**Constitutional Law I**

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Free Speech Hypotheticals: Part 3, Nudity and Profanity

Discuss the arguments likely to be advanced by both sides in the following situations. Consider what additional facts might be important.

(1) Mr. Erznoznik operates a drive-in-theatre in Jacksonville, FL, whose screens are visible from nearby highways. The theatre shows movies that contain nudity (but are not obscene under the *Miller* test). Jacksonville prohibits displays of nudity if visible from public streets, arguing (a) that nudity is offensive and harmful to minors, and (b) nudity on screens visible from public streets is distracting to motorists. Erznoznik challenges the law on First Amendment grounds.

(Adapted from *Erznoznik v. Jacksonville*, 422 U.S. 205 (1975), in which the Court held for Erznoznik.)

(2) Pacifica, a radio station, broadcasts a monologue by comedian George Carlin called “The seven dirty words,” in which Carlin mocks a Federal Communications Commission (FCC) rule that seven specified words of profanity cannot be said on radio. Carlin says the seven words repeatedly. A listener, who hears the broadcast on the car radio while driving with his young son, complains. The FCC fines Pacifica, which defends on First Amendment grounds, principally citing *Cohen v. California*.

(Adapted from *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), in which a divided Court held for the FCC, principally on the ground of protecting minors from harmful material in the home.)

[Note: in subsequent cases the Court declined to extend *Pacifica* and related restrictions to cable TV and the internet.]