

## U.S. SUPREME COURT DECISION LEAVES FCC BROADCAST INDECENCY POLICY INTACT AND ENFORCEABLE

By Thomas North

President of Decent TV

[www.decenttv.org](http://www.decenttv.org)

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In June, 2012, the U.S. Supreme Court decided *FCC v Fox and ABC TV*, and the ruling was in favor of those two television networks. Specifically, the Court found that an FCC policy, under which broadcasts by those networks were found to be indecent and illegal, was not adopted until AFTER the broadcasts occurred. Those facts and the holding of the Court are correct. Predictably, the major networks touted the decision as a victory over the FCC, and for their own “free speech” rights.

But not so fast! The grounds upon which the Supreme Court held against the FCC were not raised by the networks, and were determined by the Court on its own, from its review of the facts. Instead, the networks, joined by CBS, NBC, and various “amicus” (friend of the court) organizations, had argued the indecency findings should be overruled as infringements of their constitutional “free speech rights”, and that the Court should permanently eradicate about 80 years of federal law providing for restrictions on broadcast indecency. A federal statute prohibited indecent radio broadcasting starting in the 1920’s, and later, was applied to broadcast TV. An amended statute is still on the books. It was upheld previously by the Supreme Court in 1978, in the landmark *Pacifica Foundation* case, at least for daytime broadcasting, based on the use of the public airwaves. In this new case, the networks had argued for those federal precedents, along with all FCC indecency regulations, to be reversed and eliminated completely, even for daytime broadcasting. In ruling for Fox and ABC, the Supreme Court, consistent with the arguments in the briefs filed by Decent TV, Morality in Media, our partner amicus organizations, and the FCC, declined to even consider the constitutional challenges, finding such review legally “unnecessary.”

That brief refusal by the Court to even address the constitutional challenges of the networks is a HUGE and critical victory for the FCC and our amicus organizations, rather than the win declared by the networks, on the larger and broader issues of broadcast enforcement. Decent TV, Morality in Media, and our partner organizations strongly argued together for the continued constitutionality of generally enforceable federal law.

Perhaps more importantly, several days after it decided *Fox and ABC*, the Supreme Court spoke again, this time in *FCC v CBS* (the Janet Jackson Super Bowl halftime) case. While it found in favor of CBS also, and thereby denied review of an appeals court decision basically on the same ex post facto grounds of the policy post-dating the broadcasts, there was a huge silver lining in the ruling. Chief Justice John Roberts, in writing the majority decision, expressly stated that the grounds upon which the Court favored CBS, lack of notice, can never again be raised, as the broadcasters are all now on notice that FCC policy is valid, in place, and can be enforced!

The FCC has a backlog of over a million indecency complaints pertaining to broadcast TV programs, that were on hold pending the Supreme Court decision. While some may have the same “lack of notice” problem, undoubtedly many can and should now be processed by the FCC. Public pressure is being applied by various organizations, but more pressure is necessary.

The effect of these Supreme Court decisions, thanks to the efforts of the FCC and our organizations, is critical in maintaining at least some minimal level of decency in all American homes and public places in which there are children and unconsenting adults. If the networks had prevailed on their constitutional challenges, we would now be starting to see more unedited hard core “R”, and even “X” and “NC-17”, rated movies and television programs right on the major broadcast networks, which permeate on the public airwaves. As we argued to the Court, exposure of citizens to broadcasting is unavoidable, and distinguished from cable, satellite, and internet media, all of which are require the step of a paid subscription by a consenting adult. Future challenges to the broadcast indecency laws are likely. The network executives have shown a pattern of always thumbing their collective noses at any and all laws that interfere with their agenda of forcing all Americans to be repeatedly exposed to explicit sexual content, and financial

profit. But for now, there is still a lid on the pot, and it is important for citizens to continually support these decency efforts! Please visit the websites of Morality in Media, Decent TV, and our partner organizations, such as Parents Television Council for more information, and simple steps that can be taken to support decency.