

Reason Blog

[“It’s time for a new rule that gives broadcast media the same level of speech protection as any other kind.”](#)

[Damon W. Root](#) | November 11, 2011

The Cato Institute’s Ilya Shapiro summarizes what’s at stake when the Supreme Court hears oral arguments later this term in *Federal Communications Commission v. Fox Television*, the case arising from the live broadcast of so-called fleeting expletives:

Who controls the content of TV and radio broadcasts, parents or the FCC? In the 1978 case of *FCC v. Pacifica Foundation*, the Supreme Court held that, because over-the-air broadcast media is like an “unwanted intruder” in the home that is uniquely accessible to children, the FCC has a role in maintaining the cleanliness of the transmissions. Because of these unique characteristics, the regulation of broadcast media was held to a lesser constitutional standard than other types of media. That ruling was largely based on the technology of the time: three channels, little cable, and no VCRs, much less Internet, DVDs, and satellite TV....

Broadcast media is no longer an “unwanted intruder,” but more like an invited guest. Moreover, with the existence of parental control mechanisms like the V-Chip, parental locks included in cable and satellite boxes, and even services like “TV Guardian” — which filters live TV based on the closed-captioning signal — parents have all the tools at their disposal to ensure that children aren’t exposed to fleeting expletives or anything else unwanted. So why does the FCC need a vague and overbroad rule that could not pass heightened scrutiny and can only survive under a watered-down First Amendment standard? We live in a world that few could have imagined in 1978. It’s time for a new rule that gives broadcast media the same level of speech protection as any other kind.

Read the rest [here](#). Read *Reason*’s previous coverage of the case [here](#) and [here](#).