

Ohio Minister Not Hip to Halftime Show

By: Jack Greiner on February 11, 2020 on graydon.law

I saw [this piece](#) last week and it caught my attention. A Newark Ohio minister named Dave Daubenmire is apparently pushing for a class action lawsuit against the NFL and Pepsi over the Super Bowl halftime show that featured Shakira and J-Lo. Had 49er running backs been able to move their hips with the reckless abandon of the two performers, they may have pulled out the victory.

Minister Daubenmire, however, views the halftime show with more of a “the glass is half empty” approach. He considers it pornography and a threat to his eternal salvation. He feels that there should have been a warning about the “crotch shots” and pole dancing featured in the performance.

I hate to rain on the minister’s parade, but if he actually files the suit, it would be tossed out quicker than a Patrick Mahomes shallow cross. For starters, the show isn’t obscene by the definitions set out in United Supreme Court cases. It just wouldn’t pass the test, and so it would be protected by The First Amendment, “crotch shots” notwithstanding.

Second, even if it were, that would be a matter for the Federal Communications Commission. The Fox network, which broadcast the Super Bowl could be subject to a fine (that happened several years ago with Janet Jackson’s wardrobe malfunction) but there’s no private cause of action.

A network that broadcasts to a nationwide audience doesn’t owe a duty to the nation’s parents to shield their children from objectionable programming. That is what the remote control switch is for.