

High court upholds FCC dirty words ruling

by UPI

WASHINGTON -- The U.S. Supreme Court ruled 5-4 along ideological lines Tuesday that federal law allows the banning of even the fleeting use of dirty words in live broadcasts.

The underlying case involves the use of what the high court called the "F-word" and the "S-word."

The policy of the Federal Communications Commission has evolved over the years. In 2004, the FCC declared for the first time that the use of the words could be "actionably indecent," even when used only once. The policy was announced after U2's Bono used the F-word on a Golden Globe Awards broadcast.

The case ruled on Tuesday involves two live broadcasts on Fox: Cher's use of the F-word on the 2002 Billboard Music Awards and Nicole Richie's use of both words on the same awards show in 2003.

The FCC received numerous complaints from parents whose children watched the broadcasts, and the agency issued an order finding both broadcasts patently offensive, though it did not impose sanctions.

A federal appeals court in New York said the order was flawed under federal law governing agencies, but the U.S. Supreme Court reversed.

The majority opinion was written by Justice Antonin Scalia, who was joined in the opinion in full or in part by the three other members of the court's conservative bloc, and by moderate Justice Anthony Kennedy.

Scalia said the FCC's action was not "arbitrary and capricious," and rejected dissent that said the policy might hurt smaller broadcasters who cannot afford time-delay equipment. "The fact that the agency believed that Fox (a large broadcaster that used suggestive scripting and a deficient delay system to air a prime-time awards show aimed at millions of children) "fail(ed) to exercise 'reasonable judgment, responsibility and sensitivity,'" Scalia wrote, citing court precedent, "says little about how the commission would treat smaller broadcasters who cannot afford screening equipment."

(FCC et al vs. Fox et al, No. 07-582)

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