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Turning the Watchdog into a Lapdog: Why the Proposed Newspaper Bailout is the Wrong Solution for a Failing Industry

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TURNING THE WATCHDOG INTO A LAPDOG: WHY THE PROPOSED NEWSPAPER BAILOUT IS THE WRONG SOLUTION FOR A FAILING INDUSTRY

ABSTRACT

Current economic conditions have hastened the decline of the American newspaper trade, creating an industry-wide crisis. Following decades of declining advertising revenue and circulation rates, the newspaper industry has plunged into a historic downturn. In search of salvation for the American newspaper, some legislators and scholars have called upon the government to bail out the newspaper industry. This Note will explore the decline of the American newspaper industry, and examine proposals for government intervention to revive America's newspapers. Although the industry crisis will not abate without action, this Note will conclude that governmental support would ultimately harm newspapers. Instead of reliance on a government bailout, this Note proposes that newspaper enterprises pursue intra-industry solutions to remedy the crisis.

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INTRODUCTION

There is trouble in the Fourth Estate.¹ Newspapers, a strong institution within the American free press, are failing. With declining advertising revenue and circulation, newspapers are struggling to operate and produce an economically viable product.² While the current economic climate has significantly contributed to the dire situation of newspapers, this is only the most recent blow to an ailing industry that has been worsening for decades.³ In the wake of this newspaper crisis, print media advocates have proposed government intervention to bail out the weakening industry.⁴ Plans to bail out the newspaper industry, including Senator Cardin's proposed Newspaper Revitalization Act,⁵ threaten the independence and quality of newspaper publications and undermine attempts to revive the industry.⁶ These misguided attempts to save the failing newspaper industry would instead ensure the death of independent, watchdog newspaper journalism.⁷ Salvation for newspapers is possible, but not through government intervention.⁸ The newspaper decline is multi-factorial and requires innovative solutions from inside the industry, not artificial support from the government.

This Note will examine the decline of the American newspaper industry in Part I, summarize the troubling history of government intervention in the newspaper industry in Part II, introduce recent proposals to bail out the newspaper industry in Part III, critically evaluate the detrimental consequences of a government bailout of the newspaper industry in Part IV, and propose alternative, intra-industry solutions to the newspaper crisis in Part V.

¹ See MARTIN A. LEE & NORMAN SOLOMON, UNRELIABLE SOURCES: A GUIDE TO DETECTING BIAS IN NEWS MEDIA 103 (Carol Publishing Group 1990) (describing the media as the "Fourth Estate" in the United States).

² See *infra* Part I (discussing the decline of the American newspaper industry).

³ See *infra* Part I (discussing the decline of the American newspaper industry).

⁴ See *infra* Part III (describing proposals for a government bailout of the newspaper industry).

⁵ S. 673, 111th Cong. (1st Sess. 2009).

⁶ See *infra* Part IV (addressing the negative effects of a government bailout).

⁷ See *infra* Part IV (addressing the negative effects of a government bailout).

⁸ See *infra* Part V (proposing alternative solutions to a government bailout of the newspaper industry).

I. THE DECLINE OF THE AMERICAN NEWSPAPER INDUSTRY

A. Decline of Newspapers

While the newspaper industry may have recently reached a historical low-point, the business has been on its downward path for quite some time. As early as 1977, Rupert Murdoch, then owner of the *New York Post*, described the newspaper business as “an industry under siege.”⁹ In fact, although the industry crisis has been exacerbated by the current economic climate, the industry has been in decline for two decades.¹⁰

A number of different indicators mark the slow decline of the newspaper. One such indicator, the number of daily newspapers available to readers in the United States, has shown steady erosion over time. In contrast to the 2,600 newspapers available in 1909,¹¹ the number of daily newspaper publications has consistently dropped, with 1,700 daily newspapers by 1987,¹² and only 1,422 daily newspapers in 2007.¹³

Likewise, newspaper readership has been steadily receding over time. In 1970, 77.6 percent of adults reported reading the daily newspaper; however, only 58.3 percent of adults reported newspaper readership in 1997.¹⁴ By 2004, the number of Americans reporting that they read the daily newspaper had further reduced to 54 percent.¹⁵

⁹ William H. Jones & Laird Anderson, *Press Concentration: Perhaps Fewer Than 2 Dozen Firms Will Own All Daily Papers by '90s*, WASH. POST, July 24, 1977, at G3 (discussing the challenges facing the newspaper industry).

¹⁰ See Richard Pérez-Peña, *Newspaper Circulation Falls by More than 10%*, N.Y. TIMES, Oct. 27, 2009, at B3 (describing the “two-decade erosion in newspaper circulation” and recent factors exacerbating the decline of the newspaper industry).

¹¹ See Bethany M. Burns, Comment, *Reforming the Newspaper Industry: Achieving First Amendment Goals of Diversity Through Structural Regulation*, 5 COMM.LAW CONSP. 61, 66 (1997) (stating the number of newspapers available in 1909).

¹² See *id.* (stating the number of newspapers available in 1987).

¹³ THE PROJECT FOR EXCELLENCE IN JOURNALISM & RICK EDMONDS, *THE STATE OF NEWS MEDIA 2009: AN ANNUAL REPORT ON AMERICAN JOURNALISM* (2009), http://www.stateofthemedial.org/2009/narrative_newspapers_audience.php (discussing the decline in the number of daily newspapers).

¹⁴ NEWSPAPER ASSOCIATION OF AMERICA BUSINESS ANALYSIS & RESEARCH DEPARTMENT, *DAILY NEWSPAPER READERSHIP TRENDS: TOTAL ADULTS (1964-1997)* (2004), http://www.naa.org/docs/Research/Daily_National_Top50_64-97.pdf (comparing the weekly readership between 1964 and 1997).

¹⁵ See THE PROJECT FOR EXCELLENCE IN JOURNALISM, *THE STATE OF NEWS MEDIA 2004: AN ANNUAL REPORT ON AMERICAN JOURNALISM* (2004), http://www.stateofthemedial.org/2004/narrative_newspapers_audience.asp (reporting daily newspaper readership in 2004).

Perhaps the strongest evidence of the newspaper industry's progressive decline, however, is the depression of circulation¹⁶ and advertising,¹⁷ the two primary revenue mechanisms for newspapers.¹⁸ In the 1990s, newspaper circulation dropped steadily at a rate of less than 1 percent a year; 2005, however, marked the beginning of more substantial drops in newspaper circulation rates.¹⁹ Beginning in 2005, newspaper circulation dropped 2 percent, followed by a 3 percent drop in 2007, a 4 percent drop in 2008, and most recently, a 10 percent drop in 2009.²⁰ The 2009 drop reduced newspaper circulation to the lowest rate in seven decades.²¹ While the recent percentage decrease indicates an accelerated pattern of decline in newspaper circulation, this is consistent with the overall pattern of decline for newspapers over the span of decades. Remarking on this pattern, Philip Meyer noted, "[t]he 2008-9 recession overlaid a cyclical downturn on top of the long, slow secular decline in readership that newspapers had been experiencing since the 1970s."²²

Not only is newspaper circulation waning, but the amount of revenue newspapers collect from advertisers has also been declining.²³ Adjusted for inflation, the projected advertising revenue of the newspaper industry in 2009 was lower than any year on record since 1965.²⁴ Trends indicate that newspaper advertising revenue is on a downward spiral, with lower

¹⁶ See, e.g., Pérez-Peña, *Newspaper Circulation Falls*, *supra* note 10, at B3 (evaluating the decline of newspaper circulation over two decades).

¹⁷ See, e.g., Ryan Chittum, *Newspaper Industry Ad Revenue at 1965 Levels*, COLUM. JOURNALISM REV., Aug. 19, 2009, http://www.cjr.org/the_audit/newspaper_industry_ad_revenue.php (discussing the decline of newspaper advertising revenue over the span of decades).

¹⁸ See generally PHILIP MEYER, *THE VANISHING NEWSPAPER: SAVING JOURNALISM IN THE INFORMATION AGE 40-41* (2d ed. 2009) (explaining the primary revenue schemes of newspapers).

¹⁹ See Pérez-Peña, *Newspaper Circulation Falls*, *supra* note 10, at B3 (describing the rate of decline in newspaper circulation over two decades).

²⁰ *Id.*

²¹ See Frank Ahrens, *The Accelerating Decline of Newspapers: Small Dailies Are Rare Bright Spot in Latest Figures*, WASH. POST, Oct. 27, 2009, at A15 (reporting that "U.S. newspaper circulation has hit its lowest level in seven decades, as papers across the country lost 10.6 percent of their paying readers from April through September, compared with a year earlier").

²² MEYER, *supra* note 18, at 1.

²³ See Chittum, *supra* note 17 (reporting a trend of reduced revenue from advertising for newspapers); Robert G. Picard, *U.S. Newspapers Ad Revenue Shows Consistent Growth*, 23 NEWSPAPER RES. J. 21, 26, 31 (2002) (discussing the decline in newspaper advertising revenue).

²⁴ Chittum, *supra* note 17.

peaks, more valleys, and a steady percentage decrease since 2004.²⁵ This decline has a drastic effect on the economic state of newspapers, as the industry relies primarily on advertising for revenue.²⁶ In 2000, 82 percent of newspaper revenue was generated from advertising, deriving only the other 18 percent of the revenue from circulation.²⁷

The significant reduction in advertising revenue is not surprising, however, given the fact that advertising revenue is strongly related to newspaper circulation rates. Advertisers are less likely to pay for advertising in newspapers with diminishing circulation rates, creating an interdependent relationship between these two factors.²⁸ Declining circulation rates thus doubly injure struggling newspapers by creating lost subscription and sales revenue as well as lost advertising revenue.²⁹ Additionally, as newspapers have shifted from national and retail advertising to a greater dependence on classified advertising such as real estate, automobile, and help-wanted advertisements, the industry is relying more heavily on a stream of income easily affected by cyclical economic conditions.³⁰ This vulnerability to shifts in the economic climate makes reliance on such advertising a less reliable revenue scheme.³¹ The recent economic downturn, combined with the correlated advertising and circulation decline, created a perfect storm for newspapers, resulting in the current crisis.³²

²⁵ See *id.* (describing the overall declining trend of newspaper revenue, lower recovery periods, and a trend of losses since 2004).

²⁶ See MEYER, *supra* note 18, at 40-41 (discussing the revenue scheme of the newspaper industry and reliance on advertising for revenue).

²⁷ MEYER, *supra* note 18, at 40.

²⁸ See Eric J. Gertler, Comment, Michigan Citizens for an Independent Press v. Attorney General: *Subscribing to Newspaper Joint Operating Agreements or the Decline of Newspapers?* 39 AM. U. L. REV. 123, 132-33 (1989) (describing the interdependence of newspaper circulation and advertising revenue).

²⁹ See *id.* (referring to this process as a “downward spiral” event).

³⁰ MEYER, *supra* note 18, at 41.

³¹ See *id.* at 41 (comparing the advertising revenue reliance of 1950 with 57 percent retail advertising, 25 percent national advertising, and only 18 percent on classified advertising, with the advertising revenue reliance of 2000 at 44 percent on retail advertising, 40 percent on classified advertising, and only 16 percent on national advertising, and noting how this shift in advertising has weakened the economic stability of newspapers).

³² See Frank Ahrens, *Gannett’s Profit Plummetts 53 Percent*, WASH. POST, Oct. 20, 2009, at A16 (describing how the recent economic downturn culminated with the pre-existing industry decline to detrimentally impact newspapers); see also David Carr, *A Newsroom Subsidized? Minds Reel*, N.Y. TIMES, Oct. 19, 2009, at B1, B6 (discussing both the cyclical and secular nature of advertising losses for newspapers).

B. Reasons Behind the Decline

Why are readers and advertisers leaving newspapers? Cyclical economic factors may be partially to blame for newspapers' current crisis,³³ but it is clear that there is a more systematic, secular downturn for newspapers.³⁴ While numerous variables may explain the decline of the American newspaper, this downturn most likely has three distinct causes: (1) erosion of journalistic quality,³⁵ (2) an increasingly disinterested population,³⁶ and (3) competing news media.³⁷ Investigation into each of these contributing factors to the demise of the newspaper is critical to understanding where newspapers have gone wrong and, perhaps, how to best rectify the problems at the root of the newspaper industry.

1. Erosion of Journalistic Quality

In some respects, newspapers may be their own worst enemies. In an effort to churn out a profitable product for consumption, the newspaper industry has been accused of letting journalism suffer for the sake of profit.³⁸ Attempting to increase profit margins, even in times of circulation decline, newspapers have trimmed staff and coverage.³⁹ The

³³ See Carr, *supra* note 32, at B1 (describing the cyclical nature of newspaper advertising losses).

³⁴ See MEYER, *supra* note 18, at 42, 51, 120, 122 (describing the decline of newspaper readership); Chittum, *supra* note 17 (characterizing the persistent underlying decline of the industry as not cyclical, but secular); Carr, *supra* note 32, at B1, B6 (noting the secular trend for newspapers).

³⁵ See MEYER, *supra* note 18, at 1, 68, 151-53, 188 (describing the decline of journalistic quality).

³⁶ See Donald L. Shaw & Charles McKenzie, *American Daily Newspaper Evolution: Past, Present, ... and Future?*, in *THE FUNCTION OF NEWSPAPERS IN SOCIETY: A GLOBAL PERSPECTIVE*, 139, 149 (Shannon E. Martin & David A. Copeland eds., 2003) (discussing the decline in newspaper audience).

³⁷ See STEPHEN LACY & TODD F. SIMON, *THE ECONOMICS AND REGULATION OF UNITED STATES NEWSPAPERS* 119 (Ablex Publishing Corporation 1993) (describing how the competition between media affects newspaper consumption).

³⁸ See MEYER, *supra* note 18, at 1 (describing how profit goals affect journalistic quality); DOUG UNDERWOOD, *WHEN MBAS RULE THE NEWSROOM: HOW THE MARKETERS AND MANAGERS ARE RESHAPING TODAY'S MEDIA* 39, 41, 54, 56 (Columbia University Press 1993) (discussing how recent concerns for profit have impacted the content and quality of newspaper journalism).

³⁹ See THE PROJECT FOR EXCELLENCE IN JOURNALISM, *The Changing Newspaper Newsroom*, in *THE STATE OF NEWS MEDIA 2008: AN ANNUAL REPORT ON AMERICAN JOURNALISM* (2008), http://www.stateofthemediamedia.org/2008/narrative_special_newsroom.

strain placed on the newsroom by such cuts is undeniable, and many argue it has detrimentally impacted the journalistic work product being produced.⁴⁰ Across the board, American newspapers have reduced the amount of coverage in many important news areas.⁴¹ Analysis of American dailies reveals that two thirds of papers have reduced coverage of foreign news, half have reduced national news coverage, and over a third have reduced coverage of business news.⁴²

In addition to a reduction in coverage, serious questions remain about the quality of the coverage.⁴³ Studies of newspaper coverage report that half of “straight news stories” contain errors.⁴⁴ Troubling cases of journalistic falsification, including the infamous case of Jayson Blair, raise even greater concerns about journalistic accuracy.⁴⁵ A lack of sufficient internal controls, triggered by financial restraints and motivations, may be responsible for journalistic inaccuracy and unreliability. As one commentator noted in response to errors in web-based newspaper produced content, “[pressure to financially perform] means big-time risk taking and, in this era of staff cutbacks, it also means decreased editorial oversight and diminished checks and balances. Quality control suffers and quality deteriorates.”⁴⁶ As financial motivations impact the quality of newspaper content, readers may be reluctant to consult newspapers as a reliable source of information.

php?cat=2&media=13 [hereinafter PROJECT FOR EXCELLENCE 2008] (reporting newsroom staff and coverage cutbacks).

⁴⁰ See MEYER, *supra* note 18, at 82-83, 140, 152 (discussing the link between economic cutbacks and quality); Geneva Overholser, *Editor Inc.*, in LEAVING READERS BEHIND: THE AGE OF CORPORATE NEWSPAPERING 157 (Gene Roberts et al., eds., 2001) (describing the conflict between the quality of reporting and profit motivations).

⁴¹ PROJECT FOR EXCELLENCE 2008, *supra* note 39 (noting the various news categories with reduced coverage).

⁴² See *id.* (discussing the reduction in newspaper coverage in certain topic areas and describing the narrow topics featured in newspapers).

⁴³ See *id.* (describing the decrease in quality after coverage cutbacks).

⁴⁴ See MEYER, *supra* note 18, at 84 (citing Michael Singletary, *Accuracy in Reporting: A Review of Research*, 25 ANPA NEWS RES. REP. 1-8 (Jan. 25, 1980)).

⁴⁵ See MEYER, *supra* note 18, at 83-85 (addressing concerns within the journalistic community about such falsification and failure to identify it). Jayson Blair, a reporter for the *New York Times* “was caught creating fabrications for major stories [for several months] and putting them in the paper.” *Id.*

⁴⁶ Bob Steele, *Ethical Values and Quality Control in the Digital Era*, NIEMAN REP. (Winter 2008), <http://www.nieman.harvard.edu/reportsitem.aspx?id=100699>.

2. *Disinterested Population*

In addition to battling internally with maintaining the quality reader's desire, newspapers are feeling the effects of an increasingly disinterested population. The newspaper decline has been linked with an overall "decline in public acceptance of institutions and authority."⁴⁷ Newspapers in the 20th century had significant agenda-setting power within the realm of American politics, but as the public attention waned regarding authority in general, the power of newspapers to capture audience attention has also dwindled.⁴⁸ This growing disinterest has affected newspaper readership.⁴⁹ While newspaper readership tends to skew to older, more community-connected readers, the number of such readers has decreased as younger generations age.⁵⁰ What this means is that as newer generations age, the population of readers within older age groups continues to drop.⁵¹ This trend indicates that newspapers will not be saved by the aging American public alone, and must instead look to revitalization embracing multi-generational readership.⁵²

3. *Competing News Media*

News media across various mediums compete for the same resources: advertisers and consumers.⁵³ The McCombs "Relative Constancy Hypothesis" asserts that over time, consumers allocate the same percentage of their income to news media, despite the number of forms available to them.⁵⁴ According to the McCombs hypothesis, media compete for a limited pool of resources, and their success depends on their

⁴⁷ Shaw & McKenzie, *supra* note 36, at 149.

⁴⁸ *See id.* at 149.

⁴⁹ *See id.* at 151 (discussing the declining newspaper audience).

⁵⁰ *See id.* (noting the aging community of newspaper readership).

⁵¹ *See id.* (discussing the decline in readership as the population ages).

⁵² *See id.* (commenting on the future of newspaper audiences).

⁵³ LACY & SIMON, *supra* note 37, at 123-24 (describing the impact of competitive markets on readers and advertisers).

⁵⁴ *See* Zhanwei Cao & Xigen Li, *Effect of Growing Internet Newspapers on Circulation of U.S. Print Newspapers*, in *INTERNET NEWSPAPERS: THE MAKING OF A MAINSTREAM MEDIUM* 121, 122 (Xigen Li ed., Lawrence Earlbaum Associates 2006) (discussing the McCombs hypothesis and its applicability to intermedia competition); *see* LACY & SIMON, *supra* note 37, at 119 (explaining the McCombs "Relative Constancy Hypothesis").

ability to thrive in the face of competition from other sources.⁵⁵ While this theory has been both supported and refuted by various studies concerning differing competing media forms, it provides the theoretical groundwork for the claim that the decline in newspaper circulation and advertising revenue is related to the proliferation of new media forms, including radio, television, and most recently, the internet.⁵⁶

Although the most recent threat to newspapers has come from the internet,⁵⁷ newspapers first faced competition from radio and television news sources.⁵⁸ Indeed, in a pre-internet era, radio and television news were considered a direct threat to the well-being of newspapers and were often cited as a reason for the struggles of the newspaper industry.⁵⁹ While it seems likely that radio and television have had a hand in decreasing newspaper readership and advertising, studies have provided inconsistent data regarding the effect of this intermedia competition.⁶⁰ Prior to the advent of television news, research into the newspaper-radio relationship indicated that instead of competing, the media might have coexisted.⁶¹ Studies investigating the competition between television news and newspapers likewise revealed that those consulting one source were likely to consult the other.⁶² Research additionally conflicts as to the impact

⁵⁵ See Cao & Li, *supra* note 54, at 122 (discussing the effect of technology on traditional news media in relation to consumer spending); see also LACY & SIMON, *supra* note 37, at 119 (discussing the McCombs hypothesis and its applicability to intermedia competition).

⁵⁶ See Cao & Li, *supra* note 54, at 122 (citing studies refuting the McCombs hypothesis between newspapers, television, and radio sources, and studies supporting the McCombs hypothesis in the relationship between newspapers and the internet); see LACY & SIMON, *supra* note 37, at 119-20 (discussing contrasting studies regarding the McCombs hypothesis and evaluating the strengths and weaknesses of the theory).

⁵⁷ Cao & Li, *supra* note 54, at 121 (noting the decline in print newspaper users as a result of the internet).

⁵⁸ See Jones & Anderson, *supra* note 9, at G3 (pointing to the drop in newspaper circulation in the 1970s and criticisms that newspapers were less relevant to the current lifestyles).

⁵⁹ See *id.* (“The most often cited reasons for apparent reader disenchantment include more reliance on television (which has had a major effect on many afternoon papers) and radio news . . .”).

⁶⁰ See LACY & SIMON, *supra* note 37, at 119-20 (finding a likely link between the decline of newspapers and the rise of television and radio, but inconsistent and conflicting data regarding the relationship between intermedia competition).

⁶¹ See *id.* at 120 (referencing studies finding radio listening did not detract from newspaper readership).

⁶² See *id.* (“A summary by Stone of studies concerning newspapers concluded that television is not a substitute for newspapers. People who tend to read newspapers also

television has had on the ability of the newspaper to generate advertising revenue.⁶³ There is some evidence, however, that intermedia competition has impacted the type of advertising in newspapers.⁶⁴ The shift away from national advertising and towards a greater reliance on classified advertising by newspapers may have been triggered by national advertisers' preference for radio and television advertising.⁶⁵ Though research does seemingly indicate that radio and television have impacted newspapers, the evidence does not necessarily create as competitive a relationship as may have been hypothesized.

Like radio and television before it, the Internet has become a popularly cited reason for the newspaper's decline.⁶⁶ Unlike the inconsistent data supporting a competitive intermedia relationship between radio, television, and newspapers, research indicates a strong relationship between the

tend to watch television news. Studies of cable television impact have found that people who subscribe to cable are more likely to read newspapers.") (citations omitted).

⁶³ See *id.* at 121 (noting the inconsistent results of research on the impact of television on newspaper advertising and the disagreement on the intermedia relationship impact on advertising).

⁶⁴ See *id.* (citing a study indicating that higher numbers of radio and television stations in a given area were correlated with lower numbers of national ads in newspapers for the same region).

⁶⁵ See *id.* (describing the competition for national advertisers over local advertisers); MEYER, *supra* note 18, at 40-41 (identifying the shift in newspapers towards classified advertising and away from national advertising between 1950 and 2000); see also Leonard Downie, Jr. & Michael Schudson, *The Reconstruction of American Journalism*, COLUM. JOURNALISM R., Nov.-Dec. 2009, at 28, 32, available at http://www.cjr.org/reconstruction/the_reconstruction_of_american.php ("As significant amounts of national and retail advertising shifted to television, newspapers became more dependent on classified advertising.").

⁶⁶ See, e.g., Downie & Schudson, *supra* note 65, at 29-31 (discussing the ways in which the internet has detrimentally impacted the existence of print newspapers); see also Carr, *supra* note 32, at B1, B6 (providing support for the claim that newspaper advertising has been negatively impacted by the proliferation of internet advertising); Pérez-Peña, *Newspaper Circulation Falls*, *supra* note 10, at B3 ("The internet, where newspapers are generally free, has siphoned off circulation and advertising even as it made papers more widely read than ever before."); Megan Woolhouse, *Globe, Herald Circulation Tumbles: Higher Prices and Internet User are Key Factors*, B. GLOBE, Oct. 27, 2009, at B7 ("Circulation at the *Boston Globe*, the *Boston Herald*, and many other newspapers around the country fell sharply in the six-month period that ended in September as more readers got their news and information from the internet."); see also Martin Zimmerman, *Grim News for U.S. Papers*, L.A. TIMES, Oct. 27, 2009, at B1 ("Newspapers have seen their circulation decline sharply in recent years as readers increasingly have turned to online sources for news.").

decline of newspapers and the proliferation of internet-accessible news.⁶⁷ Of readers accessing newspapers online, one-third claim to have decreased their readership of print news.⁶⁸ This claim is consistent with the trends of newspaper readership indicating that, while circulation of print newspapers may be declining, newspapers in some cases are reaching larger audiences than ever through newspaper websites.⁶⁹ Both the *Washington Post* and the *Boston Globe* boast higher readership of their news websites than paid circulation of their print newspaper. The *Post* reached 9.4 million unique⁷⁰ web readers in 2009 compared to only 665,000 print readers,⁷¹ and the *Globe* reported 5.2 million unique website visitors in September 2009 compared to a print circulation of 300,000.⁷² This trend is seemingly increasing, with Nielson data indicating a monthly web news readership of 72 million for 2009, up from 60 million per month in 2007.⁷³ In the aggregate, research of a broad sampling of United States newspapers shows a negative relationship between web newspaper and print newspaper circulation for small, medium, and large newspapers.⁷⁴ As online newspaper content is overwhelmingly free to readers,⁷⁵ this trend

⁶⁷ See Cao & Li, *supra* note 54, at 121-24, 130-31 (reviewing authority supporting a relationship between online news and the newspaper decline, and finding that a connection between newspaper circulation depression and internet news is correlated to the size of newspaper: “the larger the newspaper, the smaller the effect of internet newspapers on print newspapers’ circulation”).

⁶⁸ See *id.* at 122 (noting readers who read print papers less frequently after reading the news online).

⁶⁹ See Howard Kurtz, *Lack of Vision to Blame for Newspaper Woes*, WASH. POST, May 11, 2009, at C6 (reporting greater web readership for *The Washington Post*); see also Pérez-Peña, *Newspaper Circulation Falls*, *supra* note 10, at B3 (identifying an overall increase in web newspaper readership from 2007 to 2009); see also Woolhouse, *supra* note 66, at B7 (noting stronger web readership for *The Boston Globe*’s website than for the print version).

⁷⁰ See Cao & Li, *supra* note 54, at 126 (defining “unique” as an industry term describing a measure of the number of different individuals visiting a website over a given period of time as opposed to a count including repeat visitors).

⁷¹ See Kurtz, *supra* note 69, at C6 (comparing the number of *Washington Post* web readers to the number of its print readers).

⁷² See Woolhouse, *supra* note 66, at B7 (comparing the number of *Globe* web readers to the number of print readers).

⁷³ See Pérez-Peña, *Newspaper Circulation Falls*, *supra* note 10, at B3 (discussing the increased visitors to newspaper websites).

⁷⁴ See Cao & Li, *supra* note 54, at 130-31 (finding that internet readership negatively impacted circulation for small, medium, and large newspapers, and also finding a correlation between newspaper size and circulation depression).

⁷⁵ See Downie & Schudson, *supra* note 65, at 29, 32, 34 (describing the predominance of free content on the Internet and the initial motivation for newspapers to

verifies the concern that web-based news content is eroding print newspapers' ability to generate profit from circulation.

In addition to reducing the circulation of print newspapers, the internet also threatens newspapers' ability to generate advertising revenue.⁷⁶ While newspaper advertising has been hit hard by the recession, website advertising has managed to thrive.⁷⁷ Web advertising is attractive to advertisers, not only because of the possibility of an increased audience, but also because web advertising offers economic advantages.⁷⁸ For every dollar spent reaching a customer through print news advertising, a customer can be reached via web advertising for five cents.⁷⁹ Classified advertisers, whom newspapers have become increasingly dependent upon for revenue,⁸⁰ may be especially attracted to the use of the internet.⁸¹ The success of classified listing websites, including Craigslist, Monster.com, and Cars.com, has taken business away from the once profitable, and lucrative, newspaper classified sections.⁸² Although print newspapers typically supplement their own web content with online advertisements, these advertisements are unable to counter the losses of pricier print advertising and are also unable to generate enough revenue to support the

provide free web content). *But see* Pérez-Peña, *Newspaper Circulation Falls*, *supra* note 10, at B3 (discussing the *Wall Street Journal's* subscription only website); Richard Pérez-Peña, *Newsday to Charge to Read Its Web Site*, N.Y. TIMES, Oct. 23, 2009, at B4 (referencing a few American newspapers like the *Wall Street Journal*, the *Financial Times*, the *Arkansas Democrat-Gazette*, and the *Albuquerque Journal* that charge for web content).

⁷⁶ See Robert Weisman, *What Went Wrong?: Secure in Their Profits, the Globe and Other Newspapers Under Estimated the Impact of the Web*, B. GLOBE, April 12, 2009, B1, available at http://www.boston.com/business/articles/2009/04/12/what_went_wrong/ (discussing how Internet advertising sales threaten newspaper advertising revenue).

⁷⁷ See Carr, *supra* note 32, at B1 (noting that in the same quarter in 2009 where newspaper advertising revenue drastically dropped, Google's website advertising rose 27 percent for a higher than expected quarter).

⁷⁸ See Richard Pérez-Peña, *Paper Cuts: An Industry Imperiled by Falling Profits and Shrinking Ads*, N.Y. TIMES, Feb. 7, 2008, at C5 (describing the increase in newspaper readership).

⁷⁹ See *id.* (describing the lower advertising cost of reaching an internet reader compared to the cost to reach a print reader).

⁸⁰ See MEYER, *supra* note 18, at 41 (discussing the growing dependence of newspapers on classified advertising revenue).

⁸¹ See Pérez-Peña, *Paper Cuts*, *supra* note 78, at C5 (noting that the shift to the internet for classified ads for "things like jobs, cars and houses" accelerated in 2007).

⁸² See Weisman, *supra* note 76, at B1 (discussing the historical profitability of the classified section in print news and how the proliferation of classified websites drastically reduced that profitability).

expenses of the news industry.⁸³ The inter-media threat posed to newspapers by the Internet, in both circulation and advertising revenue, seemingly confirms the McCombs hypothesis that new media are succeeding to the detriment of competing traditional print media.⁸⁴

It is clear that the newspaper industry is struggling, and perhaps even failing, in the current climate.⁸⁵ Understanding the reasons behind the industry decline may provide the keys to the industry's salvation; these reasons include: (1) the erosion of journalistic quality, (2) an increasingly disinterested population, and (3) competing news media.⁸⁶ As these causes are complex, they suggest that a mere influx of funding alone is not going to be sufficient to cure what ails the newspaper industry. Instead, more nuanced solutions to the newspaper crisis are required, and those within the industry are best situated to affect change.⁸⁷

II. HISTORY OF GOVERNMENT INTERVENTION INTO THE NEWSPAPER INDUSTRY

To fully understand the context in which the newspaper bailout is proposed, it is first important to understand the long history of governmental intervention into the newspaper industry antecedent to the current proposal. The government's unique treatment of the newspaper industry substantially predates the current industry crisis.⁸⁸ Historically, the government has supported newspapers through mail subsidies and discounts, public notice publication mandates, and tax breaks.⁸⁹ In more recent years, the federal government stepped in to assist the flagging industry through antitrust exemptions for newspapers in the Newspaper Preservation Act.⁹⁰ It is clear, however, that past government support did

⁸³ See Downie & Schudson, *supra* note 65, at 29-30, 32, 44-45 (explaining why web advertisement revenue is unable to sustain newspaper publications and, more broadly, investigative journalism and why online news advertising is unable to recoup for the loss in pricier print advertising).

⁸⁴ See Cao & Li, *supra* note 54, at 122 (describing new media threats to traditional print media).

⁸⁵ See *supra* Part I.A (describing the decline of the American newspaper industry).

⁸⁶ See *supra* Part I.B.1-3.

⁸⁷ See *infra* Part V (proposing alternate solutions to a government bailout).

⁸⁸ See *infra* Part II.A (discussing special treatment of newspapers).

⁸⁹ See *infra* Part II.A (detailing measures taken by the government to protect the newspaper industry).

⁹⁰ See *infra* Part II.B (discussing the Newspaper Preservation Act); see also 15 U.S.C. § 1803(b) (2006).

not revive the newspaper industry.⁹¹ This raises questions about the success of a more drastic governmental intervention to save newspapers through an official bailout.

A. Special Treatment of Newspapers

Newspapers have long been treated as a special entity in government regulation. As early as the 1700s, newspapers were granted government subsidized mail privileges.⁹² The government initially allowed newspapers to mail their product to consumers free of charge.⁹³ This form of absolute subsidization lasted into the nineteenth century.⁹⁴ Although the absolute mail subsidization was scaled back by the Postal Act of 1879, which established a pay scale based on classes of mail, newspapers still derived subsidized benefits as they were able to mail their product at a subsidized second class mail grade, to be used by newspapers and periodicals.⁹⁵ Since the Postal Reorganization Act of 1970, mailing classes are required to pay for the actual cost of shipping, but newspapers still benefit by qualifying for second class mailing that is still less costly than the first class mailing available to private citizens.⁹⁶

Aside from postal subsidies, the newspaper industry has been granted other forms of government assistance over the years. One method of indirect support for the newspaper industry has been federal, state, and local public notice requirements.⁹⁷ Public notice mandates require government actors to post notices about certain government actions in

⁹¹ See LACY & SIMON, *supra* note 37, at 253 (discussing the history of subsidized postal privileges).

⁹² See *id.* (describing the low rate to mail newspapers in the 1700s).

⁹³ See *id.*

⁹⁴ See *id.* (“In the latter 1700s and through much of the nineteenth century, newspapers traveled through the mail at no cost.”).

⁹⁵ See *id.* (noting the second class mail grade available for newspapers and periodicals).

⁹⁶ *Id.* at 253-54 (discussing the Postal Reorganization Act of 1970 and the effect on second class mailing rates).

⁹⁷ See Geoffrey Cowan & David Westphal, *American Government: It's Always Subsidized Commercial Media*, ONLINE JOURNALISM R., Nov. 30, 2009, <http://www.ojr.org/ojr/people/davidwestphal/200911/1801/> (describing public notice requirements and how the three levels of government subsidize the news industry).

newspapers.⁹⁸ In 2000, these public notices comprised approximately 5 to 10 percent of total newspaper revenue.⁹⁹

In addition to the revenue gained from the publication of public notices, newspapers are also the beneficiaries of a wide variety of sales and income tax breaks.¹⁰⁰ These tax breaks total \$890 million dollars a year from federal and state taxes to the newspaper industry and are granted predominantly at the state level.¹⁰¹

The historical and ongoing economic support from government to the newspaper industry illustrates the special treatment afforded newspapers.¹⁰² Despite this special treatment, however, the newspaper industry is still languishing, indicating that such efforts alone have not been enough to revive the failing industry.

B. Attempted Rescue: The Newspaper Preservation Act

The Newspaper Preservation Act¹⁰³ is an example of misguided government intervention into the newspaper trade that was not successful

⁹⁸ See *id.* (discussing government support of the newspaper business in the form of public notices).

⁹⁹ See *id.* (citing a statistic from the National Newspaper Association about the percent of newspaper revenue supported by public notices). Much like mail subsidies, however, there is evidence that this form of government support for newspapers may be diminishing. See Ryan Van Velzer, *Public Notices in Newspapers Facing Scrutiny at Legislature*, CRONKITE NEWS SERVICE, Feb. 2, 2010, <http://cronkitenews.jmc.asu.edu/?p=2626> (discussing proposed changes and debate concerning public notice in newspapers). Some localities are changing their public notice newspaper publication requirements in light of ongoing internet presence. See Eric Sherman, *More Newspaper Bad News: Public Notices Look Elsewhere*, BNET (May 25, 2009), <http://industry.bnet.com/media/10002376/more-newspaper-bad-news-public-notices-look-elsewhere/> (describing a \$13,000 cost-saving after moving public notices to a newspaper website).

¹⁰⁰ See Cowan & Westphal, *supra* note 97 (describing the financial breaks newspapers receive from federal, state, and local governments).

¹⁰¹ See *id.* (“Federal and state governments forego about \$890 million a year on income and sales tax breaks to the newspaper industry, most of it at the state level. The actual figure is probably much higher because many states don't report tax expenditure details.”).

¹⁰² See LACY & SIMON, *supra* note 37, at 253 (discussing the economic privileges newspapers receive).

¹⁰³ 15 U.S.C. §§ 1801-04 (2006) (“[I]t is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community, or metro-politan area where a joint operating arrangement has been heretofore entered into because of economic distress . . .”).

in reinvigorating the industry.¹⁰⁴ In 1970, Congress enacted the Newspaper Preservation Act (NPA), providing an exception to federal antitrust rules that allowed newspapers in the same region to combine production activities and share resources through a Joint Operating Agreement (JOA).¹⁰⁵ In order to obtain a JOA, the newspapers involved first had to establish that one of the newspapers in the region was in “probable danger of financial failure” and gain approval from the United States Attorney General.¹⁰⁶ In passing the NPA, Congress intended to encourage “a newspaper press editorially and reportorially independent and competitive in all parts of the United States.”¹⁰⁷ The NPA, however, was ineffective at achieving this goal and has been regarded as a failure.¹⁰⁸ Very few newspapers are operating under JOAs, and those that do have suffered circulation decline worse than their non-JOA competitors.¹⁰⁹ Furthermore, “[t]he continued pattern since 1970 of newspapers closing in large cities, despite the NPA, is proof of the argument and also telling evidence that the NPA has not preserved many newspapers.”¹¹⁰ The NPA not only failed to save the newspaper industry, but also arguably injured the industry by encouraging mergers of financially troubled companies into stronger newspapers—thereby rendering the combined entity less

¹⁰⁴ See LACY & SIMON, *supra* note 37, at 207 (noting the lack of economic invigoration after the NPA).

¹⁰⁵ See *id.* (discussing the antitrust provisions of the NPA); see also Amy Kristin Sanders, *Market Definition, Merger Review, and Media Monopolization: Congressional Approval of the Corporate Voice Through the Newspaper Preservation Act*, 59 FED. COMM. L.J. 403, 409-10 (2007) (discussing joint operating agreements regulated by the Newspaper Preservation Act).

¹⁰⁶ LACY & SIMON, *supra* note 37, at 207 (citations omitted).

¹⁰⁷ Jason A. Martin, *Reversing the Erosion of Editorial Diversity: How the Newspaper Preservation Act Has Failed and What Can Be Done*, 13 COMM. L. & POL’Y 63, 66 (2008) (quoting 15 U.S.C. § 1801 (2000)).

¹⁰⁸ See LACY & SIMON, *supra* note 37, at 207 (noting the few newspapers saved under the NPA); Martin, *supra* note 107, at 66, 89 (discussing the drawbacks of the NPA); see also Richard Brand, *All the News That’s Fit to Split: Newspaper Mergers, Antitrust Laws and the First Amendment*, 26 CARDOZO ARTS & ENT. L.J. 1, 7 (2008) (discussing how the newspaper industry may need more than the NPA to combat the economy); Jack Shafer, *Saving Newspapers from their Saviors*, SLATE (Sept. 21, 2009, 6:39 PM), <http://www.slate.com/id/2229092/pagenum/all/> (regarding JOAs as failures in the long-run).

¹⁰⁹ See Martin, *supra* note 107, at 64, 86-87 (discussing reduction in JOA operation, with nine operating JOAs, and also noting greater circulation loss for JOA operating newspapers in 2005).

¹¹⁰ LACY & SIMON, *supra* note 37, at 207.

successful overall.¹¹¹ Basically, the result of the NPA was that “JOAs generally allowed the weaker of the two newspapers to drag the stronger one down until the weaker one was finally put out of its misery.”¹¹² In this way, the government intervention into the newspaper industry through the NPA not only failed to encourage newspaper growth, but also actually worked to diminish the strength of newspapers utilizing the provision. This history should serve as a cautionary tale to any proposed government intervention to bail out the newspaper industry, indicating that such actions may not be successful, and indeed may result in unintended and destructive consequences.

III. A MISGUIDED SOLUTION: THE “BAILOUT”

Legislators and media scholars alike have proposed various forms of government assistance, or “bailouts”, to the newspaper industry. These proposed bailouts differ in the method of support, but fundamentally all involve government intervention into the newspaper industry. Perhaps the most notorious bailout proposal is a bill sponsored by United States Senator Benjamin L. Cardin, informally dubbed the Newspaper Revitalization Act (the “Act”).¹¹³ Senator Cardin’s bill, along with its identical companion bill proposed by United States Representative Carolyn Maloney, calls for amending federal tax law to allow newspapers to qualify for non-profit status.¹¹⁴ Outside of Senator Cardin’s proposal, proponents have voiced other, alternative models for governmental bailout of the newspaper industry. The common and misguided thread in all of these bailout models is the concept that government intervention into the newspaper industry is necessary for industry survival.

¹¹¹ See Shafer, *supra* note 108, at 86 (explaining how the NPA harmed the newspaper industry).

¹¹² See *id.* at 86 (describing the long-term effect of JOAs).

¹¹³ See Press Release, Sen. Benjamin L. Cardin, Senator Cardin Introduces Bill that Would Allow American Newspapers to Operate as Non-Profits: His Goal to Help the Newspaper Industry Survive (Mar. 24, 2009), <http://cardin.senate.gov/news/record.cfm?id=310392> [hereinafter “Sen. Cardin’s Press Release”] (addressing Cardin’s newspaper bill as “The Newspaper Revitalization Act”).

¹¹⁴ *Id.* (proposing newspaper to qualify as 501(c)(3) tax status); Press Release, Rep. Carolyn Maloney, Rep. Maloney Introduces Newspaper Revitalization Act (Sept. 17, 2009), <http://maloney.house.gov/index.php?option=content&task=view&id=1937&Itemid=61> [hereinafter “Rep. Maloney’s Press Release”].

A. Senator Cardin's Newspaper Revitalization Act

Senator Cardin's Newspaper Revitalization Act proposes government aid for newspapers in the form of an expanded non-profit tax exemption.¹¹⁵ Specifically, the Act proposes that the Internal Revenue Code of 1986 be revised to allow newspapers to gain non-profit status.¹¹⁶ Under current law, the tax code provides a tax exemption for "[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purpose[s]"¹¹⁷ The Act would amend section 501(c)(3) of the Internal Revenue Code of 1986 to provide tax-exempt status for corporations for "educational purposes" to expressly include "qualified newspaper corporation[s]."¹¹⁸ This exemption alone, however, is unlikely to provide substantial relief to mainstream newspapers as newspapers derive revenue from advertising, activity which is still subject to tax under section 511 as "unrelated business taxable income," not involved with pursuing educational purposes, and are therefore not tax exempt.¹¹⁹ As a result, Senator Cardin's bill also seeks to amend the definition of "unrelated business income"¹²⁰ to specifically exclude "the sale by a qualified newspaper corporation ... of any space for commercial advertisement to be published in a newspaper, to the extent that the space allotted to all such advertisements in such newspaper does not exceed the space allotted to fulfilling the educational purpose of such qualified newspaper corporation."¹²¹ Thus, the Act would definitively allow newspapers to qualify for tax-exempt status as corporations designated for educational purposes, and would allow newspapers to exempt their advertising revenue as well.

Cardin's bill has engendered considerable discussion on possible government intervention aimed at reviving the ailing newspaper industry.

¹¹⁵ Sen. Cardin's Press Release, *supra* note 113.

¹¹⁶ See S. 673, 111th Cong. (1st Sess. 2009).

¹¹⁷ 26 U.S.C. § 501(c)(3) (2006).

¹¹⁸ S. 673, 111th Cong. (1st Sess. 2009); *see also* Sen. Cardin's Press Release, *supra* note 113; *see Sen. Cardin Wants Bailout for Struggling Newspapers* (National Public Radio Broadcast Oct. 5, 2009) [hereinafter NPR Broadcast] (transcript available at <http://www.npr.org/templates/story/story.php?storyId=113495825&ft=1&f=1006>) (explaining the proposed tax code modification).

¹¹⁹ 26 U.S.C. § 511 (2006); 26 U.S.C. § 513 (2006); *see also* NPR Broadcast, *supra* note 118 (interviewing Sen. Cardin explaining the impediments preventing newspapers for realizing tax exemption for advertising and circulation revenue under current law).

¹²⁰ 26 U.S.C. § 511.

¹²¹ S. 673, 111th Cong. (1st Sess. 2009) (internal quotations omitted).

The bill has drawn support and criticism from industry members, commentators, and scholars.¹²² While the Act, and its companion bill in the House, have been slow to gather widespread political support, the proposal has provoked significant industry debate on the fate of the newspaper industry and possible forms of government aid that may help alleviate the newspaper crisis.¹²³

B. Alternative Models

In addition to Cardin's bill, other alternative methods of governmental support for the newspaper industry have been proposed. Similar to the Newspaper Revitalization Act, one plan involves the creation of a special tax-exempt status for newspapers that does not entail all the requirements associated with non-profit status under section 501(c)(3).¹²⁴ Other proposals, however, involve more direct financing of the newspaper industry. In their report, *The Reconstruction of American Journalism*, authors Leonard Downie, Jr. and Michael Schudson argue that the federal government should commission a national fund for the production of local news, supported by fees collected by the Federal Communications Commission for licensing and other requirements.¹²⁵ In an effort to revive their domestic newspaper industry, France has recently developed a plan to increase government advertising in print media, provide tax breaks for newspaper delivery services, and pay for a year long subscription of a newspaper for citizens on their 18th birthday.¹²⁶ Some in the industry have

¹²² Compare Downie & Schudson, *supra* note 65, at 34, and *The Future of the Newspapers: The Impact on the Economy and Democracy: Hearing Before the S. Joint Econ. Comm.*, 111th Cong. 3 (2009) (statement of Paul Starr, Professor, Woodrow Wilson School, Princeton University), available at http://jec.senate.gov/public/?a=Files.Serve&File_id=7cd7e132-878c-4309-bf93-cdc594467ad6 [hereinafter *Hearing*] (supporting the pursuit of a government bailout), with Shafer, *supra* note 108 (disagreeing with the need for a bailout).

¹²³ See Joseph Curl, *Lawmakers Slam Newspaper Bailout Idea*, WASH. TIMES (Sept. 24, 2009), <http://www.washingtontimes.com/news/2009/sep/24/paper-cut-lawmakers-slam-news-paper-bailout-idea/> (discussing a lack of congressional action or activity on the bailout).

¹²⁴ See *Hearing*, *supra* note 122, at 3.

¹²⁵ See Downie & Schudson, *supra* note 65, at 49-50 (proposing a national fund for local news, among other forms of governmental support for the newspaper industry).

¹²⁶ See Adam Ross, *A Newspaper Bailout?*, WASH. POST (Feb. 27, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/26/AR2009022603054.html> (reporting a French plan to increase government advertising in newspapers, cut taxes on newspaper delivery services, and provide a one-year newspaper subscription to teenagers on their 18th birthdays); see also John Diaz, *Keeping Separation of Press and*

discussed the application of comparable government bailout plan in America.¹²⁷ Based on integrating new technology, another proposal supports a government subsidy for e-readers, followed by a mandate that each home purchase an e-reader on which they may access newspapers in digital form.¹²⁸ Another proposal supports a “one-time government infusion of cash” into the newspaper industry, made conditional on newspapers staying in the business for five years and not consolidating organizations to pool such government funding.¹²⁹ While these proposals advocate different methodology, they all involve government support for the newspaper industry, and thus are open to similar criticism.

IV. WHY A BAILOUT SHOULD BE REJECTED

A publicly sponsored newspaper bailout would spell disaster to the ailing industry. Government intervention would cripple the very admirable qualities of newspaper journalism that are worth saving, and would irreparably damage media and industry innovation. Government intervention is a misguided solution to the newspaper crisis because government intervention would result in: (1) degrading the watchdog role of newspapers and corrupt journalistic integrity, (2) constraining the ability of newspapers to endorse political candidates, (3) unfairly providing special treatment for newspapers over other news media, and (4) discouraging industry innovation.

State, S.F. CHRON., Feb. 8, 2009, at H4, available at http://articles.sfgate.com/2009-02-08/opinion/17187117_1_newspaper-reporter-endowments-journalism (discussing a French government plan “to help the ailing newspaper industry by providing tax breaks for delivery service, doubling government advertising-and subsidizing free subscriptions for 18-year-olds”).

¹²⁷ See David Carr, *Separation of Press and State*, N.Y. TIMES, May 11, 2009, at B8 (discussing avenues for direct and indirect government support). *But see* Diaz, *supra* note 126, at H4 (rejecting the French proposal, and opposing the implementation of a government bailout for American newspapers).

¹²⁸ See Jon Fine, *Why Not Bail Out Newspapers, Too?: A Modest Proposal for a Lobbying Campaign to Save America’s Battered Dailies*, BUS. WEEK, Nov. 24, 2008, at 124 (proposing a government subsidized Kindle service).

¹²⁹ Clay Calvert, *Bailing Out the Print Newspaper Industry: A Not-So-Joking Public Policy and First Amendment Analysis*, 40 MCGEORGE L. REV. 661, 666 (2009) (proposing a “one-time government infusion of cash” to support newspapers made conditional on acceptance of specific terms); *see also* Fine, *supra* note 128, at 124 (discussing government debt relief for newspaper companies).

A. Degrading the Watchdog Role: Journalistic Integrity Concerns

Perhaps the greatest role of the American news media, including newspapers, is to maintain a vigilant watch on government actions, and inform the public of such activity. In this “watchdog role,” the news media plays a vital part in our democracy.¹³⁰ Even the Supreme Court has acknowledged that “[t]he press plays a unique role as a check on government abuse.”¹³¹ While this role is a critical one, it is one that may be easily corrupted if not adequately protected. As media scholars W. Lance Bennett and William Serrin note, “[o]f all the established functions of the press in American public life, the watchdog role is among the most hallowed and, at the same time, the least securely institutionalized in the daily mission of the contemporary news organization.”¹³² A government bailout of the newspaper industry jeopardizes the ability of newspapers to continue to function as watchdogs, as they will be reliant on the government for economic support.¹³³ This is arguably the greatest weakness with any form of governmental support to the newspaper industry. In the wake of a government bailout, newspapers will be reluctant to bite the hand that feeds them, thus the bailout succeeds in transforming the watchdog into a lapdog.

In promoting the Newspaper Revitalization Act, Senator Cardin argued that “[o]ur country depends on an open and free press to monitor what happens in our communities so that Americans can make sound judgments about their lives and leaders.”¹³⁴ Yet proposals such as Cardin’s bill endanger the ability of newspapers to fulfill the watchdog role. “[*W*]atchdog journalism is defined here as: (1) independent scrutiny by the press of activities of government, business, and other public institutions, with an aim toward (2) documenting, questioning, and investigating those activities, in order to (3) provide publics and officials with timely information on issues of public concern.”¹³⁵ In order to function as a watchdog, the press must retain independence from the

¹³⁰ W. Lance Bennett & William Serrin, *The Watchdog Role*, in *THE PRESS* 169, 171-72 (Geneva Overholser & Kathleen Hall Jamieson eds., Oxford University Press 2005) (describing the historical role of American newspapers as the watchdog).

¹³¹ See *Leathers v. Medlock*, 499 U.S. 439, 447 (1991) (referring to “the press as a watchdog of government activity”).

¹³² Bennett & Serrin, *supra* note 130, at 169.

¹³³ See Diaz, *supra* note 126, at H4 (emphasizing the need for newspapers to be independent from the government).

¹³⁴ Benjamin L. Cardin, *A Plan to Save Our Free Press*, WASH. POST, Apr. 3, 2009, at A19 (promoting the Newspaper Revitalization Act).

¹³⁵ Bennett & Serrin, *supra* note 130, at 169.

government institutions it monitors.¹³⁶ A bailout impairs the ability of newspapers receiving funding or benefits from the government to fulfill the watchdog role, as such regimes corrupt the independence of the newspaper organization.¹³⁷ Under a newspaper bailout, newspapers would be interested parties in governmental affairs, and dependent on government funding. Even if the government support were provided to newspapers without any content restrictions or mandates, the impartiality of newspapers would be affected; and, such support would endanger the journalistic integrity of print news.

Even under content-neutral government bailout regimes, the institutional alignment of the government and newspapers will impact print journalism and corrupt the ability of newspapers to act as government watchdogs. Evidence of this phenomenon can be seen within the context of corporate ownership of newspapers, and the effect such ownership has had on journalistic independence.¹³⁸ As a result of widespread corporate ownership, newspapers are reluctant to publish content critical of their corporate parent companies.¹³⁹ In fact, a survey of American newspaper editors revealed that, of those who worked for media conglomerates, 33 percent reported that it would be “unlikely” that they would publish an article critical of their parent company.¹⁴⁰ Like corporate ownership, government support may have a similar effect on newspapers, thus affecting the content of newspaper publications and diminishing the ability of newspapers as a media institution to fulfill their watchdog role.

B. Constraining Effect on Political Endorsements

A government bailout for the newspaper industry would likely curtail the ability of newspapers to engage in endorsement of political candidates and related activity. In particular, newspapers seeking to reap the benefits of the Cardin plan would not be able to engage in such political activity. Because the Cardin plan allows newspapers to reorganize as non-profit

¹³⁶ See David A. Copeland, *Newspapers in the Americas*, in *THE FUNCTION OF NEWSPAPERS IN SOCIETY: A GLOBAL PERSPECTIVE* 103, 114-16 (Shannon E. Martin & David A. Copeland eds., 2003) (discussing the watchdog role and how the relationship between newspapers and the government impacts this role).

¹³⁷ See Diaz, *supra* note 126, at H4 (“Once newspapers become wards of the state, they lose their credibility as a watchdog of the state.”).

¹³⁸ Burns, *supra* note 11, at 67 (examining the impact that corporate ownership has had on newspaper coverage critical of corporate America).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

organizations under section 501(c)(3), newspapers seeking the tax exempt benefit would be constrained by the same rules as other non-profits in this class.¹⁴¹ The section 501(c)(3) tax exemption for organizations requires that “no substantial part of the activities” of the organization include “carrying on propaganda, or otherwise attempting, to influence legislation ... participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”¹⁴² This means that in order for a newspaper organization to qualify for the tax exemption, they must cease any political publications or endorsements that may fall into these categories.¹⁴³ Senator Cardin acknowledged this consequence of the Act, stating that “[o]ne of the restrictions on a nonprofit is that they cannot directly get involved in an election.”¹⁴⁴ This restriction would have a significant impact on the newspaper industry, particularly in their election coverage and institutional support or endorsement of candidates. In the words of one speaker commenting on this issue: “It would be a real loss to freedom of the press if, in becoming nonprofit, newspapers had to restrict their political expression.”¹⁴⁵ While Cardin’s plan does not require newspapers to reorganize as non-profits, organizations that refuse such support may suffer in trying to compete with those receiving the government benefits. Cardin’s plan is just one of many proposed government bailouts for newspapers, but the impact this plan would have illustrates the effect that government support may have on content, particularly in the context of political and campaign coverage.

C. Illegitimacy of Special Treatment for Newspapers Over Other News Media

Supporting a newspaper bailout on the grounds that it must be done to maintain “investigative reporting” assumes that only newspapers can foster this type of journalism in a way that benefits American demo-

¹⁴¹ See Downie & Schudson, *supra* note 65, at 46 (describing the limitations on political activity for newspapers under the government bailout legislation).

¹⁴² 26 U.S.C. § 501(c)(3) (2006).

¹⁴³ *Id.*

¹⁴⁴ NPR Broadcast, *supra* note 118 (describing the political participation restrictions for non-profits).

¹⁴⁵ See *Hearing*, *supra* note 122, at 3 (discussing the impact of the freedom of the press if newspapers became nonprofits).

cracy.¹⁴⁶ This assumption is erroneous. Outside of print media, numerous other media employ investigative journalism, including broadcast, cable, radio, and internet news sources. Assuming that other forms of media are less adequate mediums for investigative journalism is unfounded and prejudicial. For example, in exploring the legitimacy of a state tax scheme preferring some media over others, the Supreme Court determined that there was no evidence that cable programming “differs systematically in its message from that communicated by satellite broadcast programming, newspapers, or magazines.”¹⁴⁷ Making governmental distinctions between media based on an unfounded presumption is not only unfair and unwise, but it also implicates serious equal protection issues, which may invalidate such legislation. In *Leathers v. Medlock*, the Supreme Court determined that differential treatment of some media over other media arguably providing the same content implicated equal protection concerns.¹⁴⁸ As other media forms have the capability of supporting investigative journalism, creating a regime of government support for newspapers on the basis of their ability to provide such journalism is illogical and inequitable.

D. Discouragement of Innovative Solutions to the Industry Decline

For policy reasons, government intervention to support the newspaper industry should be rejected as it necessarily discourages innovation within the industry. If the newspaper trade can sustain itself by employing innovative strategies to remedy its current position, it is more efficient to let the industry do so rather than applying government funds to their cause. Additionally, if the government steps in to save newspapers, the industry will have no motivation to seek out and explore alternative methods and technologies that may be beneficial to the industry and to the public, and may make print media more relevant in an era of technological advances. Speaking to this concern, one bailout critic noted that government support “interferes with the already-in-progress transition from print to digital

¹⁴⁶ This is a motivation behind Cardin’s bill. See NPR Broadcast, *supra* note 118 (interviewing Sen. Cardin addressing his motivations for supporting the Newspaper Revitalization Act).

¹⁴⁷ See *Leathers v. Medlock*, 499 U.S. 439, 449 (finding no distinctions among types of media).

¹⁴⁸ See *id.* at 453 (finding that the differential tax scheme did not violate the First Amendment, but remanding the case for further examination on equal protection claims); see also Benjamin Lombard, *First Amendment Limits on the Use of Taxes to Subsidize Selectively the Media*, 78 CORNELL L. REV. 106, 117 (1992) (discussing the holding in *Leathers*).

news delivery that's been accelerating for the past 15 years—or longer.”¹⁴⁹ In addition to digital news delivery, there remain many methods for the newspaper industry to revitalize itself, and some newspapers are currently experimenting with these methods.¹⁵⁰ As one insider commented,

[i]f the government (*the government!*) starts getting in the business of propping up the fading part of journalism's business model, forget the ethical and constitutional issues, it'll effectively cut off oxygen to the parts of the business that are trying to innovate. In the past 6-12 months, I believe it's been the panic around the breakdown of the old business model that has allowed more talk of change to rise to the surface in newspaper executive suites. The worst thing that could happen would be for newspaper companies to find the means to suddenly become comfortable again.¹⁵¹

Instead of receiving external support in the form of a government bailout, the newspaper trade should employ intra-industry solutions for their revitalization. The solution to the newspaper industry's crisis lies not in government intervention, but instead in intra-industry implementation of methods and practices already being employed in some areas of the newspaper trade. These methods and practices present alternative solutions to government bailout. Following a discussion of these alternative solutions, this Note proposes increased exploration of these methods and practices, instead of governmental intervention.

V. PROPOSAL

While a public newspaper bailout scheme of any variety would prove devastating to the American newspaper industry and its role in American society, it is clear that the industry is struggling.¹⁵² Without government support, however, newspapers will be able to survive and reinvent themselves. Remarking on the resilience of the newspaper industry, in the face of the current hostile climate, one commentator noted,

[d]espite what you might have heard, then, it's not a genuine question whether newspaper companies will survive in our ever-shifting, hyper-

¹⁴⁹ Shafer, *supra* note 108 (discussing the harmful effects of the Newspaper Revitalization Act).

¹⁵⁰ *See infra* Part V.

¹⁵¹ Tim Windsor, *Killing Innovation with Kindness: The Newspaper Revitalization Act*, NIEMAN JOURNALISM LAB (Mar. 25, 2009), <http://www.niemanlab.org/2009/03/killing-innovation-with-kindness-the-newspaper-revitalization-act/> (emphasis in original).

¹⁵² *See supra* Part I (discussing the decline of the American newspaper industry).

competitive communications landscape. They will, their genius for adaptation and self-preservation evolved to a level that Darwin would relish. They are that well tested—and, it should not be forgotten, even better bankrolled.¹⁵³

Indeed, as newspapers struggle, the industry seeks ways to reinvent itself and revise its product to once again become profitable. Although there may be countless ways for the newspaper industry to revive itself, newspapers are currently attempting various methods that appear to be providing promising results. These methods include: (1) developing alternative revenue schemes, (2) emphasizing local news content, (3) establishing collaborative news arrangements, (4) making better use of the internet, and (5) exploring publication through digital readers. These methods provide viable self-remedies to salvaging the newspaper industry, and they do so without the injurious consequences of an industry-wide government bailout.

A. Alternative Revenue Schemes

The newspaper industry has long focused on selling advertising as their predominant model for earning revenue.¹⁵⁴ In 2000, advertising represented 82 percent of total newspaper revenue, with only the remaining 18 percent coming from circulation revenue.¹⁵⁵ While newspapers traditionally relied on advertising for revenue, the data indicates that there has been an even greater dependence on advertising in recent years.¹⁵⁶ This heavy reliance has injured newspapers in the current climate, particularly as advertising on the internet has become a cheaper alternative to print advertisements.¹⁵⁷ Instead of relying heavily on advertising for revenue, newspapers may be able to achieve greater financial stability by instead seeking alternative revenue schemes that are less reliant on advertising.¹⁵⁸ One potential option for newspapers is to

¹⁵³ GENE ROBERTS, *Leaving Readers Behind*, in LEAVING READERS BEHIND: THE AGE OF CORPORATE NEWSPAPERING 1, 1 (Gene Roberts et al. eds., 2001).

¹⁵⁴ See MEYER, *supra* note 18, at 40-41 (explaining the advertising industry's focus on advertising for revenue, and the trend of growing dependence on advertising revenue).

¹⁵⁵ *Id.* (discussing newspaper revenue in 2000 as compared to the mid-century, when the dependence on advertising revenue was not as great).

¹⁵⁶ *See id.*

¹⁵⁷ *See supra* Part I.B.

¹⁵⁸ See David R. Baker, *The Chronicle's Strategy Shift Starts to Pay Off*, S.F. CHRON., Oct. 27, 2009, at D1, available at <http://articles.sfgate.com/2009-10-27/business/>

seek higher subscription revenue from readers.¹⁵⁹ The *San Francisco Chronicle* recently adopted this revenue scheme, increasing the weekly subscription fee by three dollars and reducing the amount of subscription discounts offered to consumers.¹⁶⁰ Although the *Chronicle* realized a reduction in their circulation, the revenue shift helped the newspaper turn a profit within eighteen months of the price increase, ultimately helping the struggling newspaper to stay afloat.¹⁶¹ The *Chronicle's* approach is but one of many possible ways that newspapers are attempting to restructure their business model in order to become more profitable.¹⁶² In an attempt to increase their profitability, the *Detroit Free Press* and the *Detroit News* stopped providing delivery of newspapers except for Thursdays, Fridays, and Sundays—days that carry more than 80 percent of the newspaper's advertising revenue.¹⁶³ The newspaper continues to produce content during the rest of the week, but it is only available through street pick-up, direct mail, or Internet access.¹⁶⁴ These examples demonstrate the breadth of alternate revenue schemes available to newspapers willing to explore these options. Moving away from an advertising-dominated business model, and instead exploring alternative revenue schemes, may allow newspapers to realize greater profits.

B. Emphasis on Local News

Refocusing newspaper content on local news and interests may help the newspaper industry out of its current predicament. Newspapers have moved away from producing locally focused content, due to media conglomeration and greater expense involved in producing local content over national content that may be shared across individual newspaper publications in a conglomerate.¹⁶⁵ Local news, however, has helped

17186308_1_daily-circulation-bay-area-news-group-metropolitan-papers (describing business models that do not rely heavily on advertising revenue).

¹⁵⁹ *Id.* (describing a subscription increase at the *Chronicle*).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *See id.* (“The turmoil in the newspaper industry has forced many papers to try out different business models, including raising subscription rates, publishing only on certain days of the week, and charging for online content.”).

¹⁶³ *See* MEYER, *supra* note 18, at 187 (describing a shortened home delivery schedule).

¹⁶⁴ *Id.* (explaining how readers access content on non-delivery days).

¹⁶⁵ *See* Burns, *supra* note 11, at 66-67 (discussing the effect of conglomeration to reduce local news and the heightened expense of producing local news).

sustain many smaller, locally focused papers, which have not been as seriously affected as their national counterparts.¹⁶⁶

Local news-dominated publications are faring the newspaper crisis better than their larger, national counterparts, in part because there is less competition for local news. Unlike national news, local news coverage is less likely to be widely available through numerous sources, and is less likely to be available on the internet.¹⁶⁷ Another benefit to focusing on local news is the move away from reliance on national advertisers.¹⁶⁸ As more publications are trying to attract large national advertisers, local advertisers provide a less competitive alternative. Local newspapers also often have the advantage of greater influence in their area, and they are therefore better able to establish themselves within the smaller, local advertising market.¹⁶⁹ For example, the local focus of the *Arkansas Democrat* allowed the newspaper to flourish, in part due to the strength of their hold on the local advertising market, while the conglomerate-owned competitor, the *Gazette*, floundered and eventually closed.¹⁷⁰

The clear advantages to enhancing local news content have encouraged some newspapers to turn back to a more localized model in an effort to revitalize their newspaper. In one such experiment, *Newsday*, a Long Island, New York newspaper publication, vowed to refocus their content on local reports.¹⁷¹ In 2009, *Newsday*'s managing editor and senior vice president, Debby Krennek, announced that: “[*Newsday* is] going to be

¹⁶⁶ See Downie & Schudson, *supra* note 65 at 33, (discussing how local news staffs escape staff cuts); see also Ahrens, *supra* note 21, at A15 (citing locally focused news content and local advertising advantages to explain why the “nation's smallest daily newspapers” fared better than their larger counterparts); see Zimmerman, *supra* note 66, at B4 (describing how small daily papers fill gaps in internet coverage and are not dependent on national advertisers).

¹⁶⁷ See Ahrens, *supra* note 21, at A15 (noting that newspapers focused on local news are faring better than their national counterparts because local news is not as likely to be published by larger publications); see also Zimmerman, *supra* note 66, at B4 (remarking that local news focused publications have had greater success because local news is less available on the internet).

¹⁶⁸ See Zimmerman, *supra* note 66, at B4 (explaining that local-based newspapers are less reliant on national advertisers).

¹⁶⁹ See Ahrens, *supra* note 21, at A15 (noting that local newspaper publications “tend to have a lock on local ad markets”); see also MEYER, *supra* note 18, at 189 (discussing the dominance of local newspapers in local advertising markets and exploring the case of the *Democrat-Gazette*).

¹⁷⁰ See MEYER, *supra* note 18, at 188-89 (noting that the *Democrat* eventually bought the assets of its former competitor, and the product was the *Democrat-Gazette*).

¹⁷¹ See Pérez-Peña, *Newsday to Charge*, *supra* note 75, at B4 (describing *Newsday*'s commitment to local news coverage).

much more locally focused.”¹⁷² The newspaper, in addition to committing to emphasizing local news, also added a feature to its website allowing web readers to tailor their news coverage to their zip code.¹⁷³ Newspapers that likewise rekindle their local roots may increase their viability in the declining industry.

C. Collaborative News Arrangements

Collaborative news arrangements offer a way for newspapers to cut costs expended on investigation without affecting the format or content of their reports. By establishing a news-sharing network with other news papers or other news media, newspapers creating collaborative news arrangements can distribute investigative costs across the news partnership.¹⁷⁴ Unlike cutbacks in newsroom staff, collaborative news arrangements do not necessarily implicate reduction of the newspaper’s ability to gather news. Although the concept of collaborative news arrangements may appear counterintuitive to the idea of media competition, the form has had seeming success in its limited use by newspapers.¹⁷⁵ Ohio’s eight top newspapers¹⁷⁶ have joined such a collaborative arrangement, forming the Ohio News Organization.¹⁷⁷ The newspapers share news, and even publish reports produced by the staff members of competitor publications.¹⁷⁸ For example, *The Columbus Dispatch* has published sports coverage of the Cleveland Indians from *The Cleveland Plain Dealer*, provided to them through the collaborative network.¹⁷⁹ This arrangement is comparable to the service popularly provided to subscriber newspapers of the Associated Press.¹⁸⁰ Unlike the Associated Press service however, collaborative news arrangements such as the Ohio News Organization may provide location specific content

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ See Downie & Schudson, *supra* note 65, at 34 (discussing collaborative news arrangements and their use by newspapers).

¹⁷⁵ See *On the Media: Oh No They Didn't* (WNYC broadcast Apr. 25, 2008) (transcript available at <http://www.onthemedial.org/transcripts/2008/04/25/04>) (describing one such arrangement, the Ohio News Organization, as a success).

¹⁷⁶ See *id.* (identifying the eight Ohio newspapers which form the Ohio News Organization).

¹⁷⁷ See *id.* (discussing the Ohio News Organization and how it functions).

¹⁷⁸ See *id.* (describing how newspapers within the Ohio News Organization (OHNO) allocate byline credit when using stories from newspapers within OHNO).

¹⁷⁹ *Id.*

¹⁸⁰ See *id.* (comparing collaborative news service to the Associated Press service).

more rapidly,¹⁸¹ and may do so at a lower price than the Associated Press service.¹⁸²

Collaborative news arrangements provide relief to newsrooms struggling to cover news with reduced staff, and may actually expand the amount of material a newspaper is able to cover due to the collaboration. As Susan Goldberg, Editor of *The Cleveland Plain Dealer* noted, “I frankly think we’re getting better, more distinctively written stories because they’re not going through the [Associated Press] mill. But I also think that [the Ohio News Organization] does allow us to make some smarter choices. We, and everybody else, have smaller staffs than we used to, and we’ve got to pick some priorities.”¹⁸³ The apparent success of the Ohio News Organization suggests that participation in collaborative news arrangements may be a viable option for newspapers looking to reduce costs without impairing content.

D. Making Better Use of the Internet

The newspaper industry is no stranger to the internet, but the industry has yet to realize the potential for news publication on this medium. By 2003, “nearly 1,500 North American daily newspapers had launched websites.”¹⁸⁴ Newspaper websites have been successful in attracting audiences, with some newspaper websites boasting higher readership than their print editions.¹⁸⁵ According to survey data, internet users now spend fifty-three minutes reading newspapers online weekly.¹⁸⁶ The industry on the whole, however, has not succeeded in making internet newspaper

¹⁸¹ See *id.* (noting that the Ohio News Organization disseminates content faster because, unlike the Associated Press content, the content is not rewritten).

¹⁸² See *id.* (commenting on the high cost of the Associated Press service, including a million dollar Associated Press budget at the *Cleveland Plain Dealer*, and describing the Ohio News Organization collaboration as a response to the Associated Press).

¹⁸³ *Id.*

¹⁸⁴ Hsiang Iris Chyi & Dominic L. Lasorsa, *The Market Relation Between Online and Print Newspapers: The Case of Austin, Texas*, in *INTERNET NEWSPAPERS: THE MAKING OF A MAINSTREAM MEDIUM* 177 (Xigen Li ed., Lawrence Earlbaum Associates 2006) (citation omitted) (describing the number of American newspapers with websites in 2003).

¹⁸⁵ See *supra* Part I.B.3.; see also Kurtz, *supra* note 69, at C6 (reporting greater web readership for *The Washington Post*); see also Pérez-Peña, *Newspaper Circulation Falls*, *supra* note 10, at B3 (identifying an overall increase in web newspaper readership from 2007 to 2009); Woolhouse, *supra* note 66, at B7 (noting stronger web readership for the *Boston Globe*’s website than for the print version).

¹⁸⁶ See Kurtz, *supra* note 69, at C6 (referencing data from a survey conducted by the University of Southern California’s Annenberg Center).

websites a profitable venture. Newspaper websites do have the potential to become revenue-generating assets to newspapers in an ever-more internet dominated climate, but their development requires the industry to: (1) create original web content and (2) develop a payment scheme for charging readers for the content.

Instead of providing original content on their website for readers, newspapers tend to simply repackage their print newspaper content in web form.¹⁸⁷ This sort of repackaging, termed “shovelware,” dominates the newspaper industry.¹⁸⁸ One study estimated that a mere 13 percent of content on newspaper websites was original, leaving the vast majority of the material to be replicated from the print newspaper.¹⁸⁹ Shovelware hinders the ability of newspapers to market their website to consumers in two ways. First, because shovelware entails creating a replica of the print newspaper, it discourages readership of both print and online editions, as readers are unlikely to consume both products when they are identical in content.¹⁹⁰ Instead, shovelware seemingly encourages a “substitution effect,” where consumers will seek out the less expensive option where products are interchangeable.¹⁹¹ The second way in which shovelware hinders the marketability of newspaper websites is that print content is not intended for the type of interactivity that the Internet permits.¹⁹² Web content provides newspapers the opportunity to engage in a wide range of interactive mechanisms with their readers and post multimedia content that is not possible in print newspaper.¹⁹³ By simply posting the same content on their websites as in their print editions, newspapers limit their ability to utilize interactive tools that may attract readers to their websites. If newspapers abandon the shovelware that has dominated their websites,

¹⁸⁷ See Chyi & Lasorsa, *supra* note 184, at 179.

¹⁸⁸ See *id.* (explaining shovelware and its predominance in the newspaper industry).

¹⁸⁹ See *id.* (citation omitted) (describing newspaper reliance on recycled material and not original content).

¹⁹⁰ See *id.* at 180 (discussing theoretical effects of shovelware, and industry concerns).

¹⁹¹ See *id.* (explaining the substitution effect within the context of newspaper websites, and identifying theoretical support for the idea that duplicated content elicits this effect).

¹⁹² See Kurtz, *supra* note 69, at C6 (“the Net changed America, but newspapers remained mired in two-dimensional thinking. They created sites that were largely a static replica of their print editions. There was little updating, [and] little sense of the dynamism of the web”).

¹⁹³ See Richard Pérez-Peña & Tim Arango, *They Pay for Cable, Music and Extra Bags. How About News?*, N.Y. TIMES, Apr. 8, 2009, at B6 (describing interactive and multimedia capabilities for newspaper websites, and the need to develop different online features in order to charge consumers to view content).

they may be able to attract new readers and market a new, distinct product from the traditional print paper.

In addition to creating web original content, newspapers must also adopt some regime to charge readers for web content in order for newspaper websites to become profitable. Newspapers have been reluctant to embrace charging readers for online content; instead they have attempted to generate greater advertising revenue by creating a large online reader base by providing website content for free.¹⁹⁴ The industry reluctance may be in part based on the fact that traditionally, newspapers derived a majority of their revenue from advertising, as well as the fact that other comparable media, such as television and radio, originally provided free content to consumers.¹⁹⁵ Because online advertising does not produce a revenue stream similar to print advertising, newspapers providing readers with free online content and relying solely on internet advertising for revenue are unlikely to make their websites profit producing assets.¹⁹⁶ Fortunately, industry reluctance to charge for website content seems to be diminishing in the face of the current climate.¹⁹⁷ Newspapers, including the *Wall Street Journal* and New York's *Newsday*, have begun to charge readers for access to online content.¹⁹⁸ Most recently, the *New York Times* announced a plan to begin charging for online content on their website beginning in 2011.¹⁹⁹ News Corporation, a media company, has even proposed an idea to create a single, centralized

¹⁹⁴ See *id.* (“Just a year ago, most media companies believed the formula for internet success was to offer free content, build an audience and rake in advertising dollars.”).

¹⁹⁵ See *id.* (“[Charging for online content] is an alien concept to many media veterans, who grew up in a world where news and other content on television and radio were free, and newspapers made far more money from advertisers than from readers.”).

¹⁹⁶ See *supra* Part I.B.3.

¹⁹⁷ See *supra* Part I.B.3 (discussing the impact of competing forms of media); see also Dawn Chmielewski, *Company Town: News Corp. Pushing for Online News Consortium*, L.A. TIMES, Aug. 21, 2009, at B1 (describing a news distribution consortium for online and portable devices); Agnes T. Crane, *Newspapers Charging for Their Online Content Won't Grab Headlines in a Year*, DAILY TELEGRAPH (London), Jan. 21, 2010, at B4 (noting that the *Wall Street Journal* and *Financial Times* have pay schemes); Richard Pérez-Peña, *The Times To Set Fee for Some On Web Site*, N.Y. TIMES, Jan. 21, 2010, at B1 (discussing The *Times* online fee announcement); see also Pérez-Peña, *Newsday to Charge*, *supra* note 75, at B4 (discussing *Newsday* access charge for online content).

¹⁹⁸ See Pérez-Peña, *The Times To Set Fee*, *supra* note 197, at B1 (discussing the *New York Times* online pay service); see also Pérez-Peña, *Newsday to Charge*, *supra* note 75, at B4 (discussing *Newsday* upcoming access charge for online content).

¹⁹⁹ See Crane, *supra* note 197, at B4 (discussing the *New York Times* pay service); see also Pérez-Peña, *The Times To Set Fee*, *supra* note 197, at B1 (discussing the *New York Times* plan to charge for internet content in 2011).

consortium for newspapers to charge for their online content.²⁰⁰ It is clear that the industry is starting to realize that providing free web content is an unsustainable practice. As newspaper mogul Rupert Murdoch put it: “People reading news for free on the web, that’s got to change.”²⁰¹ So long as newspapers continue to move towards charging consumers for online content, they may be able to finally realize the full economic value of their product.

If newspapers produce original online content and charge for access to that content, they may be able to transform their websites from low revenue producing entities, indistinguishable from the print product, into revenue generating assets. The strength of online newspaper readership, and the success of newspapers already charging for content, indicates that newspaper websites may become profitable for newspapers. In a tough economic climate, this additional web-based revenue may help keep newspapers afloat. In the recent downturn, the *Wall Street Journal*, which has been charging readers for online content since 1996,²⁰² defied the industry-wide reductions in circulation, in part due to its 400,000 online subscribers.²⁰³ In this way, newspaper websites could become assets to struggling newspaper companies.

E. Digital Readers

New technology may provide a remedy for the newspaper industry’s crisis. Digital reading devices, or “e-readers,” such as Amazon.com’s Kindle and Apple’s iPad, may revive newspaper readership and make newspapers current again in the digital age.²⁰⁴ E-readers are portable devices that allow the owner to view books, newspapers, and magazines downloaded onto the device, on screens that mimic the appearance of printed text.²⁰⁵ E-readers may offer salvation to newspapers, not only

²⁰⁰ See Chmielewski, *supra* note 197, at B1, B3.

²⁰¹ Pérez-Peña & Arango, *They Pay for Cable*, *supra* note 193, at B1 (quoting Rupert Murdoch).

²⁰² See Pérez-Peña & Arango, *They Pay for Cable*, *supra* note 193, at B1.

²⁰³ See Pérez-Peña & Arango, *Newspaper Circulation Falls*, *supra* note 10, at B3 (discussing the increase in online readers over the past five years).

²⁰⁴ See Chmielewski, *supra* note 197, at B3 (discussing the future of newspapers on e-readers including Amazon.com’s Kindle); see also Gordon Farrer, Just the Jobs: Paper Hope Lies in E-reader, *AGE* (Melbourne), Feb. 2, 2010, at B7 (introducing Apple’s iPad and industry expectations); Brad Stone & Stephanie Clifford, *With Apple Tablet, Print Media Hope for a Payday*, *N.Y. TIMES*, Jan. 26, 2010, at B1 (discussing possible beneficial effect Apple’s Tablet device may have on the media industry).

²⁰⁵ See Chmielewski, *supra* note 197, at B3 (explaining e-reader technology).

because they provide a technologically advanced medium for consumers to read newspapers, but also because the technological development provides newspapers with a chance to make a profit by selling newspaper content on a new medium. Commentators see the publication of e-reader newspapers as a way for the industry to correct the error it made in providing free internet content, and instead sell their news content on a more relevant medium than traditional newsprint.²⁰⁶ Newspapers are already embracing e-readers as a potential source for revenue. The *New York Times* has already announced that it is creating an e-reader compatible version of the newspaper.²⁰⁷ If newspapers develop e-reader compatible versions, they may be able to revive themselves in a society ever more dominated by new technology.

CONCLUSION

Newspaper revitalization should not come in the form of a government bailout. Although the motivation behind bailout proposals is focused on saving an industry instrumental to American democracy, the results of a government-sponsored bailout would be catastrophic for the newspaper industry. In addition to unfairly preferring newspapers over other comparable news media, a bailout would weaken the newspaper industry by impairing the watchdog role of newspaper journalism, restraining political endorsement and expression in print journalism, and discouraging intra-industry innovation.²⁰⁸ As newspapers have traditionally played a significant role in an informed democracy, perhaps the greatest victim of a government newspaper bailout would be the public.²⁰⁹ Thus, the future of newspapers does not depend on the government, but instead on actions within the industry. Viable options for restructuring the newspaper industry, including the development of alternative revenue schemes, emphasis on local news content, establishment of collaborative news arrangements, utilization of the internet, and exploration of digital reader technology, require action on the part of newspapers themselves.²¹⁰ If uninterrupted by government intervention, the industry may respond to the

²⁰⁶ See Farrer, *supra* note 204, at B7 (describing e-readers as the solution to charge for news content); see Stone *supra* note 204, at B1 (acknowledging that the newspaper industry's failure to charge for internet content was a failure, and articulating the hope that e-readers may provide a chance to correct that error).

²⁰⁷ See Stone, *supra* note 204, at B1.

²⁰⁸ See *supra* Part IV.

²⁰⁹ See *supra* Part IV.

²¹⁰ See *supra* Part V.

current newspaper crisis with a stronger, more relevant product and newspaper business model.

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