

# **The Free State Foundation**

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## **Why Public Broadcasting Isn't a Model for Newspapers**

**by**

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Last March, Sen. Ben Cardin, a Maryland Democrat, introduced “The Newspaper Revitalization Act” (S. 673), a bill he says is intended to rejuvenate America’s financially troubled newspapers. Citing the bankruptcy filing of the Tribune Company and the growing number of threatened or actual cessations of operation by such venerable daily newspapers as the Seattle Post-Intelligencer, the Rocky Mountain News, and the San Francisco Chronicle, the Senator’s press release described the legislation as “an effort to help the faltering industry survive.”<sup>1</sup> At a Senate hearing shortly thereafter, Democrat Sen. John D. Rockefeller, IV of West Virginia and several witnesses voiced concern that the collapse of the American newspaper industry could also bring about the death of independent professional journalism, “a pillar of our democracy and a watchdog the public relies on.”<sup>2</sup>

Until recently, the national preoccupation with health care reform and government bailouts of the troubled financial service and auto industries greatly surpassed public attention on Congressional efforts to address the newspaper industry’s mounting financial

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difficulties. After introducing a companion bill (H.R. 3602) in the House on September 17, Rep. Carolyn Maloney, a New York Democrat who chairs the Joint Economic Committee, held a committee hearing on the future of newspapers. That hearing might also have attracted little notice if President Obama had not weighed in on the issue just a few days earlier. In an Oval Office interview with editors of the Pittsburgh Post-Gazette and the Toledo Blade, the President confessed to being a “newspaper junkie,” identified the preservation of journalistic integrity and fact-based investigative reporting as “absolutely critical to the health of our democracy,” and indicated his willingness to consider newspaper relief proposals.<sup>3</sup> His remarks raised newspaper revitalization’s public profile.

At the Joint Committee hearing Rep. Maloney insisted that H.R.3602 is not another government bailout.<sup>4</sup> To a certain extent, that characterization is accurate. Rather than offering newspapers a direct federal subsidy, the legislation would effect an indirect rescue by amending Section 501(c)(3) of the Internal Revenue Code to grant certain “qualified” newspaper corporations the option of operating as non-profit “educational” entities. As non-profit entities, such newspaper corporations’ income from subscription and advertising revenue would be tax-exempt, and donors’ charitable contributions to support the paper would be tax-deductible.

At first blush, granting newspapers a form of tax relief and providing an incentive for voluntary charitable support may seem a more prudent course than providing a direct infusion of taxpayers’ money. But even though this legislative solution might differ from previous bailouts in form, the activity on the Hill raises some constitutional concerns. As the recipients of Troubled Asset Relief Program (“TARP”) funds<sup>5</sup> and auto industry bailouts quickly learned, government money always comes with strings attached, a result that occurs not just with the provision of direct funds, but also with the grant of preferential status.

When the recipient of federal largesse is a newspaper, those strings can easily become tied to content and editorial freedom. As a 501(c)(3) entity, a newspaper may not endorse candidates for public office or make certain kinds of campaign-related statements. Such restrictions certainly impede one the most important traditional editorial functions of the press. In addition, the bill links a newspaper’s eligibility for non-profit status to publication of specific content: qualified newspapers must contain “local, national, and international news stories of interest to the general public.” These content-related restrictions and strings raise serious First Amendment concerns.

The bill also poses practical problems that could impede newspapers’ efforts to generate revenues sufficient to alleviate their current financial distress. Tax savings on revenues from subscriptions and advertising may have only a modest impact on newspapers’ bottom line, in that those two sources of income have been declining steadily and show little chance of recovery in the near future. Because non-profit organizations’ revenues from activities unrelated to their exempt missions are not immune from taxation, the rescue plan actually may deter a non-profit newspaper from pursuing new ventures or business models that ultimately could provide the key to survival. Ironically, the legislation also looks to

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charitable contributions as a source of new revenues at a time when the value of major foundation endowments has plunged and charitable giving at all levels has decreased dramatically.

In the discussion surrounding newspaper revitalization, another even more troubling idea has arisen – that non-profit newspapers should emulate public broadcasting or even become part of an expanded federally supported "public media" system. At the Joint Economic Committee Hearing on the Future of Journalism, for example, Professor Paul Starr of the Princeton University Woodrow Wilson School of Public and International Affairs observed that direct federal subsidization of newspapers might become acceptable by following public broadcasting's model for insulating content from political manipulation.<sup>6</sup> Citing the breakdown of traditional distinctions between print and electronic media, Starr went even further, suggesting that "rather than create an entirely new structure, Congress might simply broaden the mandate of the one that exists."

Starr's suggestion would lead to even closer ties between government and newspapers than the current legislative proposal. As the author of The Creation of the Media, an acclaimed history of journalism and communications, Starr has reason to appreciate how freedom of expression and editorial independence over the centuries have suffered when the press is beholden to government. Thus, his suggestion that newspapers might receive direct federal subsidies within a federal funding structure expanded to include both broadcasting and newspapers is quite surprising.

The current U.S. funding structure for public broadcasting relies in principal part on the Corporation for Public Broadcasting ("CPB"), a private, non-profit corporation established by Congress to serve as a conduit for receiving congressionally appropriated funds and distributing them throughout the public broadcasting community in accordance with a precisely-drawn statutory formula.<sup>7</sup> Although CPB provides other services to the public broadcasting community such as conducting research and convening meetings of public television and radio stations, its principal functions are that of a fund administrator which Congress intended to serve as a structural "heat shield" for insulating public stations other content-producing entities from governmental or political pressure.<sup>8</sup>

Here are some constitutional, practical, and policy reasons why bringing a new class of non-profit newspapers under the umbrella of CPB or an expanded corporation for public media is a bad idea:

- The current public broadcasting structure provides only an imperfect shield from content-related governmental or political pressure. A review of CPB's appropriations history sadly reveals that the "heat shield's" strength is too often tested by periodic efforts to stall CPB's reauthorization, or administration and congressional threats to "zero out" or drastically reduce CPB's appropriation.<sup>9</sup> While public broadcasting has managed to survive such challenges in the past -- often thanks to support from

members of Congress whose grandchildren are fans of Elmo and Big Bird – public stations nevertheless sense some pressure.

- The money that CPB provides constitutes only a small fraction of the public broadcasting system's total revenues. While CPB distributed a total of \$400 million to the public broadcasting system in 2007, those funds represented only 13.7% of the public broadcasting system's total revenues.<sup>10</sup> Individual membership contributions (from thousands of “viewers like you”) made up the greatest percentage (24.4%) of system wide revenues, and a combination of non-federal sources including state and local government, colleges and universities, foundations, and business activities provided much of the rest.<sup>11</sup> A comparable share of CPB administered funds likely would fall far short of what would be necessary to sustain a large number of non-profit newspapers.
- Congressional efforts to ensure that public broadcasting funds are distributed fairly throughout the system have resulted in an extremely complex and rigid statutory formula, which makes distribution of funds cumbersome and often inefficient.<sup>12</sup> Adding a group of non-profit newspapers to the mix would only complicate the process and slow it down even more.
- Like the newspaper industry, the public broadcasting community is struggling to identify a mission suited to the Internet era and to adapt legacy broadcast operations and business models to new distribution platforms for media content. In an interview shortly after his recent election as Chairman of the CPB Board, Ernest Wilson, Dean of the University of Southern California's Annenberg School for Communication observed, “Even before the economic crisis, a lot of the stations were suffering from a business model that was no longer viable as it once was, especially on the television side.”<sup>13</sup> While Wilson is determined that public broadcasting can play an important role in filling in the gaps left by dying newspapers and shrinking news operations in commercial broadcasting, it is doubtful that CPB could take on the added burden of revitalizing America's newspapers.

The Washington-based debate over how to save America's newspapers predictably looks first to solutions emanating from the federal government and next to charity. While efforts of the non-profit group Pro Publica and similar initiatives deserve credit, innovative and promising market-based solutions should not be ignored. New business models, strategic partnerships, micropayment systems, and other ideas for monetizing on-line content receive much less of Capitol Hill's attention.

Before rushing to convert newspapers into dubious non-profit status, placing newspapers under an already stressed public broadcasting structure, or providing another federal bailout – all proposals that, inevitably would compromise newspapers' independence -- policymakers should have some faith in traditional American ingenuity and look for ways to encourage and ~~facilitate the newspaper industry's exploration and pursuit of creative market-based ideas and~~

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solutions that show promise. And, most importantly, the newspaper industry must step forward to do its part.

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<sup>1</sup> “Senator Cardin Introduces Bill That Would Allow American Newspapers to Operate as Non-Profits,” Cardin press release, May 24, 2009.

<sup>2</sup> Statement of Senator John D. Rockefeller, IV, May 6, 2009, “Hearing: The Future of Journalism”, United States Senate Committee on Commerce, Science, and Transportation, Subcommittee on Communications, Technology, and the Internet, Hearing on the Future of Journalism, May 6, 2009. *See also* Testimony of Alberto Ibarguen, President John S. and James L. Knight Foundation, and Statement of Steve Coll (former Managing Editor, Washington Post).

<sup>3</sup> Dave Murray, “Newspaper journalism gets words of praise; Print media’s role vital, Obama says,” Toledo Blade, September 20, 2009, <http://toledoblade.com/apps/pbcs.dll/article?AID=/20090220/NEWS16/909200326>.

<sup>4</sup> Reuters, “Taxes and laws could help U.S. newspapers-lawmaker,” September 24, 2009, <http://www.reuters.com/article/media/News/idUSN2445405420090924>, quoting Maloney: “We’re not talking about bailouts,” . . . “We are through with bailouts, but we should always talk about the best ways to have a tax and regulatory environment that will help businesses thrive and create jobs.”

<sup>5</sup> *See* Emergency Economic Stabilization Act of 2008, Pub Law 110-343, December 3, 2008.

<sup>6</sup> Statement of Paul Starr, Hearing before the Joint Economic Committee, “The Future of Newspapers: The Impact on the Economy and Democracy,” September 24, 2009, at 4.

<sup>7</sup> 47 U.S.C. § 396 (a) and (b).

<sup>8</sup> *See, e.g.*, Prepared Statement of Richard W. Carlson, President and Chief Executive Officer, Corporation for Public Broadcasting, 103d Cong. 2d Sess., Sept. 12, 1994 (explaining that one of CPB’s two original missions was “to serve as a ‘heat shield’ between the government, politics, and the public broadcasting system”).

<sup>9</sup> *See, e.g.*, “Pressler stocks up on ammunition,” Current, Feb. 5, 1995, [www.current.org/mo502a.html](http://www.current.org/mo502a.html) (discussion of anticipated hostile congressional scrutiny of CPB’s authorization),

<sup>10</sup> Corporation for Public Broadcasting Appropriation Request and Justification FY 2010 and FY 2012, at Appendix D. [http://www.cpb.org/aboutcpb/financials/appropriation/justification\\_10-12.pdf](http://www.cpb.org/aboutcpb/financials/appropriation/justification_10-12.pdf)

<sup>11</sup> *Id.*

<sup>12</sup> 47 U.S.C. § 396 (k).

<sup>13</sup> John Eggerton, “Q & A with CPB’s Ernest Wilson III,” Broadcasting & Cable, Sept. 17, 2009, [http://www.broadcastingcable.com/article/354476-Q\\_A\\_With\\_CPB\\_s\\_Ernest\\_Wilson\\_III.php](http://www.broadcastingcable.com/article/354476-Q_A_With_CPB_s_Ernest_Wilson_III.php)