



Written by [Dave Bohon](#) on June 22, 2012

Supreme Court Ruling Frees FCC to Crack Down on TV Network Indecency

The U.S. Supreme Court ruled June 21 that the Federal Communications Commission (FCC) over-enforced its own laws when it fined the Fox and ABC networks for incidental obscenities uttered during televised awards shows and a brief display of nudity during an episode of a police drama series. But the High Court refused to issue a larger ruling on the constitutionality of the FCC's broadcast decency measures, meaning that the enforcement agency will be free — for the foreseeable future, at least — to keep broadcasters on a short leash relative to potentially immoral and obscene broadcast content.



The [Associated Press](#) reported that while the justices “unanimously threw out fines and other penalties against Fox and ABC television stations that violated the Federal Communications Commission policy regulating curse words and nudity on television airwaves,” they stopped short of a broader constitutional ruling that broadcasters hoped would free them from the FCC's strictures on indecency over the airwaves. The Court “concluded only that broadcasters could not have known in advance that obscenities uttered during awards show programs on Fox stations and a brief display of nudity on an episode of ABC's ‘NYPD Blue’ could give rise to penalties,” reported the AP. The FCC had imposed fines totaling nearly \$1.24 million against the networks and scores of affiliates.

Networks in the case argued that the FCC decency rules, which apply mainly to over-the-air broadcast channels, have become obsolete with the explosion of Internet, satellite, and mobile technology. The last time the High Court weighed in on the issue of broadcast indecency was in 1978, when it ruled in *FCC v. Pacifica* that comedian George Carlin's televised “Filthy Words” monologue crossed the line of decency because it contained “language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that children may be in the audience.”

The conservative legal advocacy group [Liberty Counsel](#) recalled that following that historic ruling, “the FCC noted that it would distinguish between repetitive and isolated speech” in future enforcement of its rules. In the most recent case, the agency “sanctioned for three incidents,” noted Liberty Counsel: “one involving the 2002 and 2003 Billboard Music Awards, both of which contained the ‘F word’; an episode of *NYPD Blue* which contained a seven-second segment of a nude buttocks and a side view of a breast; and a segment on ABC during the 2003 Golden Globe Awards, where the ‘F word’ was used.”

Liberty Counsel explained that in its actions against Fox and ABC, “the FCC changed its application of indecency to include even isolated violations. The Supreme Court ruled that the application of this policy change did not give notice to Fox or ABC of what was banned, and therefore the FCC's



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application as to these instances was void for vagueness.”

However, because the High Court ruling did not address the larger issue of the constitutionality of the FCC’s policies, the agency will be free, with proper notice of its intent, to apply its decency standards even to isolated incidents.

Paul Smith, a First Amendment attorney who wrote a brief in the case in support of the broadcasters, told AP News that the issue is far from settled. “The Supreme Court decided to punt on the opportunity to issue a broad ruling on the constitutionality of the FCC indecency policy,” said Smith. “The issue will be raised again as broadcasters will continue to try to grapple with the FCC’s vague and inconsistent enforcement regime.”

While pro-family and decency groups had hoped the Supreme Court would uphold the fines against the networks and make a stronger ruling in favor of the FCC’s policies, most nonetheless felt that the Court’s overall decision was favorable for cracking down on broadcast indecency. Tim Winter of the [Parents Television Council](#) said the ruling amounted to a defeat for broadcasters in their efforts to overturn the authority of the FCC to enforce strict standards for what broadcast networks may air between the hours of 6 a.m. and 10 p.m., when children are most likely to be viewing.

“Once again the Supreme Court has ruled against the networks in their years-long campaign to obliterate broadcast decency standards,” Winter said. He noted that such standards “have existed to protect children since the dawn of the broadcast medium. It is for their sake that there will still be decency rules and the TV networks will be required to abide by them.”

Patrick Trueman, president of [Morality in Media](#), said that while the ruling was not all that his group hoped it would be, the positive takeaway was that “the High Court did not strike down the federal indecency law, 18 USC 1464, nor did it uphold the decision of the U. S. Court of Appeals finding that the FCC enforcement regulations of that law were unconstitutional.”

Trueman emphasized that the real import of the ruling was that “the FCC is free to enforce indecency law,” and thus should launch a vigorous campaign to clean up the airwaves. “Broadcasters do not have a right to turn network television into a cesspool at the expense of children and those who wish to avoid the foul language and pornography that is now so common on cable television,” said Trueman. “The FCC must now enforce our right to decency on the public airwaves.”

Tony Perkins, president of [Family Research Council](#), agreed, saying that his group expected the FCC to use the ruling as a green light to more aggressively pursue its efforts to keep the airwaves safe for children and families — and for the Supreme Court to offer its continued assistance. “When a similar case goes before the Supreme Court again for fines imposed for any future violations,” Perkins said, “we expect the Court to once again decide that fleeting expletives and brief nudity are not protected under the First Amendment.”

Photos: The Supreme Court building; the cast of NYPD Blue at the beginning of season 11



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