

Office of the Attorney General
Washington, D. C. 20530

REC'D OCT 11 1979

October 11, 1979

Mr. Michael Davidson
Office of the Secretary
United States Senate
Washington, D. C. 20510

Dear Mr. Davidson:

In League of Women Voters of California, et al. v. Federal Communications Commission (C.D. Cal., No. CV 79-1562-MML(PX)), the plaintiffs challenge, on First and Fifth Amendment grounds, the constitutionality of Section 399(a) of the Public Broadcasting Act of 1967, 47 U.S.C. §399(a), which prohibits all public broadcasting stations from editorializing and supporting or opposing political candidates. I wish to inform you that the United States will not defend the constitutionality of the statute.

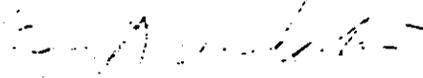
After careful consideration, we have concluded that Section 399(a) violates the First Amendment guarantees of freedom of speech and freedom of the press by restricting the ability of public broadcasting stations to comment on matters of public interest. While not every restriction on expression is necessarily unconstitutional, such restrictions must serve some compelling state interest. We have not been able to identify any compelling governmental interest served by Section 399(a) which would justify the statute's prior restraint on speech. Furthermore, even if the Department of Justice could fashion an argument that the statute serves a compelling government interest, the statute would still be constitutionally defective on grounds of overbreadth since public broadcasting stations receiving no federal funds are covered. Finally, we have concluded that there are less restrictive means to achieve the suggested purposes of the statute.

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The Department of Justice is, of course, fully mindful of its duty to support the laws enacted by Congress. Here, however, the Department has determined, after careful study and deliberation, that reasonable arguments cannot be advanced to defend the challenged statute. The Federal Communications Commission has informed us that it agrees that the statute cannot be defended successfully in its present form.

The Department has filed an Answer to Plaintiffs' Complaint to protect your interests should you decide to defend this suit, and the Court has established a briefing schedule. If the Department can be of further assistance to you in explicating the reasons for declining to defend this case or if you or your staff believe it would be helpful to discuss the options that you may wish to pursue, Thomas S. Martin, Deputy Assistant Attorney General, Civil Division, will be pleased to discuss the matter further. He can be reached at 633-3309.

Sincerely,



BENJAMIN R. CIVILETTI
Attorney General

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