and balance” language in part because any other conclusion would raise substantial constitutional questions). If the Act were instead meant to impose this requirement on local broadcasters—or, perhaps worse yet, creators and distributors of broadcast content— ‘then it is clear that we have moved . . . to [the realm] of regulation aimed at suppressing free speech, which may be justified only by reference to the most compelling government interests.’ *Cmty.-Serv. Broad. of Mid-Am*, 593 F.2d at 1122. Thus, that provision of the Act cannot justify any viewpoint-based discrimination against Plaintiffs here.

Congress’s determination to prevent government meddling in the selection of programming for public broadcasting is reflected everywhere in the Act’s text, as well as its ‘elaborate structure,’ which ‘operates to insulate local stations from governmental interference.’ *League of Women Voters of Cal.*, 468 U.S. at 388. Indeed, the ‘unifying theme of the PBA’s statutory provisions is that they substantially reduce the risk of governmental interference with the editorial judgments of local stations without restricting those stations’ ability to speak on matters of public concern.’ *Corp. for Pub. Broad. v. Trump*, No. CV 25-1305 (RDM), 2025 WL 1617191, at *4 (D.D.C. June 8, 2025) (cleaned up) (quoting *League of Women Voters of Cal.*, 468 U.S. at 390).

‘Throughout the legislative process, and in the legislation itself, Congress made clear that it intended that the Board of Directors perform its duties outside the government and without government or political influence.’ *Id*. at *2 (citation omitted). Congress expressly legislated that ‘no ‘department, agency, officer, or employee of the United States’ may ‘exercise any direction, supervision, or control over the content or distribution of public telecommunications programs and services.’’ *Id.* at *2 (quoting 47 U.S.C. § 398(c)). Instead, ‘the ultimate decision as to whether an available program is broadcast is left to the local stations, which CPB is foreclosed from owning or operating under the statute.’ *Cmty.-Serv. Broad. of Mid-Am*, 593 F.2d at 1109. The Act’s legislative history, too, ‘clearly indicates that Congress was concerned with ‘assur[ing] complete freedom from any Federal Government influence.’’ *League of Women Voters of Cal*., 468 U.S. at 394 (citation omitted).”

(1) Amicus Cur passage of the Public Broadcasting Act of 1967, with its §396(g)(1)(A) provision "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature" was against the backdrop of the Fairness Doctrine, applicable to local member stations, enforceable by the FCC;[7]

(2) That the §396(g)(1)(A) provision of "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature" includes, by the word "objectivity", "inquiry into the factual accuracy of programming" – not explicit in the Fairness Doctrine. *Accuracy in Media*, at . "The elevated standards of objectivity and balance were designed to forestall the use of federal funds for partisan expression", *Community Service Broadcasting*, at 1140.

. – of Judge Harold Levanthal (at 1135- ), to which Judge Edward Tamm joined, and of the largely concurring dissenting opinion of Judge George MacKinnon, to which Judge Roger Robb joined – making the referred-to "*en banc*" a 5-4 Circuit split. Clear from that case and from the earlier three-judge decision in *Accuracy in Media* case, in which Justice Levanthal had participated, is that:

Inexplicably, the 1978 sharply divided and consequential D.C. Circuit Court's decisions in *Community Service Broadcasting* were not the subject of a cert petition to the U.S. Supreme Court. Nor does it appear that the FCC's 1987 repeal of the Fairness Doctrine, whose constitutionality the Supreme Court had upheld in 1969, was ever the subject of judicial review of the FCC's determination of likely unconstitutionality – at least it hadn't been up to 2011, when the Congressional Research Service, issued a report: "*Fairness Doctrine: History and Constitutional Issues*", stating:

> "No reviewing court has examined the validity of the agency's findings on the constitutional issue. Therefore, whether a newly instituted Fairness Doctrine would survive constitutional scrutiny remains an open question." (summary)

iae -- America's Public Television Stations (APTS) – PBS Document #18

---

[7] "A further element of this carefully balanced framework of regulation [of the Act] is the accountability of the local noncommercial licensees under established FCC practice, including the Fairness Doctrine in particular. This existing system of accountability was clearly recognized in the 1967 legislative debates…[fn. 32]

> "[fn 32]: …Reliance on the Fairness Doctrine as one element of the CPB regulatory scheme is evident…" *Accuracy in Media*, at .