



CHRISTIAN POST

Supreme Court Case, FCC v. Fox TV, Divides Social Conservatives, Libertarians

By [Napp Nazworth](#) | Christian Post Reporter

Social conservatives and libertarians are taking opposite sides in a Supreme Court case involving the regulation of indecency on broadcast television. In FCC v. Fox Television Stations Inc., the Court will decide if the Federal Communications Commission (FCC) violated broadcast networks Freedom of Speech when they were fined for profanity and nudity.

The Supreme Court will consider two separate cases in which broadcast television networks were fined by the FCC for displays of indecency in their programs. In the first case, participants in a live showing of the “Billboard [Music Awards](#)” in 2002 and 2003 used expletives, the “s-word” and the “f-word.” In the second case, a 2003 episode of “NYPD Blue” showed actress Charlotte Ross nude. Her buttocks was fully nude and the rest of her private parts were partially covered by her hands.

At issue in the case is whether the FCC standards are too vague to be constitutional. The FCC had previously allowed instances of “fleeting expletives,” and only issued fines for recurring instances. Lower courts found that the FCC did not offer reasonable explanations for changing its policy. By combining the two cases, the Court could rule on FCC fines for “fleeting” instances of both nudity and expletives.

Cato Institute, a libertarian think tank, filed an [amicus brief](#) asking the court to overturn FCC v. Pacifica Foundation (1978), which allowed the FCC to have the authority to regulate indecency on broadcast television. Cato argued that changes in [technology](#) since 1978 invalidate the Court's reasoning in Pacifica.

In a Tuesday interview with The Christian Post, Ilya Shapiro, senior fellow in Constitutional Studies at Cato and co-author of Cato's amicus brief, said that the four broadcast networks, ABC, CBS, NBC and Fox should be able to “compete on a level playing field” with the cable networks, which are not regulated by the FCC. Today, unlike in 1978, consumers have many TV networks to watch and multiple methods to watch them, so the distinction between broadcast and non-broadcast networks, cable television and the Internet, no longer makes sense, Shapiro argued.

“Pacifica is based on an archaic and unrealistic conception of broadcast television. The state of media and technology today directly challenges Pacifica’s assumption that broadcast television is a unique medium that deserves only watered-down First Amendment protection,” Cato's Amicus brief states.

Family Research Council (FRC), a social conservative think tank, took a different view in its [amicus brief](#) supporting the FCC in the case. “While some have claimed that the emergence of new media has undermined Pacifica’s observation about broadcasting’s penetration of the American home, in fact, Petitioners [for the FCC] have demonstrated convincingly that broadcast TV and radio still maintain 'a uniquely pervasive presence' in American life,” FRC argued.

Chris Gacek, senior fellow at FRC, said, in a Tuesday interview with The Christian Post, he sympathizes with the belief that the cable networks should be treated the same as the broadcast networks, but would prefer increased regulation of the cable networks rather than decreased regulation of the broadcast networks.

If the Supreme Court supports the lower courts' decisions, “it won't be too long before you have nudity on TV,” Gacek argued.

Gacek also believes that the broadcast networks should be set aside as a place where consumers know they can watch TV without inadvertently being exposed to indecency.

“With all these cable channels where you can go, there ought to be someplace you can go that is OK. You can show this junk all over the place. So, what is the problem with having one area that is not subject to all the intrusions and unwanted content that people find offensive? The broadcaster ought to be like a safe harbor,” Gacek implored.

Shapiro and Gacek both acknowledged that the split between libertarians and social conservatives on this issue is typical. From an electoral standpoint, Shapiro does not believe that the issue is important enough to fracture the conservative coalition.