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SPIEGEL ATTORNEYS FILE *PRO BONO AMICUS* BRIEF FOR CHILDREN'S ADVOCACY GROUPS IN SUPREME COURT TV BROADCAST "FLEETING EXPLETIVE" CASE.

WASHINGTON, DC—On June 9, Spiegel attorneys Jim Horwood, Tim Lay, Gloria Tristani and Ruben Gomez, together with the Institute for Public Representation at Georgetown University Law Center, filed an *amicus* brief with the Supreme Court in *FCC, et al. v. Fox Television Stations, et al.*, on behalf of several children's advocacy groups. The *amici* were the American Academy of Pediatrics, the Benton Foundation, Children Now, the National Institute on Media and the Family, the Parent Teacher Association, and the United Church Of Christ, Office of Communications, Inc. The firm prepared the brief on a *pro bono* basis.

The *Fox* case arose out of an FCC decision finding that isolated uses of the "F-word" and the "S-word" in the 2002 and 2003 Billboard Music Awards shows violated a federal statute and FCC rules prohibiting indecency in TV broadcasts. The FCC's decision represented a change from its prior indecency policy, which required profanities to be repeated rather than isolated. The Second Circuit overturned the FCC's decision, finding that the FCC's change in policy was not adequately justified and therefore violated the Administrative Procedure Act. The Second Circuit went on, however, to suggest that the FCC's decision, and differential treatment of broadcasters from other media such as cable, might no longer be justifiable under the First Amendment. The FCC successfully persuaded the Supreme Court to review the Second Circuit's decision.

The *amicus* brief did not take sides in the *Fox* case. Instead, it urged the Court not to reach the First Amendment issues in the case but that if it did so, not to resolve them in a way that would threaten the continuing constitutional validity of the Children's Television Act and other laws and FCC regulations designed to require broadcasters to provide educational programming to children and to enable parents to protect their children from programming that they believe is inappropriate.

Because the Second Circuit's opinion had suggested that FCC oversight was no longer necessary in light of technological advances like the V-Chip, the *amicus* brief also supplied the Supreme Court with the latest research about how well the V-Chip is working. The V-Chip, which was mandated in most TV sets sold after 2000, can read age-based and content-based program ratings imbedded in a TV broadcast and, if programmed to do so by parents, block TV programs based on their ratings. The brief pointed out, however, that research reveals that the V-Chip and its associated program ratings system continue to suffer from several shortcomings that weaken their effectiveness. The program ratings system, for instance, is entirely voluntary, and as a result, programmers are not even required to rate their programs at all, and when they do, there is no mechanism to ensure consistent and accurate ratings of all programming. Moreover, research also indicates that parental awareness and use of the V-Chip remains low, while parental confusion about the ratings system remains high. In addition, many older TV sets without V-Chip capability remain in use in places like children's bedrooms, and many new TV sets do not have the FCC-required upgraded V-Chip installed.

The case will be argued in the fall, and a decision is expected next year.

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