

Supreme Court Indecency Ruling Beginning to Impact Current Cases

by Anthony Caruso on October 11, 2012

In the wake of the Supreme Court's recent decision regarding "fleeting expletives," the U.S. Department of Justice has dismissed an indecency lawsuit against Fox Broadcasting and four TV stations owned by the network. Fox was facing legal action after refusing to pay fines related to a 2003 episode of the show *Married By America* that featured strippers.

Although the DOJ did not expressly state why it was abandoning the suit, the Supreme Court's decision in *Federal Communications Commission v. Fox Television Stations* likely played a key role. The case centered on fines levied against Fox and ABC for what the FCC deemed offensive content.

In its opinion, the Court concluded that the fines were unconstitutional under the Due Process clause. As explained by Justice Anthony Kennedy, "The Commission 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."

Although the FCC has not filed an indecency since 2009, several cases like this one are still making their way through the court system. It will be interesting to see if the increased Supreme Court scrutiny will cause the agency to revisit its policies before bringing any new indecency actions or even continuing to pursue active cases.

For more information about this case or FCC indecency regulations, please contact Anthony Caruso, Chair of Scarinci Hollenbeck's Sports and Entertainment Law Group.