

# FCC v. Pacifica

438 U.S. 726

Supreme Court of the United States

July 3, 1978

5 FEDERAL COMMUNICATIONS COMMISSION v. PACIFICA FOUNDATION ET AL. No. 77-528. Argued  
April 18, 19, 1978. Decided July 3, 1978. CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT. Joseph A. Marino argued the cause for petitioner. With him  
on the briefs were Robert R. Bruce and Daniel M. Armstrong. Harry M. Plotkin argued the cause for respondent  
10 Pacifica Foundation. With him on the brief were David Tillotson and Harry F. Cole. Louis F. Claiborne argued  
the cause for the United States, a respondent under this Court's Rule 21 (4). With him on the brief were  
Solicitor General McCree, Assistant Attorney General Civiletti, and Jerome M. Feit. Briefs of amici curiae  
urging reversal were filed by Anthony J. Atlas for Morality in Media, Inc.; and by George E. Reed and Patrick  
F. Geary for the United States Catholic Conference. Briefs of amici curiae urging affirmance were filed by J.  
15 Roger Wollenberg, Timothy B. Dyk, James A. McKenna, Jr., Carl R. Ramey, Erwin G. Krasnow, Floyd  
Abrams, J. Laurent Scharff, Corydon B. Dunham, and Howard Monderer for the American Broadcasting  
Companies, Inc., et al.; by Henry R. Kaufman, Joel M. Gora, Charles Sims, and Bruce J. Ennis for the  
American Civil Liberties Union et al.; by Irwin Karp for the Authors League of America, Inc.; by James  
Bouras, Barbara Scott, and Fritz E. Attaway for the Motion Picture Association of America, Inc.; and by Paul P.  
20 Selvin for the Writers Guild of America, West Inc. Charles M. Firestone filed a brief for the Committee for  
Open Media as amicus curiae.

**MR. JUSTICE STEVENS delivered the opinion of the Court (Parts I, II, III,  
and IV-C) and an opinion in which THE CHIEF JUSTICE and MR.  
JUSTICE REHNQUIST joined (Parts IV-A and IV-B).**

25 This case requires that we decide whether the Federal Communications  
Commission has any power to regulate a radio broadcast that is indecent but not  
obscene.

A satiric humorist named George Carlin recorded a 12-minute monologue  
entitled "Filthy Words" before a live audience in a California theater. He began  
by referring to his thoughts about "the words you couldn't say on the public, ah,  
30 airwaves, um, the ones you definitely wouldn't say, ever." He proceeded to list  
those words and repeat them over and over again in a variety of colloquialisms.  
The transcript of the recording, which is appended to this opinion, indicates  
frequent laughter from the audience.

At about 2 o'clock in the afternoon on Tuesday, October 30, 1973, a New  
35 York radio station, owned by respondent Pacifica Foundation, broadcast the  
"Filthy Words" monologue. A few weeks later a man, who stated that he had  
heard the broadcast while driving with his young son, wrote a letter complaining  
to the Commission. He stated that, although he could perhaps understand the  
"record's being sold for private use, I certainly cannot understand the broadcast  
40 of same over the air that, supposedly, you control."

The complaint was forwarded to the station for comment. In its response,  
Pacifica explained that the monologue had been played during a program about  
contemporary society's attitude toward language and that, immediately before its  
broadcast, listeners had been advised that it included "sensitive language which  
45 might be regarded as offensive to some." Pacifica characterized George Carlin as

“a significant social satirist” who “like Twain and Sahl before him, examines the language of ordinary people. . . . Carlin is not mouthing obscenities, he is merely using words to satirize as harmless and essentially silly our attitudes towards those words.” Pacifica stated that it was not aware of any other complaints about the broadcast.

On February 21, 1975, the Commission issued a declaratory order granting the complaint and holding that Pacifica “could have been the subject of administrative sanctions.” 56 F. C. C. 2d 94, 99. The Commission did not impose formal sanctions, but it did state that the order would be “associated with the station’s license file, and in the event that subsequent complaints are received, the Commission will then decide whether it should utilize any of the available sanctions it has been granted by Congress.”<sup>17</sup>

In its memorandum opinion the Commission stated that it intended to “clarify the standards which will be utilized in considering” the growing number of complaints about indecent speech on the airwaves. *Id.*, at 94. Advancing several reasons for treating broadcast speech differently from other forms of expression,<sup>18</sup> the Commission found a power to regulate indecent broadcasting in two statutes: 18 U.S. C. § 1464 (1976 ed.), which forbids the use of “any obscene, indecent, or profane language by means of radio communications,”<sup>19</sup> and 47 U.S. C. § 303 (g), which requires the Commission to “encourage the larger and more effective use of radio in the public interest.”

The Commission characterized the language used in the Carlin monologue as “patently offensive,” though not necessarily obscene, and expressed the opinion that it should be regulated by principles analogous to those found in the law of

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<sup>17</sup> 56 F. C. C. 2d, at 99. The Commission noted:

“Congress has specifically empowered the FCC to (1) revoke a station’s license (2) issue a cease and desist order, or (3) impose a monetary forfeiture for a violation of Section 1464, 47 U.S. C. [§§] 312 (a), 312 (b), 503 (b) (1) (E). The FCC can also (4) deny license renewal or (5) grant a short term renewal, 47 U.S. C. [§§] 307, 308.” *Id.*, at 96 n. 3.

<sup>18</sup> “Broadcasting requires special treatment because of four important considerations: (1) children have access to radios and in many cases are unsupervised by parents; (2) radio receivers are in the home, a place where people’s privacy interest is entitled to extra deference, see *Rowan v. Post Office Dept.*, 397 U.S. 728 (1970); (3) unconsenting adults may tune in a station without any warning that offensive language is being or will be broadcast; and (4) there is a scarcity of spectrum space, the use of which the government must therefore license in the public interest. Of special concern to the Commission as well as parents is the first point regarding the use of radio by children.” *Id.*, at 97.

<sup>19</sup> Title 18 U.S. C. § 1464 (1976 ed.) provides:

“Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than \$10,000 or imprisoned not more than two years, or both.”

nuisance where the “law generally speaks to *channeling* behavior more than actually prohibiting it. . . . [T]he concept of ‘indecent’ is intimately connected with the exposure of children to language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that children may be in the audience.” 56 F. C. C. 2d, at 98.<sup>20</sup>

Applying these considerations to the language used in the monologue as broadcast by respondent, the Commission concluded that certain words depicted sexual and excretory activities in a patently offensive manner, noted that they “were broadcast at a time when children were undoubtedly in the audience (i. e., in the early afternoon),” and that the prerecorded language, with these offensive words “repeated over and over,” was “deliberately broadcast.” *Id.*, at 99. In summary, the Commission stated: “We therefore hold that the language as broadcast was indecent and prohibited by 18 U.S. C. [§] 1464.” *Ibid.*

After the order issued, the Commission was asked to clarify its opinion by ruling that the broadcast of indecent words as part of a live newscast would not be prohibited. The Commission issued another opinion in which it pointed out that it “never intended to place an absolute prohibition on the broadcast of this type of language, but rather sought to channel it to times of day when children most likely would not be exposed to it.” 59 F. C. C. 2d 892 (1976). The Commission noted that its “declaratory order was issued in a specific factual context,” and declined to comment on various hypothetical situations presented by the petition.<sup>20</sup> *Id.*, at 893. It relied on its “long standing policy of refusing to issue interpretive rulings or advisory opinions when the critical facts are not explicitly stated or there is a possibility that subsequent events will alter them.” *Ibid.*

The United States Court of Appeals for the District of Columbia Circuit reversed, with each of the three judges on the panel writing separately. 181 U.S. App. D. C. 132, 556 F. 2d 9. Judge Tamm concluded that the order represented censorship and was expressly prohibited by § 326 of the Communications Act.<sup>21</sup> Alternatively, Judge Tamm read the Commission opinion as the functional equivalent of a rule and concluded that it was “overbroad.” 181 U.S. App. D. C., at 141, 556 F. 2d, at 18. Chief Judge Bazelon’s concurrence rested on the Constitution. He was persuaded that § 326’s prohibition against censorship is

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<sup>20</sup> The Commission did, however, comment: “‘[I]n some cases, public events likely to produce offensive speech are covered live, and there is no opportunity for journalistic editing.’ Under these circumstances we believe that it would be inequitable for us to hold a licensee responsible for indecent language. . . . We trust that under such circumstances a licensee will exercise judgment, responsibility, and sensitivity to the community’s needs, interests and tastes.” 59 F. C. C. 2d, at 893 n. 1.

<sup>21</sup> “Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.” 48 Stat. 1091, 47 U.S. C. § 326.

inapplicable to broadcasts forbidden by § 1464. However, he concluded that § 1464 must be narrowly construed to cover only language that is obscene or otherwise unprotected by the First Amendment. 181 U.S. App. D. C., at 140-153, 556 F. 2d, at 24-30. Judge Leventhal, in dissent, stated that the only issue was whether the Commission could regulate the language “as broadcast.” *Id.*, at 154, 556 F. 2d, at 31. Emphasizing the interest in protecting children, not only from exposure to indecent language, but also from exposure to the idea that such language has official approval, *id.*, at 160, and n. 18, 556 F. 2d, at 37, and n. 18, he concluded that the Commission had correctly condemned the daytime broadcast as indecent.

Having granted the Commission’s petition for certiorari, 434 U.S. 1008, we must decide: (1) whether the scope of judicial review encompasses more than the Commission’s determination that the monologue was indecent “as broadcast”; (2) whether the Commission’s order was a form of censorship forbidden by § 326; (3) whether the broadcast was indecent within the meaning of § 1464; and (4) whether the order violates the First Amendment of the United States Constitution.

## I

The general statements in the Commission’s memorandum opinion do not change the character of its order. Its action was an adjudication under 5 U.S. C. § 554 (e) (1976 ed.); it did not purport to engage in formal rulemaking or in the promulgation of any regulations. The order “was issued in a specific factual context”; questions concerning possible action in other contexts were expressly reserved for the future. The specific holding was carefully confined to the monologue “as broadcast.”

“This Court . . . reviews judgments, not statements in opinions.” *Black v. Cutter Laboratories*, 351 U.S. 292, 297. That admonition has special force when the statements raise constitutional questions, for it is our settled practice to avoid the unnecessary decision of such issues. *Rescue Army v. Municipal Court*, 331 U.S. 549, 568-569. However appropriate it may be for an administrative agency to write broadly in an adjudicatory proceeding, federal courts have never been empowered to issue advisory opinions. See *Herb v. Pitcairn*, 324 U.S. 117, 126. Accordingly, the focus of our review must be on the Commission’s determination that the Carlin monologue was indecent as broadcast.

## II

The relevant statutory questions are whether the Commission’s action is forbidden “censorship” within the meaning of 47 U.S. C. § 326 and whether speech that concededly is not obscene may be restricted as “indecent” under the authority of 18 U.S. C. § 1464 (1976 ed.). The questions are not unrelated, for the two statutory provisions have a common origin. Nevertheless, we analyze them separately.

Section 29 of the Radio Act of 1927 provided:

5           “Nothing in this Act shall be understood or construed to give the  
licensing authority the power of censorship over the radio  
communications or signals transmitted by any radio station, and no  
regulation or condition shall be promulgated or fixed by the licensing  
authority which shall interfere with the right of free speech by means of  
radio communications. No person within the jurisdiction of the United  
States shall utter any obscene, indecent, or profane language by means of  
radio communication.” 44 Stat. 1172.

10           The prohibition against censorship unequivocally denies the Commission any  
power to edit proposed broadcasts in advance and to excise material considered  
inappropriate for the airwaves. The prohibition, however, has never been  
construed to deny the Commission the power to review the content of completed  
broadcasts in the performance of its regulatory duties.<sup>22</sup>

15           During the period between the original enactment of the provision in 1927  
and its re-enactment in the Communications Act of 1934, the courts and the  
Federal Radio Commission held that the section deprived the Commission of the  
power to subject “broadcasting matter to scrutiny prior to its release,” but they  
concluded that the Commission’s “undoubted right” to take note of past program  
content when considering a licensee’s renewal application “is not censorship.”<sup>23</sup>

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<sup>22</sup> Zechariah Chafee, defending the Commission’s authority to take into account program service in  
granting licenses, interpreted the restriction on “censorship” narrowly: “This means, I feel sure, the  
sort of censorship which went on in the seventeenth century in England – the deletion of specific  
items and dictation as to what should go into particular programs.” 2 Z. Chafee, *Government and  
Mass Communications* 641 (1947).

<sup>23</sup> In *KFKB Broadcasting Assn. v. Federal Radio Comm’n*, 60 App. D. C. 79, 47 F. 2d 670 (1931),  
a doctor who controlled a radio station as well as a pharmaceutical association made frequent  
broadcasts in which he answered the medical questions of listeners. He often prescribed mixtures  
prepared by his pharmaceutical association. The Commission determined that renewal of the  
station’s license would not be in the public interest, convenience, or necessity because many of the  
broadcasts served the doctor’s private interests. In response to the claim that this was censorship in  
violation of § 29 of the 1927 Act, the Court held:

“This contention is without merit. There has been no attempt on the part of the commission to  
subject any part of appellant’s broadcasting matter to scrutiny prior to its release. In considering the  
question whether the public interest, convenience, or necessity will be served by a renewal of  
appellant’s license, the commission has merely exercised its undoubted right to take note of  
appellant’s past conduct, which is not censorship.” 60 App. D. C., at 81, 47 F. 2d, at 672.

In *Trinity Methodist Church, South v. Federal Radio Comm’n*, 61 App. D. C. 311, 62 F. 2d 850  
(1932), cert. denied, 288 U.S. 599, the station was controlled by a minister whose broadcasts  
contained frequent references to “pimps” and “prostitutes” as well as bitter attacks on the Roman  
Catholic Church. The Commission refused to renew the license, citing the nature of the broadcasts.  
The Court of Appeals affirmed, concluding the First Amendment concerns did not prevent the  
Commission from regulating broadcasts that “offend the religious susceptibilities of thousands . . .  
or offend youth and innocence by the free use of words suggestive of sexual immorality.” 61 App.

Not only did the Federal Radio Commission so construe the statute prior to 1934; its successor, the Federal Communications Commission, has consistently interpreted the provision in the same way ever since. See Note, Regulation of Program Content by the FCC, 77 Harv. L. Rev. 701 (1964). And, until this case, the Court of Appeals for the District of Columbia Circuit has consistently agreed with this construction.~ Thus, for example, in his opinion in *Anti-Defamation League of B'nai B'rith v. FCC*, 131 U.S. App. D. C. 146, 403 F. 2d 169 (1968), cert. denied, 394 U.S. 930, Judge Wright forcefully pointed out that the Commission is not prevented from canceling the license of a broadcaster who persists in a course of improper programming. He explained:

“This would not be prohibited ‘censorship,’ . . . any more than would the Commission’s considering on a license renewal application whether a broadcaster allowed ‘coarse, vulgar, suggestive, double-meaning’ programming; programs containing such material are grounds for denial of a license renewal.” 131 U.S. App. D. C., at 150-151, n. 3. 403 F. 2d, at 173-174, n. 3.

~Entirely apart from the fact that the subsequent review of program content is not the sort of censorship at which the statute was directed, its history makes it perfectly clear that it was not intended to limit the Commission’s power to regulate the broadcast of obscene, indecent, or profane language. A single section of the 1927 Act is the source of both the anticensorship provision and the Commission’s authority to impose sanctions for the broadcast of indecent or obscene language. Quite plainly, Congress intended to give meaning to both provisions. Respect for that intent requires that the censorship language be read as inapplicable to the prohibition on broadcasting obscene, indecent, or profane language.

There is nothing in the legislative history to contradict this conclusion. The provision was discussed only in generalities when it was first enacted.~ In 1934, the anticensorship provision and the prohibition against indecent broadcasts were re-enacted in the same section, just as in the 1927 Act. In 1948, when the Criminal Code was revised to include provisions that had previously been located in other Titles of the United States Code, the prohibition against obscene, indecent, and profane broadcasts was removed from the Communications Act and re-enacted as § 1464 of Title 18. 62 Stat. 769 and 866. That rearrangement of the Code cannot reasonably be interpreted as having been intended to change the meaning of the anticensorship provision. ‘. R. Rep. No. 304, 80th Cong., 1st Sess., A106 (1947). Cf. *Tidewater Oil Co. v. United States*, 409 U.S. 151, 162.

We conclude, therefore, that § 326 does not limit the Commission’s authority to impose sanctions on licensees who engage in obscene, indecent, or profane broadcasting.

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D. C., at 314, 62 F. 2d, at 853. The court recognized that the licensee had a right to broadcast this material free of prior restraint, but “this does not mean that the government, through agencies established by Congress, may not refuse a renewal of license to one who has abused it.” *Id.*, at 312, 62 F. 2d, at 851.

### III

5 The only other statutory question presented by this case is whether the  
afternoon broadcast of the “Filthy Words” monologue was indecent within the  
meaning of § 1464.<sup>24</sup> Even that question is narrowly confined by the arguments of  
the parties.

10 The Commission identified several words that referred to excretory or sexual  
activities or organs, stated that the repetitive, deliberate use of those words in an  
afternoon broadcast when children are in the audience was patently offensive,  
and held that the broadcast was indecent. Pacifica takes issue with the  
Commission’s definition of indecency, but does not dispute the Commission’s  
preliminary determination that each of the components of its definition was  
present. Specifically, Pacifica does not quarrel with the conclusion that this  
afternoon broadcast was patently offensive. Pacifica’s claim that the broadcast  
was not indecent within the meaning of the statute rests entirely on the absence of  
prurient appeal.

15 The plain language of the statute does not support Pacifica’s argument. The  
words “obscene, indecent, or profane” are written in the disjunctive, implying  
that each has a separate meaning. Prurient appeal is an element of the obscene,  
but the normal definition of “indecent” merely refers to nonconformance with  
accepted standards of morality.<sup>24</sup>

20 Pacifica argues, however, that this Court has construed the term “indecent” in  
related statutes to mean “obscene,” as that term was defined in *Miller v.*  
*California*, 413 U.S. 15. Pacifica relies most heavily on the construction this  
Court gave to 18 U.S. C. § 1461 in *Hamling v. United States*, 418 U.S. 87. See  
25 also *United States v. 12 200-ft. Reels of Film*, 413 U.S. 123, 130 n. 7 (18 U.S. C.  
§ 1462) (dicta). *Hamling* rejected a vagueness attack on § 1461, which forbids  
the mailing of “obscene, lewd, lascivious, indecent, filthy or vile” material. In  
holding that the statute’s coverage is limited to obscenity, the Court followed the  
lead of Mr. Justice Harlan in *Manual Enterprises, Inc. v. Day*, 370 U.S. 478. In  
30 that case, Mr. Justice Harlan recognized that § 1461 contained a variety of words  
with many shades of meaning.<sup>25</sup> Nonetheless, he thought that the phrase  
“obscene, lewd, lascivious, indecent, filthy or vile,” taken as a whole, was clearly  
limited to the obscene, a reading well grounded in prior judicial constructions:  
“[T]he statute since its inception has always been taken as aimed at obnoxiously  
35 debasing portrayals of sex.” 370 U.S., at 483. In *Hamling* the Court agreed with

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<sup>24</sup> Webster defines the term as “a: altogether unbecoming: contrary to what the nature of things or  
what circumstances would dictate as right or expected or appropriate: hardly suitable: UNSEEMLY  
... b: not conforming to generally accepted standards of morality: ...” Webster’s Third New  
International Dictionary (1966).

<sup>25</sup> Indeed, at one point, he used “indecency” as a shorthand term for “patent offensiveness,” 370  
U.S., at 482, a usage strikingly similar to the Commission’s definition in this case. 56 F. C. C. 2d,  
at 98.

Mr. Justice Harlan that § 1461 was meant only to regulate obscenity in the mails; by reading into it the limits set by *Miller v. California, supra*, the Court adopted a construction which assured the statute's constitutionality.

5 The reasons supporting *Hamling's* construction of § 1461 do not apply to § 1464. Although the history of the former revealed a primary concern with the prurient, the Commission has long interpreted § 1464 as encompassing more than the obscene.~ The former statute deals primarily with printed matter enclosed in sealed envelopes mailed from one individual to another; the latter deals with the content of public broadcasts. It is unrealistic to assume that Congress intended to  
10 impose precisely the same limitations on the dissemination of patently offensive matter by such different means.~

Because neither our prior decisions nor the language or history of § 1464 supports the conclusion that prurient appeal is an essential component of indecent language, we reject *Pacifica's* construction of the statute. When that construction  
15 is put to one side, there is no basis for disagreeing with the Commission's conclusion that indecent language was used in this broadcast.

#### IV

*Pacifica* makes two constitutional attacks on the Commission's order. First, it argues that the Commission's construction of the statutory language broadly  
20 encompasses so much constitutionally protected speech that reversal is required even if *Pacifica's* broadcast of the "Filthy Words" monologue is not itself protected by the First Amendment. Second, *Pacifica* argues that inasmuch as the recording is not obscene, the Constitution forbids any abridgment of the right to broadcast it on the radio.

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#### A

The first argument fails because our review is limited to the question whether the Commission has the authority to proscribe this particular broadcast. As the Commission itself emphasized, its order was "issued in a specific factual context." 59 F. C. C. 2d, at 893. That approach is appropriate for courts as well as  
30 the Commission when regulation of indecency is at stake, for indecency is largely a function of context – it cannot be adequately judged in the abstract.

The approach is also consistent with *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367. In that case the Court rejected an argument that the Commission's regulations defining the fairness doctrine were so vague that they would  
35 inevitably abridge the broadcasters' freedom of speech. The Court of Appeals had invalidated the regulations because their vagueness might lead to self-censorship of controversial program content. *Radio Television News Directors Assn. v. United States*, 400 F. 2d 1002, 1016 (CA7 1968). This Court reversed. After noting that the Commission had indicated, as it has in this case, that it  
40 would not impose sanctions without warning in cases in which the applicability of the law was unclear, the Court stated:

"We need not approve every aspect of the fairness doctrine to decide these cases, and we will not now pass upon the constitutionality of these

regulations by envisioning the most extreme applications conceivable, *United States v. Sullivan*, 332 U.S. 689, 694 (1948), but will deal with those problems if and when they arise.” 395 U.S., at 396.

5 It is true that the Commission’s order may lead some broadcasters to censor themselves. At most, however, the Commission’s definition of indecency will deter only the broadcasting of patently offensive references to excretory and sexual organs and activities<sup>26</sup> While some of these references may be protected, they surely lie at the periphery of First Amendment concern. Cf. *Bates v. State Bar of Arizona*, 433 U.S. 350, 380-381. *Young v. American Mini Theatres, Inc.*, 10 427 U.S. 50, 61. The danger dismissed so summarily in *Red Lion*, in contrast, was that broadcasters would respond to the vagueness of the regulations by refusing to present programs dealing with important social and political controversies. Invalidating any rule on the basis of its hypothetical application to situations not before the Court is “strong medicine” to be applied “sparingly and only as a last resort.” *Broadrick v. Oklahoma*, 413 U.S. 601, 613. We decline to 15 administer that medicine to preserve the vigor of patently offensive sexual and excretory speech.

## B

20 When the issue is narrowed to the facts of this case, the question is whether the First Amendment denies government any power to restrict the public broadcast of indecent language in any circumstances.~ For if the government has any such power, this was an appropriate occasion for its exercise.

The words of the Carlin monologue are unquestionably “speech” within the meaning of the First Amendment. It is equally clear that the Commission’s 25 objections to the broadcast were based in part on its content. The order must therefore fall if, as *Pacifica* argues, the First Amendment prohibits all governmental regulation that depends on the content of speech. Our past cases demonstrate, however, that no such absolute rule is mandated by the Constitution.

30 The classic exposition of the proposition that both the content and the context of speech are critical elements of First Amendment analysis is Mr. Justice Holmes’ statement for the Court in *Schenck v. United States*, 249 U.S. 47, 52:

35 “We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction

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<sup>26</sup> A requirement that indecent language be avoided will have its primary effect on the form, rather than the content, of serious communication. There are few, if any, thoughts that cannot be expressed by the use of less offensive language.

5           against uttering words that may have all the effect of force. . . . The  
question in every case is whether the words used are used in such  
circumstances and are of such a nature as to create a clear and present  
danger that they will bring about the substantive evils that Congress has a  
right to prevent.”

10       Other distinctions based on content have been approved in the years since  
*Schenck*. The government may forbid speech calculated to provoke a fight. See  
*Chaplinsky v. New Hampshire*, 315 U.S. 568. It may pay heed to the “  
‘commonsense differences’ between commercial speech and other varieties.”  
15 *Bates v. State Bar of Arizona, supra*, at 381. It may treat libels against private  
citizens more severely than libels against public officials. See *Gertz v. Robert  
Welch, Inc.*, 418 U.S. 323. Obscenity may be wholly prohibited. *Miller v.  
California*, 413 U.S. 15. And only two Terms ago we refused to hold that a  
“statutory classification is unconstitutional because it is based on the content of  
communication protected by the First Amendment.” *Young v. American Mini  
Theatres, Inc., supra*, at 52.

20       The question in this case is whether a broadcast of patently offensive words  
dealing with sex and excretion may be regulated because of its content.~ Obscene  
materials have been denied the protection of the First Amendment because their  
content is so offensive to contemporary moral standards. *Roth v. United States*,  
354 U.S. 476. But the fact that society may find speech offensive is not a  
sufficient reason for suppressing it. Indeed, if it is the speaker’s opinion that  
gives offense, that consequence is a reason for according it constitutional  
protection. For it is a central tenet of the First Amendment that the government  
25 must remain neutral in the marketplace of ideas.~ If there were any reason to  
believe that the Commission’s characterization of the Carlin monologue as  
offensive could be traced to its political content – or even to the fact that it  
satirized contemporary attitudes about four-letter words~ – First Amendment  
protection might be required. But that is simply not this case. These words offend  
30 for the same reasons that obscenity offends.~ Their place in the hierarchy of First  
Amendment values was aptly sketched by Mr. Justice Murphy when he said:  
“[S]uch utterances are no essential part of any exposition of ideas, and are of  
such slight social value as a step to truth that any benefit that may be derived  
from them is clearly outweighed by the social interest in order and morality.”  
35 *Chaplinsky v. New Hampshire*, 315 U.S., at 572.

      Although these words ordinarily lack literary, political, or scientific value,  
they are not entirely outside the protection of the First Amendment. Some uses of  
even the most offensive words are unquestionably protected. See, e. g., *Hess v.  
Indiana*, 414 U.S. 105. Indeed, we may assume, *arguendo*, that this monologue  
40 would be protected in other contexts. Nonetheless, the constitutional protection  
accorded to a communication containing such patently offensive sexual and  
excretory language need not be the same in every context.~ It is a characteristic of  
speech such as this that both its capacity to offend and its “social value,” to use  
Mr. Justice Murphy’s term, vary with the circumstances. Words that are  
45 commonplace in one setting are shocking in another. To paraphrase Mr. Justice  
Harlan, one occasion’s lyric is another’s vulgarity. Cf. *Cohen v. California*, 403  
U.S. 15, 25.~

5 In this case it is undisputed that the content of Pacifica's broadcast was "vulgar," "offensive," and "shocking." Because content of that character is not entitled to absolute constitutional protection under all circumstances, we must consider its context in order to determine whether the Commission's action was constitutionally permissible.

## C

10 We have long recognized that each medium of expression presents special First Amendment problems. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 502-503. And of all forms of communication, it is broadcasting that has received the most limited First Amendment protection. Thus, although other speakers cannot be licensed except under laws that carefully define and narrow official discretion, a broadcaster may be deprived of his license and his forum if the Commission decides that such an action would serve "the public interest, convenience, and necessity."~ Similarly, although the First Amendment protects newspaper publishers from being required to print the replies of those whom they criticize, 15 *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, it affords no such protection to broadcasters; on the contrary, they must give free time to the victims of their criticism. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367.

20 The reasons for these distinctions are complex, but two have relevance to the present case. First, the broadcast media have established a uniquely pervasive presence in the lives of all Americans. Patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder. *Rowan v. Post Office Dept.*, 397 U.S. 728. Because the broadcast audience is constantly tuning in and out, prior warnings cannot completely protect the listener or viewer from unexpected program content. To say that one may avoid further offense by turning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow. One may hang up on an 25 indecent phone call, but that option does not give the caller a constitutional immunity or avoid a harm that has already taken place.~

30 Second, broadcasting is uniquely accessible to children, even those too young to read. Although Cohen's written message might have been incomprehensible to a first grader, Pacifica's broadcast could have enlarged a child's vocabulary in an instant. Other forms of offensive expression may be withheld from the young without restricting the expression at its source. Bookstores and motion picture theaters, for example, may be prohibited from making indecent material available to children. We held in *Ginsberg v. New York*, 390 U.S. 629, that the government's interest in the "well-being of its youth" and in supporting "parents' 35 claim to authority in their own household" justified the regulation of otherwise protected expression. *Id.*, at 640 and 639.~ The case with which children may obtain access to broadcast material, coupled with the concerns recognized in *Ginsberg*, amply justify special treatment of indecent broadcasting.

40 It is appropriate, in conclusion, to emphasize the narrowness of our holding. This case does not involve a two-way radio conversation between a cab driver and a dispatcher, or a telecast of an Elizabethan comedy. We have not decided 45

that an occasional expletive in either setting would justify any sanction or, indeed, that this broadcast would justify a criminal prosecution. The Commission's decision rested entirely on a nuisance rationale under which context is all-important. The concept requires consideration of a host of variables. The time of day was emphasized by the Commission. The content of the program in which the language is used will also affect the composition of the audience, and differences between radio, television, and perhaps closed-circuit transmissions, may also be relevant. As Mr. Justice Sutherland wrote, a "nuisance may be merely a right thing in the wrong place, – like a pig in the parlor instead of the barnyard." *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388. We simply hold that when the Commission finds that a pig has entered the parlor, the exercise of its regulatory power does not depend on proof that the pig is obscene.

The judgment of the Court of Appeals is reversed.

*It is so ordered.*

#### APPENDIX TO OPINION OF THE COURT

The following is a verbatim transcript of "Filthy Words" prepared by the Federal Communications Commission.

Aruba-du, ruba-tu, ruba-tu. I was thinking about the curse words and the swear words, the cuss words and the words that you can't say, that you're not supposed to say all the time, [']cause words or people into words want to hear your words. Some guys like to record your words and sell them back to you if they can, (laughter) listen in on the telephone, write down what words you say. A guy who used to be in Washington knew that his phone was tapped, used to answer, Fuck Hoover, yes, go ahead. (laughter) Okay, I was thinking one night about the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say, ever, [']cause I heard a lady say bitch one night on television, and it was cool like she was talking about, you know, ah, well, the bitch is the first one to notice that in the litter Johnnie right (murmur) Right. And, uh, bastard you can say, and hell and damn so I have to figure out which ones you couldn't and ever and it came down to seven but the list is open to amendment, and in fact, has been changed, uh, by now, ha, a lot of people pointed things out to me, and I noticed some myself. The original seven words were, shit, piss, fuck, cunt, cocksucker, mother-fucker, and tits. Those are the ones that will curve your spine, grow hair on your hands and (laughter) maybe, even bring us, God help us, peace without honor (laughter) um, and a bourbon. (laughter) And now the first thing that we noticed was that word fuck was really repeated in there because the word motherfucker is a compound word and it's another form of the word fuck. (laughter) You want to be a purist it doesn't really – it can't be on the list of basic words. Also, cocksucker is a compound word and neither half of that is really dirty. The word – the half sucker that's merely suggestive (laughter) and the word cock is a half-way dirty word, 50% dirty – dirty half the time, depending on what you mean by it. (laughter) Uh, remember when you first heard it, like in 6th grade, you used to giggle. And the cock crowed three times, heh (laughter) the cock – three times. It's in the Bible, cock in the Bible. (laughter) And the first time you heard about a cock-fight,

remember – What? Huh? naw. It ain't that, are you stupid? man. (laughter, clapping) It's chickens, you know, (laughter) Then you have the four letter words from the old Anglo-Saxon fame. Uh, shit and fuck. The word shit, uh, is an interesting kind of word in that the middle class has never really accepted it and approved it. They use it like, crazy but it's not really okay. It's still a rude, dirty, old kind of gushy word. (laughter) They don't like that, but they say it, like, they say it like, a lady now in a middle-class home, you'll hear most of the time she says it as an expletive, you know, it's out of her mouth before she knows. She says, Oh shit oh shit, (laughter) oh shit. If she drops something, Oh, the shit hurt the broccoli. Shit. Thank you. (footsteps fading away) (papers ruffling)

Read it! (from audience)

Shit! (laughter) I won the Grammy, man, for the comedy album. Isn't that groovy? (clapping, whistling) (murmur) That's true. Thank you. Thank you man. Yeah. (murmur) (continuous clapping) Thank you man. Thank you. Thank you very much, man. Thank, no, (end of continuous clapping) for that and for the Grammy, man, [']cause (laughter) that's based on people liking it man, yeh, that's ah, that's okay man. (laughter) Let's let that go, man. I got my Grammy. I can let my hair hang down now, shit. (laughter) Ha! So! Now the word shit is okay for the man. At work you can say it like crazy. Mostly figuratively, Get that shit out of here, will ya? I don't want to see that shit anymore. I can't *cut* that shit, buddy. I've had that shit up to here. I think you're full of shit myself. (laughter) He don't know shit from Shinola. (laughter) you know that? (laughter) Always wondered how the Shinola people felt about that (laughter) Hi, I'm the new man from Shinola. (laughter) Hi, how are ya? Nice to see ya. (laughter) How are ya? (laughter) Boy, I don't know whether to shit or wind my watch. (laughter) Guess, I'll shit on my watch. (laughter) Oh, *the* shit is going to hit *de* fan. (laughter) Built like a brick shit-house. (laughter) Up, he's up shit's creek. (laughter) He's had it. (laughter) He hit me, I'm sorry. (laughter) Hot shit, holy shit, tough shit, eat shit, (laughter) shit-eating grin. Uh, whoever thought of that was ill. (murmur laughter) He had a shit-eating grin! He had a what? (laughter) Shit on a stick. (laughter) Shit in a handbag. I always like that. He ain't worth shit in a handbag. (laughter) Shitty. He acted real shitty. (laughter) You know what I mean? (laughter) I got the money back, but a real shitty attitude. Heh, he had a shit-fit. (laughter) Wow! Shit-fit. Whew! Glad I wasn't there. (murmur, laughter) All the animals – Bull shit, horse shit, cow shit, rat shit, bat shit. (laughter) First time I heard bat shit, I really came apart. A guy in Oklahoma, Boggs, said it, man. Aw! Bat shit. (laughter) Vera reminded me of that last night, ah (murmur). Snake shit, slicker than owl shit. (laughter) Get your shit together. Shit or get off the pot. (laughter) I got a shit-load full of them. (laughter) I got a shit-pot full, all right. Shit-head, shit-heel, shit in your heart, shit for brains, (laughter) shit-face, heh (laughter) I always try to think how that could have originated; the first guy that said that. Somebody got drunk and fell in some shit, you know. (laughter) Hey, I'm shit-face. (laughter) Shit-face, *today*. (laughter) Anyway, enough of that shit. (laughter) The big one, the word fuck that's the one that hangs them up the most. [']Cause in a lot of cases that's the very act that hangs them up the most. So, it's natural that the word would, uh, have the same effect. It's a great word, fuck, nice word, easy word, cute word, kind of. Easy word to say. One syllable, short u. (laughter) Fuck. (Murmur) You know, it's

easy. Starts with a nice soft sound fuh ends with a *kuh*. Right? (laughter) A little something for everyone. Fuck (laughter) Good word. Kind of a proud word, too. Who are you? I am *FUCK*. (laughter) *FUCK OF THE MOUNTAIN*. (laughter) Tune in again next week to *FUCK OF THE MOUNTAIN*. (laughter) It's an interesting word too, [']cause it's got a double kind of a life – personality – dual, you know, whatever the right phrase is. It leads a double life, the word fuck. First of all, it means, sometimes, most of the time, fuck. What does it mean? It means to make love. Right? We're going to make love, yeh, we're going to fuck, yeh, we're going to fuck, yeh, we're going to make love. (laughter) we're really going to fuck, yeh, we're going to make love. Right? And it also means the beginning of life, it's the act that begins life, so there's the word hanging around with words like love, and life, and yet on the other hand, it's also a word that we really use to hurt each other with, man. It's a heavy. It's one that you have toward the end of the argument. (laughter) Right? (laughter) You finally can't make out. Oh, fuck you man. I said, fuck you. (laughter, murmur) Stupid fuck. (laughter) Fuck you and everybody that looks like you. (laughter) man. It would be nice to change the movies that we already have and substitute the word fuck for the word kill, wherever we could, and some of those movie cliches would change a little bit. Madfuckers still on the loose. Stop me before I fuck again. Fuck the ump, fuck the ump, fuck the ump, fuck the ump, fuck the ump. Easy on the clutch Bill, you'll fuck that engine again. (laughter) The other shit one was, I don't give a shit. Like it's worth something, you know? (laughter) I don't give a shit. Hey, well, I don't take no shit, (laughter) you know what I mean? You know why I don't take no shit? (laughter) [']Cause I don't give a shit. (laughter) If I give a shit, I would have to pack shit. (laughter) But I don't pack no shit cause I don't give a shit. (laughter) You wouldn't shit me, would you? (laughter) That's a joke when you're a kid with a worm looking out the bird's ass. You wouldn't shit me, would you? (laughter) It's an eight-year-old joke but a good one. (laughter) The additions to the list. I found three more words that had to be put on the list of words you could never say on television, and they were fart, turd and twat, those three. (laughter) Fart, we talked about, it's harmless It's like tits, it's a cutie word, no problem. Turd, you can't say but who wants to, you know? (laughter) The subject never comes up on the panel so I'm not worried about that one. Now the word twat is an interesting word. Twat! Yeh, right in the twat. (laughter) Twat is an interesting word because it's the only one I know of, the only slang word applying to the, a part of the sexual anatomy that doesn't have another meaning to it. Like, ah, snatch, box and pussy all have other meanings, man. Even in a Walt Disney movie, you can say, We're going to snatch that pussy and put him in a box and bring him on the airplane. (murmur, laughter) Everybody loves it. The twat stands alone, man, as it should. And two-way words. Ah, ass is okay providing you're riding into town on a religious feast day. (laughter) You can't say, up your *ass*. (laughter) You can say, stuff it! (murmur) There are certain things you can say its weird but you can just come so close. Before I cut, I, uh, want to, ah, thank you for listening to my words, man, fellow, uh space travelers. Thank you man for tonight and thank you also. (clapping whistling)

**MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN joins, concurring in part and concurring in the judgment.**

[M]y views are generally in accord with what is said in Part IV-C of MR. JUSTICE STEVENS' opinion. See *ante*, at 748-750. I therefore join that portion  
5 of his opinion. I do not join Part IV-B, however, because I do not subscribe to the theory that the Justices of this Court are free generally to decide on the basis of its content which speech protected by the First Amendment is most "valuable" and hence deserving of the most protection, and which is less "valuable" and hence deserving of less protection.~ In my view, the result in this case does not  
10 turn on whether Carlin's monologue, viewed as a whole, or the words that constitute it, have more or less "value" than a candidate's campaign speech. This is a judgment for each person to make, not one for the judges to impose upon him.

The result turns instead on the unique characteristics of the broadcast media,  
15 combined with society's right to protect its children from speech generally agreed to be inappropriate for their years, and with the interest of unwilling adults in not being assaulted by such offensive speech in their homes. Moreover, I doubt whether today's decision will prevent any adult who wishes to receive Carlin's message in Carlin's own words from doing so, and from making for  
20 himself a value judgment as to the merit of the message and words. Cf. *id.*, at 77-79 (POWELL, J., concurring). These are the grounds upon which I join the judgment of the Court as to Part IV.

**MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, dissenting.**

I agree with MR. JUSTICE STEWART that, under *Hamling v. United States*, 418 U.S. 87 (1974), and *United States v. 12 200-ft. Reels of Film*, 413 U.S. 123 (1973), the word "indecent" in 18 U.S. C. § 1464 (1976 ed.) must be construed to  
30 prohibit only obscene speech. I would, therefore, normally refrain from expressing my views on any constitutional issues implicated in this case. However, I find the Court's misapplication of fundamental First Amendment principles so patent, and its attempt to impose *its* notions of propriety on the whole of the American people so misguided, that I am unable to remain silent.~

The Court's balance, of necessity, fails to accord proper weight to the  
35 interests of listeners who wish to hear broadcasts the FCC deems offensive. It permits majoritarian tastes completely to preclude a protected message from entering the homes of a receptive, unoffended minority. No decision of this Court supports such a result. Where the individuals constituting the offended majority may freely choose to reject the material being offered, we have never found their  
40 privacy interests of such moment to warrant the suppression of speech on privacy grounds. Cf. *Lehman v. Shaker Heights*, *supra*. *Rowan v. Post Office Dept.*, 397 U.S. 728 (1970), relied on by the FCC and by the opinions of my Brothers POWELL and STEVENS, confirms rather than belies this conclusion. In *Rowan*, the Court upheld a statute, 39 U.S. C. § 4009 (1964 ed., Supp. IV), permitting  
45 householders to require that mail advertisers stop sending them lewd or offensive materials and remove their names from mailing lists. Unlike the situation here, householders who wished to receive the sender's communications were not

5 prevented from doing so. Equally important, the determination of offensiveness  
vel non under the statute involved in *Rowan* was completely within the hands of  
the individual householder; no governmental evaluation of the worth of the  
mail's content stood between the mailer and the householder. In contrast, the  
visage of the censor is all too discernible here.

10 In concluding that the presence of children in the listening audience provides  
an adequate basis for the FCC to impose sanctions for Pacifica's broadcast of the  
Carlin monologue, the opinions of my Brother POWELL, *ante*, at 757-758, and  
my Brother STEVENS, *ante*, at 749-750, both stress the time-honored right of a  
parent to raise his child as he sees fit – a right this Court has consistently been  
vigilant to protect. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v.*  
15 *Society of Sisters*, 268 U.S. 510 (1925). Yet this principle supports a result  
directly contrary to that reached by the Court. *Yoder* and *Pierce* hold that parents,  
not the government, have the right to make certain decisions regarding the  
upbringing of their children. As surprising as it may be to individual Members of  
this Court, some parents may actually find Mr. Carlin's unabashed attitude  
towards the seven "dirty words" healthy, and deem it desirable to expose their  
children to the manner in which Mr. Carlin defuses the taboo surrounding the  
words. Such parents may constitute a minority of the American public, but the  
20 absence of great numbers willing to exercise the right to raise their children in  
this fashion does not alter the right's nature or its existence. Only the Court's  
regrettable decision does that.

My Brother STEVENS, in reaching a result apologetically described as  
narrow, *ante*, at 750, takes comfort in his observation that "[a] requirement that  
25 indecent language be avoided will have its primary effect on the form, rather than  
the content, of serious communication," *ante*, at 743 n. 18, and finds solace in his  
conviction that "[t]here are few, if any, thoughts that cannot be expressed by the  
use of less offensive language." *Ibid*. The idea that the content of a message and  
its potential impact on any who might receive it can be divorced from the words  
30 that are the vehicle for its expression is transparently fallacious. A given word  
may have a unique capacity to capsule an idea, evoke an emotion, or conjure up  
an image. Indeed, for those of us who place an appropriately high value on our  
cherished First Amendment rights, the word "censor" is such a word. Mr. Justice  
Harlan, speaking for the Court, recognized the truism that a speaker's choice of  
35 words cannot surgically be separated from the ideas he desires to express when  
he warned that "we cannot indulge the facile assumption that one can forbid  
particular words without also running a substantial risk of suppressing ideas in  
the process." *Cohen v. California*, 403 U.S., at 26. Moreover, even if an  
alternative phrasing may communicate a speaker's abstract ideas as effectively as  
40 those words he is forbidden to use, it is doubtful that the sterilized message will  
convey the emotion that is an essential part of so many communications. This,  
too, was apparent to Mr. Justice Harlan and the Court in *Cohen*.

45 "[W]e cannot overlook the fact, because it is well illustrated by the  
episode involved here, that much linguistic expression serves a dual  
communicative function: it conveys not only ideas capable of relatively  
precise, detached explication, but otherwise inexpressible emotions as  
well. In fact, words are often chosen as much for their emotive as their

5           cognitive force. We cannot sanction the view that the Constitution, while  
solicitous of the cognitive content of individual speech, has little or no  
regard for that emotive function which, practically speaking, may often  
be the more important element of the overall message sought to be  
communicated.” *Id.*, at 25-26.

10           My Brother STEVENS also finds relevant to his First Amendment analysis  
the fact that “[a]dults who feel the need may purchase tapes and records or go to  
theaters and nightclubs to hear [the tabooed] words.” *Ante*, at 750 n. 28. My  
Brother POWELL agrees: “The Commission’s holding does not prevent willing  
15 adults from purchasing Carlin’s record, from attending his performances, or,  
indeed, from reading the transcript reprinted as an appendix to the Court’s  
opinion.” *Ante*, at 760. The opinions of my Brethren display both a sad  
insensitivity to the fact that these alternatives involve the expenditure of money,  
time, and effort that many of those wishing to hear Mr. Carlin’s message may not  
be able to afford, and a naive innocence of the reality that in many cases, the  
medium may well be the message.~