

2. Free Speech Methodology

***Turner Broadcasting System, Inc.
v. Federal Communications
Commission,
512 U.S. 622, 114 S.Ct. 2445 (1994)***

Justice KENNEDY announced the judgment of the Court and delivered the opinion of the Court.

Sections 4 and 5 of the Cable Television Consumer Protection and Competition Act of 1992 require cable television systems to devote a portion of their channels to the transmission of local broadcast television stations. This case presents the question whether these provisions abridge the freedom of speech or of the press, in violation of the First Amendment. On October 5, 1992, Congress overrode a Presidential veto to enact the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460 (1992 Cable Act or Act). Among other things, the Act subjects the cable industry to rate regulation by the Federal Communications Commission (FCC) and by municipal franchising authorities; prohibits municipalities from awarding exclusive franchises to cable operators; imposes various restrictions on cable programmers that are affiliated with cable operators; and directs the FCC to develop and promulgate regulations imposing minimum technical standards for cable operators. At issue in this case is the constitutionality of the so called must carry provisions, contained in §§4 and 5 of the Act, which require cable operators to carry the signals of a specified number of local broadcast television stations.

There can be no disagreement on an initial premise: Cable programmers and cable operators engage in and transmit speech, and