Indecency Standards: Who Should Decide?
by Dale Frost Stillman

If you watched the Super Bowl last January, you may remember the halftime show better than the result of the game. According to published reports, the Janet Jackson/Justin Timberlake “wardrobe malfunction” generated more than half a million complaints to the Federal Communications Commission (FCC) and set the course for a discussion of what is considered indecent on the airwaves.

What is the FCC?
The U.S. Congress established the FCC with the Communications Act of 1934. An independent government agency, the FCC reports directly to Congress and was initially responsible for enforcing the Communications Act. Its jurisdiction in 1934 included not only radio communications, but interstate telephone and telegraph communications as well. Later, the FCC’s authority would expand to include the regulation of television.

Governed by five commissioners, today the FCC consists of six bureaus, including consumer and government affairs, enforcement, international, media, wireless communications, and wireline competition. To insure bipartisan representation, no more than three FCC commissioners may belong to the same political party.

The six FCC bureaus process applications for licenses, analyze complaints, conduct investigations, develop regulatory programs and take part in hearings. The FCC itself does not monitor the airwaves, but investigates complaints from the public about TV or radio content.

FCC vs. freedom of speech
Although the FCC’s authority encompasses regulating broadcast indecency, it is prohibited from interfering with the First Amendment’s right of free speech. However, with the 1978 landmark case of FCC v. Pacifica Foundation, the U.S. Supreme Court found that the Commission can restrict indecent speech on the airwaves.

Training wheels in California
California Senator John Vasconcellos has proposed legislation that would drop that state’s legal voting age from 18 to 14. Under the plan, the ballots cast by California residents between the ages of 14 and 16 would be worth one-quarter of an adult vote, while those cast by 16- and 17-year-olds would be worth half a vote.

Vasconcellos calls his voter proposal Training Wheels for Citizenship, and sees it as a way to interest teenagers in elections and keep them voting as they get older. While some people support the idea as a way to teach teenagers about the value of their vote, others strongly oppose the plan. The Committee on Moral Concerns in California opposes giving 14- to 17-year-olds the right to vote because it feels teenagers do not know enough about life and the world to cast an intelligent vote.

Some people would say, “Johnny can’t clean his room, why should he be able to vote?” but plenty of adults with the right to vote lack responsibility too,” said Haddonfield attorney Richard Croney, told The Washington Post.

Who Would Get Your VOTE?
by Cheryl Baisden

If you are like most kids your age, keeping up with the November elections is probably not a priority. Barring the presidential candidates—George W. Bush and John Kerry—you might not even know who they are running. But if you lived in California there could come a time when you would have the legal right to help decide who wins local, county and state elections at the age of 14.

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Two proposed amendments to the U.S. Constitution have recently been debated in the U.S. Congress. One is the Flag Desecration Amendment and the other would limit marriage in all states to a relationship between a man and a woman. While many amendments to our federal Constitution have been proposed over the years, few get very far in the lengthy process of changing it.

To understand the process of amending the U.S. Constitution, we need to go back to the beginning when in 1786, 55 representatives from the 13 colonies met in the stifling heat of a Philadelphia summer to hammer out what would eventually be the original U.S. Constitution. At the end of 127 days of impassioned debate, the framers succeeded in crafting an instrument “to secure the blessings of liberty to ourselves and our posterity.”

The original Constitution, which would contain seven articles, was adopted by the states on March 4, 1789.

In more than 200 years the document has changed very little. It is the oldest written constitution in the world still in effect today and has been the model of democracy for many other nations. Establishing the supreme law of our complex nation, the U.S. Constitution gives power and authority to our national and state governments, while at the same time vigorously protecting each of us, as individual citizens, from the power of those governments.

Credit must be given to the genius of those who wrote the U.S. Constitution. The framers’ intent was to create a Constitution not only for their time, but for future generations as well. They designed it not as a set of rules cast in stone, but as a vital, enduring foundation for an active democracy.

When it’s time to change
Within two years of writing the Constitution, one of the first acts its authors engaged in was to amend it. The framers had given themselves the power of amendment in Article V so that, if necessary, the Constitution could “keep pace with the times,” according to one of the original drafters, Thomas Jefferson. The framers deliberately did not make the process easy. They recognized that stability is essential in government and the stability of the Constitution on which that government is based is most essential of all. Therefore, they decided that if the written foundation of our government is to be amended, it must be on a
How Much is that Doggie in the Window? — The Dark Side of the Puppy Business
db y Phyllis Raybin Emeret
A trip to the mall wouldn’t be complete without a visit to the pet shop to see the puppies. You might even want to buy one. If the puppy you like has a glassy, sick look, it could come from a puppy mill and have a higher cost than just its price tag.

What’s a puppy mill?
A puppy mill is a term used to describe mass breeding facilities of animals. Imagine a place where hundreds of dirty cages are stacked and filled with dogs and puppies. The female dogs are bred continuously, never leaving their wire cages. In some cases, the puppies have skin and ear infections and eat fly-infested food.

While many puppies are bred by responsible breeders, those puppies bred at puppy mills are usually taken from the owners too soon, and as a result, can have numerous health problems. In addition, many of the puppies have socialization problems, never having been surrounded by people or having the benefit of individual care.

This is the reality of puppy mills, according to the New Jersey Consumers Against Pet Shop Abuse (NJCAPSA), a voluntary, non-profit organization dedicated to raising awareness about the horrors of puppy mills. NJCAPSA claims that many pet shop dogs come from puppy mills and that the owners of these mills are focused on profits and provide minimal care for the animals. Inbreeding, which is the process of mating two dogs that are too closely related, is very common in puppy mills. NJCAPSA believes that the Act is “ineffective.” Strauss explained that the Act does not cover conditions that occur after six months, noting that many congenital diseases take longer to develop. In addition, she says the Act does not take into account the high cost of veterinary care that can often amount to much more than twice the original purchase price of the animal.

The owner is faced with a dilemma, stated Strauss. “Either return a sick animal that may be resold sick or may be euthanized, or spend a huge amount of money on a condition that may last the lifetime of the pet.”

Strauss said the Pet Purchase Protection Act was put into effect to deal with occasional problems at pet shops, but the reality is that “a large number of the animals sold in stores are ill,” and the Act doesn’t address the greater problem of making pet shops more responsible.

One of the few attorneys in the state to specialize entirely in animal law, Strauss believes the only solution to the problem is “for stores not to sell dogs and cats,” reducing the demand for puppy mills.

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Back issues of The Legal Eagle since its inception in 1996, can be found on the New Jersey State Bar Foundation’s Web site at www.njsbf.org.

While you’re there, check out other interesting and fun stuff in our Students’ Corner. There is also useful information for teachers about other Foundation school-based programs.

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Libby Williams, president and founder of the NICAPSA, agrees and claims that many pet shops are currently in violation of the Pet Purchase Protection Act and that complaints are not regularly reported. Williams would recommend changing the Act to make veterinarians responsible for reporting to the Health Department any certificates of unfitness they have issued, instead of leaving that responsibility up to the pet shop owners.

Many breeders, few inspections
There are thousands of licensed dog breeders in the U.S. and less than 100 inspectors from the U.S. Department of Agriculture (USDA) to monitor them. In addition to overseeing dog breeders, the USDA also oversees research labs, zoos, circuses and airlines that transport animals. Breeders must meet regulations of the Federal Animal Welfare Act, which requires minimum space, shelter, feeding, and veterinary care standards to obtain a license, but the USDA simply does not have enough inspectors to routinely keep track of conditions in all breeding facilities and to enforce laws against puppy mills.

In the 1990s, the U.S. Congress passed tougher USDA regulations requiring coating on wire cages to avoid injuries and banning the tethering of dogs (limiting their movement on a chain or rope). The regulations stopped short of proposing bigger cages, better sanitation, access to water 24-hours a day and limiting the breeding of the same females.

Finding the pet that’s right for you
The NICAPSA recommends anyone who wants a dog or cat to try an animal shelter first. Some pet stores, like PETMART and Petco refuse to sell dogs or cats in their stores but regularly donate floor space so that local shelter and rescue organizations can bring animals to be adopted by their customers. In addition, almost every breed of dog has a corresponding rescue organization that you may find online. For referral to responsible breeders in your area, NICAPSA suggests checking with the New Jersey Federation of Dog Clubs.

To learn more about pet issues and your consumer rights, visit NICAPSA’s Web site, www.nicapsa.org.
even though such speech is protected under the First Amendment. The Pacifica case centered on a 1973 broadcast by a public radio station in New York owned by the Pacifica Foundation. The station broadcast comedian George Carlin’s “Filthy Words” monologue as part of a program on contemporary language and society’s attitudes toward it. The monologue consisted of Carlin identifying seven dirty words that can’t be said on public airwaves and then using those words in a variety of ways. A listener who happened to be in the car with his son heard the broadcast and complained to the FCC.

In its declaratory order against the Pacifica Foundation, the FCC did not fine the station but stated that the incident would be noted in the radio station’s file and if any other complaints were received, the commission would consider revoking the station’s license. Ultimately the case came before the U.S. Supreme Court. The Court rejected Pacifica’s argument that the First Amendment protected the station’s decision in the station based on what has become known as the pervasiveness doctrine. “Broadcast media have established a uniquely pervasive instance in the lives of all Americans,” the Court stated in its ruling. “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,” the Court said.

The ban on indecent broadcasts applies between 6 a.m. and 10 p.m. when children are more likely to tune in.

Broadcast Decency Enforcement Act of 2004

The Broadcast Decency Enforcement Act of 2004 was introduced in Congress two weeks before the Super Bowl. Originally calling for an increase in fines for violating FCC regulations from $27,000 to $275,000, the bill was amended after the Super Bowl to increase the fines to $500,000 for each infraction. The bill also calls for holding those who deliver what the FCC deems indecent speech personally responsible for fines. The bill would increase the fines for individual performers from a maximum of $11,000 to a maximum of $500,000. Another penalty added to the bill after the Super Bowl calls for broadcast networks (radio stations, television networks) to face a license revocation hearing if indecency standards are violated three times.

In its 70-year history the FCC has never revoked a license on the basis of indecency.

Although the Act would only cover broadcast airwaves, not cable networks, Michael Copps, one of the five FCC commissioners, told Entertainment Weekly that its jurisdiction could expand and cable networks would not necessarily be exempt. The FCC is aggressively pursuing violators since the Super Bowl incident. According to the White House Office of Public Integrity, the FCC proposed more fines in 2004 than for the last 10 years combined. Entertainment Weekly also reports that Congress is in the process of investigative hearings that could increase penalties to as much as $53 million per incident.

Targeting Howard Stern

Howard Stern of Clear Channel Communications, one of the nation’s largest owners of radio stations, agreed to pay $1.75 million in penalties to settle indecency complaints. The fine against him was part of a settlement for shock jock Howard Stern. Stern, who had previously broadcast Howard Stern’s show on its station permanently last April.

“Howard Stern has First Amendment rights,” contends Peter Skolnik, a media law attorney in Roseland. “But when speech crosses a line, and sometimes the line is vague, the law places some restrictions on obscenity,” he says.

Howard Stern’s show has been ranked number one in Los Angeles and New York, the nation’s two largest markets. Since 1990, the FCC has fined broadcasters four times for indecency. Stern has also been charged for “patently offensive” material and “indecency.” However, in 2001, the FCC stated that if sexual material is presented in a clinical context, it may not be considered indecent, so Winfrey may be in the clear.

Stern announced recently that he will take his show to Sirius satellite radio in January 2006 where he will no longer be bound by government sanctions.

Confusing times for television

In 2001, the FCC listed factors that made a broadcast more likely to be considered offensive, including the graphic nature of the broadcast, whether the station repeats the indecent material and whether the programming appears to have been presented for shock value. That clarification doesn’t seem to be helping writers, producers and network executives today.

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Does One Vote Really Matter?

History has shown that a single vote can have a huge impact on world events. Here are some examples:

- One vote in 1649 resulted in England’s King Charles I being beheaded.
- One vote in 1846 led to the decision to go to war with Mexico.
- One vote in 1868 saved impeached President Andrew Johnson from being removed from office.
- One vote resulted in Texas, California, Idaho, Oregon and Washington becoming states.
- One vote in 1923 made Adolph Hitler the leader of the Nazi Party.

Source: WorldNow and WBNS-TV Inc.

The process of amending New Jersey’s Constitution is a lot simpler than amending the U.S. Constitution. One possible method is to submit an amendment proposed by the state legislature to a direct vote by the public as a public question in the November election. Another is to submit the proposal to members of a constitutional convention for approval.

One repealed amendment

In the 213 years between 1791 and 2004, a total of 27 amendments to the New Jersey Constitution have been ratified by Congress, including the first 10, known as the Bill of Rights. The distinguishing feature of 26 of the 27 amendments to the U.S. Constitution is that they all gave greater freedom to or expanded the rights of American citizens. Only one amendment took away a right.

The 18th Amendment of 1919 brought Prohibition to the U.S., making it illegal to sell, buy or drink any kind of alcoholic beverage in this country. Fourteen years after this amendment went into effect, Congress passed the 21st Amendment repealing Prohibition.

Could this be number 28?

Not all failed amendments slip away quietly. A proposed amendment defeated in one session of Congress may very well be brought up in another session. Consider the story behind the Equal Rights Amendment, which was proposed and defeated in every session of Congress from 1923 to 1972.

In 1920, Alice Paul, a leader in the women’s rights movement, had just succeeded in winning women the right to vote with the passage of the 19th Amendment. Paul then turned her energy to the fight for a constitutional amendment that would guarantee “equal justice under the law” for women in the workplace and in all aspects of life.

VOTE CONTINUED FROM PAGE 1

Perr: “And when people argue that kids don’t know what’s going on in the world, they could be very wrong. With the Internet, plenty of kids know more about politics and world affairs than their parents,” he said.

Perr also points out that there is nothing in the law that says a citizen must understand politics or have certain experiences to be able to vote.

New Jersey State Senator Joseph Coniglio, who chairs New Jersey’s Senate State Government Committee, doesn’t think California’s proposal would fly in New Jersey. He agrees with the Committee on Moral Concerns that “14-year-olds don’t possess the life experiences necessary to make mature, informed decisions when it comes to voting.”

Senator Coniglio does believe, however, that “a better job needs to be done of educating our children about the election process so that they are able to make their voices heard and fight for the issues that are important to them once they reach the age of 18.”

Counting for less

What concerns Perr when it comes to the California proposal is the idea of votes from 14- to 17-year-olds counting less than adult votes.

“Legally there would be a problem with valuing some votes as one-quarter of a vote, some at half a vote and others at a whole vote,” Perr said. “I think California would have to make everyone’s vote count equally as a whole vote, or there would be a constitutional problem.”

Placing different values on votes would violate the 14th Amendment to the U.S. Constitution, which guarantees every citizen equal protection under the law, explained Perr. Passed after the Civil War in 1868, the amendment granted African-Americans citizenship and changed a political policy that counted them as three-fifths of a person for determining congressional representation.

What will it take to pass?

To lower the voting age in California, lawmakers would have to pass an amendment to the state constitution, vote two-thirds of the state Assembly and two-thirds of the state Senate approving the idea in a state referendum.

While the California proposal would lower the voting age for state, county and local elections, voters would still have to be 18 to cast ballots in presidential and congressional elections. Changing the voting age for national elections would require an amendment to the U.S. Constitution, like the 26th Amendment passed in 1972, which lowered the voting age from 21 to 18.

The idea behind the 26th Amendment may seem similar to California’s proposal for 14- to 17-year-olds, however, the circumstances surrounding the 1972 amendment were very different. The voting age was dropped in 1972 because more than half of the American soldiers dying in battle in the Vietnam War were under 21, yet they were considered too young to vote.

“The California proposal makes sense in some ways because the number of young voters who are actually casting ballots these days is very low and I’m sure they see lowering the voting age as a way to get young people involved so they will continue to vote when they get older,” Perr said. “But there’s a lot more to consider in making that decision, and it may not be as easy as it sounds.”

For now, the merits of Senator Vasconcellos’ legislation is still being debated. So, California teenagers will not be voting anytime soon.

27 Amendments CONTINUED FROM PAGE 3

According to the National Council of Women’s Organizations, who led the drive for ratification, the Equal Rights Amendment “would give equal legal status to women for the first time in our country’s history” and “would raise the standard for sex discrimination claims in the courts,” such as claims for equal pay for equal work.

In 1972, both houses of Congress finally passed the Equal Rights Amendment and sent it to the states for ratification. In anticipation of a difficult passage, Congress extended the seven-year time limit for the ERA’s approval by the states to 10 years.

And, there were difficulties indeed. By 1982, at the end of the 10-year period, only 35 states had ratified the amendment—three states short. Congress then voted to remove the deadline for state ratification entirely.

The 15 states in which the amendment has not been ratified are Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah and Virginia.

If and when any three of these states ratifies the Equal Rights Amendment, it could become the 28th Amendment to the U.S. Constitution.

As for the amendment to define marriage, in July 2004, that measure failed in the U.S. Senate by a vote of 65–35. The proposal needed 60 votes to move forward. In October 2004, the proposal was defeated in the house 227–186, well short of the two-thirds majority.