

Brooks Pierce Broadcasting Clients Prevail in U.S. Supreme Court

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Court deems FCC's application of indecency policy to "fleeting nudity" vague and strikes down \$1.24 million fine.

The U.S. Supreme Court issued its long-awaited fleeting indecency decision yesterday in *FCC v. Fox Television Stations, Inc.* and *FCC v. ABC, Inc.* Brooks Pierce represented the ABC Television Affiliates Association and 43 individual stations challenging the imposition of a \$1.24 million fine on numerous ABC stations for a 2003 episode of *NYPD Blue* that briefly displayed a woman's bare buttocks.

The Court's opinion struck down the fine, concluding that the Federal Communication Commission's application of its fleeting indecency policy to the challenged episode was vague under the Due Process Clause. This is precisely the theory urged by Brooks Pierce partners Wade Hargrove, Mark Prak, David Kushner, and Julia Ambrose in their advocacy before the Supreme Court.

While this is a victory for broadcasters, it does not necessarily settle the legal issues, as the Court did not address the constitutionality of the indecency policy in other contexts or the government's power to monitor and restrict content disseminated through public airwaves.