

Supreme Court Rules Unanimously in Favor of ABC and Other Broadcasters in FCC Indecency Case

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On June 21, the US Supreme Court unanimously ruled in favor of several major broadcasters—including WilmerHale client ABC, Inc.—in *FCC v. Fox Television Stations, Inc.*, et al. The Court set aside the FCC’s findings that television networks violated the agency’s indecency rules by broadcasting profanity and nudity.

In his decision for a seven-Justice majority (Justice Sotomayor was recused), Justice Anthony Kennedy said the FCC “failed to give Fox or ABC fair notice prior to the broadcasts in question that fleeting expletives and momentary nudity could be found actionably indecent.” He noted that the Court’s ruling left the FCC “free to modify its current indecency policy.”

ABC filed the matter in 2008 after the FCC levied a \$1.24 million fine for ABC’s broadcast of allegedly indecent material—specifically, a scene in *NYPD Blue* in which a woman’s buttocks were shown for seven seconds. The Second Circuit, where WilmerHale also represented ABC, concluded that the FCC’s indecency regime was impermissibly vague and that the FCC’s application of its indecency test was arbitrary and left “little rhyme or reason” to its indecency findings. The Supreme Court then granted the FCC’s petition for *certiorari*. (Fox network filed a separate suit after the FCC deemed its airing of certain expletives to be indecent; the Supreme Court heard both cases together.)

In addition to reviewing the Second Circuit’s due process holding, the Supreme Court considered the broadcasters’ arguments that the FCC’s indecency rules violate the First Amendment. Having found the findings unconstitutionally vague, however, the Court concluded that it did not need to reach the broadcasters’ broader arguments. (Justice Ginsburg, concurring in the judgment, would have addressed one of the broadcasters’ First Amendment challenges.)

WilmerHale’s [Seth Waxman](#) argued the case before the Supreme Court. The firm team representing ABC included Partners [Paul Wolfson](#) and [Daniel Volchok](#), Senior Associate [Sonya Lebsack](#) and Associate [Ari Holtzblatt](#).