

(ORDER LIST: 567 U.S.)

FRIDAY, JUNE 29, 2012

CERTIORARI -- SUMMARY DISPOSITIONS

09-10231 TURNER, DANNY V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Williams v. Illinois*, 567 U.S. ____ (2012).

10-8835 GREINER, DIRK K. V. MASSACHUSETTS

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Supreme Judicial Court of Massachusetts for further consideration in light of *Williams v. Illinois*, 567 U.S. ____ (2012).

10-9303 WILLIS, WAYNE V. ILLINOIS

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Appellate Court of Illinois, First District, for further consideration in light of *Williams v. Illinois*, 567 U.S. ____ (2012).

10-9789 PABLO, JONATHAN V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted.

The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Tenth Circuit for further consideration in light of *Williams v. Illinois*, 567 U.S. ____ (2012).

10-10923 JOHNSON, WILLIAM J. V. CALIFORNIA

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Court of Appeal of California, Third Appellate District, for further consideration in light of *Williams v. Illinois*, 567 U.S. ____ (2012).

10-10936 SUEN, DAVID V. CALIFORNIA

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Court of Appeal of California, Second Appellate District, for further consideration in light of *Williams v. Illinois*, 567 U.S. ____ (2012).

11-694 MARYLAND V. DERR, NORMAN B.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the Court of Appeals of Maryland for further consideration in light of *Williams v. Illinois*, 567 U.S. ____ (2012).

11-799 BLAKE, PIERRE V. UNITED STATES

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____

(2012).

11-883 JAIMES, NOE V. UNITED STATES

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-5323 DAVIS, CHARLES V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-5832 KWON, STEVEN H. V. CALIFORNIA

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Court of Appeal of California, Second Appellate District, for further consideration in light of *Williams v. Illinois*, 567 U.S. ____ (2012).

11-5842 ROBINSON, TARA L. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-5950 BRAZELL, CHRISTOPHER S. V. UNITED STATES
 11-6364 HYDE, JEFFREY J. V. UNITED STATES
 11-6464 LEWIS, SHANE L. V. UNITED STATES
 11-6602 HERNANDEZ, PEDRO V. UNITED STATES
 11-6716 COX, ROMAILL V. UNITED STATES
 11-6847) MERRIMAN, BRETT A. V. UNITED STATES
)
 11-6876) GRIFFIN, DEREK V. UNITED STATES
 11-7029 KING, DARNELL V. UNITED STATES
 11-7043 CAIN, BRIAN E. V. UNITED STATES
 11-7328 NEWCOMB, CHARLES V. UNITED STATES
 11-7500 PARKER, LASHUN V. UNITED STATES
 11-7505 HOLCOMB, CHRISTOPHER, ET AL. V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* and the petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-7558 MOORE, BRIAN V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-7650 RICKMON, TERRILL V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted.

The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-7689 BAGU, FRANCISCO V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-7728 MOSES, TIMOTHY V. UNITED STATES

11-7879 VANCE, TERRENCE R. V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* and the petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-7972 MERCADO, MONICA V. CALIFORNIA

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Court of Appeal of California, Second Appellate District, for further consideration in light of *Williams v. Illinois*, 567 U.S. ____ (2012).

11-7979 WHITESIDE, LEMUEL S. V. ARKANSAS

The motion of petitioner for leave to proceed *in forma*

pauperis and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Supreme Court of Arkansas for further consideration in light of *Miller v. Alabama*, 567 U.S. ____ (2012).

11-8023 TICKLES, SHAWNA V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-8026 WALKER, AHMED V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-8063 WILKS, LASHAWN L. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-8134 SIDNEY, JEMAIN L. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted.

The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-8146 LEWIS, SONNY L. V. UNITED STATES

11-8244 JONES, ERNEST V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* and the petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-8268 GIBSON, JABAR V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-8355 WATSON, MAURICE L. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-8413 STROWDER, JAMES M. V. UNITED STATES

11-8476 BRITO, ERICK V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* and the petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-8551 DOUGLAS, BRUCE V. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-8655 GUILLEN, JOSE V. CALIFORNIA

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Court of Appeal of California, Second Appellate District, for further consideration in light of *Miller v. Alabama*, 567 U.S. ____ (2012).

11-8737 BOOMER, MICHAEL L. V. UNITED STATES

11-8778 GIBBS, DARYL V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* and the petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the Fourth Circuit for

further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-8894 RAYSOR, DARRIN B. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-9016 JORDAN, DRACY L. V. UNITED STATES

11-9028 AKIWOWO, IDOWU V. UNITED STATES

11-9029 BAXTER, NATHANIEL, ET AL. V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* and the petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-9142 BENITEZ, JOSEPH J. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-9604 COLEMAN, PAUL B. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted.

The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

11-9711 BENNETT, LANCE V. UNITED STATES
11-9938 JACKSON, DON P. V. UNITED STATES
11-9961 OWENS, KERRY K. V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* and the petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Dorsey v. United States*, 567 U.S. ____ (2012).

ORDERS IN PENDING CASES

11-681 HARRIS, PAMELA, ET AL. V. QUINN, GOV. OF IL, ET AL.
11-1154 RETRACTABLE TECHNOLOGIES, ET AL. V. BECTON, DICKINSON AND CO.

The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

11-1327 EVANS, LAMAR V. MICHIGAN

The motion of petitioner to dispense with printing the joint appendix is granted.

CERTIORARI DENIED

10-7405 MITCHELL, THOMAS H. V. MAINE
10-10180 MILLS, JAMIE R. V. ALABAMA
10-10642 JOHNSON, LORELL V. ILLINOIS
11-117 THOMAS MORE LAW CENTER, ET AL. V. OBAMA, PRES. OF U.S., ET AL.
11-420 VIRGINIA, EX REL. CUCCINELLI V. SEBELIUS, SEC. OF H&HS
11-438 LIBERTY UNIVERSITY, ET AL. V. GEITHNER, SEC. OF TREASURY

11-535 ARNESON, ROSS, ET AL. V. 281 CARE COMMITTEE, ET AL.

11-679 SEVEN-SKY, SUSAN, ET AL. V. HOLDER, ATT'Y GEN., ET AL.

11-691) MEDIA GENERAL, INC. V. FCC, ET AL.
)

11-696) TRIBUNE COMPANY, ET AL. V. FCC, ET AL.
)

11-698) NAT. ASSN. OF BROADCASTERS V. FCC, ET AL.

11-5759) MOSCOE, MATTHEW R. V. CALIFORNIA
)

11-5796) ESPINOZA, RUBEN V. CALIFORNIA

11-6217 SISOLAK, JOHN A. V. CALIFORNIA

11-6494 NINHAM, OMER V. WISCONSIN

11-6870 HALEY, ALEXANDER V. GEORGIA

11-7424 RAMIREZ, OMAR R. V. CALIFORNIA

11-7756 CASTILLO, JUAN M. V. SMITH, WARDEN, ET AL.

11-7882 WILLIAMS, TERRANCE V. WETZEL, SEC., PA DOC, ET AL.

11-8675 FOSTER, DORIS V. UNITED STATES

11-9072 FOUST, MICHAEL P. V. PENNSYLVANIA

11-10190 COX, CLINTON V. UNITED STATES

The petitions for writs of certiorari are denied.

11-336 CORBOY, JOHN M., ET AL. V. LOUIE, ATT'Y GEN. OF HI, ET AL.

The motion of Center for Equal Opportunity for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

11-614 WARNER, SEC., WA DOC V. OCAMPO, SANTANA

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

11-975 HENRY FORD HEALTH SYSTEM V. DEPT. OF H&HS

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this

petition.

REHEARING DENIED

09-10755 SMITH, JOSEPH V. FLORIDA

The petition for rehearing is denied.

ROBERTS, C. J., concurring

SUPREME COURT OF THE UNITED STATES

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
PETITIONERS *v.* CBS CORPORATION ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11-1240. Decided June 29, 2012

The petition for a writ of certiorari is denied.

CHIEF JUSTICE ROBERTS, concurring in the denial of certiorari.

During the finale of the Super Bowl XXXVIII halftime show, entertainers Justin Timberlake and Janet Jackson performed a song and dance routine to Timberlake’s song “Rock Your Body.” As Timberlake ended the duet by singing “gonna have you naked by the end of this song,” he tore away a portion of Jackson’s bustier, momentarily revealing her breast. The performers subsequently strained the credulity of the public by terming the episode a “wardrobe malfunction.”

The Federal Communications Commission issued an order fining CBS \$550,000 for broadcasting the nudity. The agency explained that the incident violated the FCC policy against broadcasting indecent material, such as nudity and expletives, during the hours when children are most likely to watch television. The Third Circuit vacated the order, finding that it violated the Administrative Procedure Act as “arbitrary and capricious” agency action. The court held that the FCC’s order represented an unexplained departure from the agency’s longstanding policy of excusing the broadcast of fleeting moments of indecency. 663 F. 3d 122 (2011).

I am not so sure. As we recently explained in *FCC v. Fox Television Stations, Inc.*, the FCC’s general policy is to conduct a context-specific examination of each allegedly

indecent broadcast in order to determine whether it should be censured. 556 U.S. 502, 508 (2009). Until 2004, the FCC made a limited exception to this general policy for fleeting *expletives*. *Ibid.* But the agency never stated that the exception applied to fleeting *images* as well, and there was good reason to believe that it did not. As every schoolchild knows, a picture is worth a thousand words, and CBS broadcast this particular picture to millions of impressionable children.

I nonetheless concur in the Court’s denial of certiorari. Even if the Third Circuit is wrong that sanctioning the Super Bowl broadcast constituted an unexplained departure from the FCC’s prior indecency policy, that error has been rendered moot going forward. The FCC has made clear that it has abandoned its exception for fleeting expletives. *Id.*, at 509–510. Looking ahead, it makes no difference as a matter of administrative law whether the FCC’s fleeting expletive policy applies to allegedly fleeting images, because the FCC no longer adheres to the fleeting expletive policy. It is now clear that the brevity of an indecent broadcast—be it word or image—cannot immunize it from FCC censure. See, e.g., *In re Young Broadcasting of San Francisco, Inc.*, 19 FCC Rcd. 1751 (2004) (censuring a broadcast despite the “fleeting” nature of the nudity involved). Any future “wardrobe malfunctions” will not be protected on the ground relied on by the court below.

GINSBURG, J., concurring

SUPREME COURT OF THE UNITED STATES

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
PETITIONERS *v.* CBS CORPORATION ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11–1240. Decided June 29, 2012

JUSTICE GINSBURG, concurring in the denial of certiorari.

The Court’s remand in *FCC v. Fox Television Stations, Inc.*, 567 U. S. ____ (2012), affords the Commission an opportunity to reconsider its indecency policy in light of technological advances and the Commission’s uncertain course since this Court’s ruling in *FCC v. Pacifica Foundation*, 438 U. S. 726 (1978).