

The United States Supreme Court has recently agreed to hear a case that challenges the constitutionality of a 1992 federal law, known as the Helms Amendment, intended to regulate indecent programming on cable TV. Under this law, cable TV operators can be prosecuted for programming on channels they lease that is considered indecent by prosecutorial authorities. The law, however, also allows cable TV operators to ban programs they themselves regard as indecent. The law defines indecency as programming that describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

Does the Helms Amendment unjustifiably violate the rights of cable TV program providers and subscribers? If so, why? If not, why not?

The Helms Amendment violates the rights of both program providers and subscribers. The question of whether the Amendment's definition of indecency applies to a specific program is a legal issue. The Helms Amendment therefore, in effect, gives one private party – the cable TV operator - the authority to resolve this legal issue as it affects other private parties - program providers and subscribers. An arrangement under which one private party has the authority to decide the legal rights of another may be morally justifiable if the other private party voluntarily agrees to it -- e.g. in an agreement to arbitrate. In the case of the Helms Amendment, however, the arrangement is imposed upon program providers and subscribers. This problem is aggravated by the extreme vagueness and breadth of the definition of indecency in the amendment, which appears to give cable TV operators the right to ban programs they find personally offensive, but which other people might enjoy or find artistically significant.

Case from the February 3, 1996 Intercollegiate Ethics Bowl. Copyright Robert Ladenson, Center for the Study of Ethics at the Illinois Institute of Technology, 1996.