

# High court weighs limits of broadcast indecency: Federal Communications Commission v. Fox Television

News in the [December 2, 2008](#) issue

As the rest of the country focused on the presidential election November 4, the Supreme Court danced around the use of dirty words, opting for *f-word* and *s-word* as euphemisms for expletives in a chamber that twice erupted in laughter.

The justices showed little sign of reaching consensus during the oral arguments in *Federal Communications Commission v. Fox Television*, which centered on “fleeting uses” of profanity on live television during daytime hours when children are likely to be watching.

Much of the morning’s argument focused on the literal and nonliteral meanings of the expletives in question, as well as the use of a word as a throwaway epithet as opposed to a description of sexual activity.

“The reason these words shock is because of their association with a literal meaning,” Chief Justice John Roberts said.

Justice John Paul Stevens asked Solicitor General Gregory Garre if the word *dung*, which he proceeded to spell out, would be considered indecent. Garre responded that it would depend on the context.

When discussion of the case turned to whether or not there has been a change in community standards over what is acceptable on television, attorney Carter Phillips, representing broadcasters, said he thought the public had become considerably more tolerant.

“Think your clients have anything to do with that?” Justice Antonin Scalia responded.

The case, the Supreme Court’s first major consideration of alleged broadcast indecency in 30 years, arose after several celebrities let loose with crudities on

television.

In 2004, the FCC changed the indecency policy after Cher, Nicole Richie and Bono used variations of the f-word and s-word during live award shows in 2002 and 2003. The FCC ruled that in many instances the uttering of even a single expletive, such as the f-word, was indecent and made a broadcaster subject to a fine.

In June 2007, the Second U.S. Circuit Court of Appeals in New York ruled that the FCC policy was “arbitrary and capricious,” did not follow requirements of federal law, and raised questions about First Amendment free speech rights.

Before the high court in Washington, Garre argued that “broadcast TV is one place where Americans can expect . . . not to be bombarded with indecent language.” The federal agency has no authority over cable TV and the Internet, he pointed out.

Garre said the FCC seeks to avoid a situation as extreme as Big Bird using the f-word on *Sesame Street*. That brought a laugh from the crowded courtroom.

Court observers said the Supreme Court justices could address the larger First Amendment issue or simply decide that the FCC did not adequately explain its 2004 change in policy. -*Religion News Service*