

Pet News and Views

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Media Impressions: Not Available

October 6, 2009

Supreme Court to Decide on Animal Cruelty Tapes and Free Speech

I have always been a defender of our First Amendment right. Today, October 6, the Supreme Court meets to hear arguments on a case involving animal cruelty and freedom of speech. I hope they will rule compassionately and justly.

The law up before the high court criminalizes depictions of animal cruelty. The case concerns infamous dog fighting videographer Robert Stevens, who was convicted by a Pennsylvania jury of violating a 1999 federal law banning the sale of videos showing extreme and illegal acts of animal cruelty. This federal law, called the Depiction of Animal Cruelty Act, “was prompted in part by a Humane Society of the U.S. (HSUS) investigation that uncovered an underground subculture of animal crush videos,” says Wayne Pacelle, president and CEO of HSUS.

Animal crush videos show scantily clad women dressed in stilettos, using their shoes to crush the skulls of puppies, kittens, mice, and other small animals. You can hear the cries of these animals on the tapes. The other videos involved in this free speech case show dog fighting, which is illegal in the United States. These videos are made in Japan, where dog fighting is legal. (Our government should pressure the Japanese government to stop this act of cruelty.)

According to information found at [Animal Law Coalition](#), law enforcement officers arranged to buy three videotapes from Stevens, who advertised these videos in *Sporting Dog Journal*, an underground publication featuring articles on illegal dog fighting. The first two tapes, entitled *Pick-A-Winna* and *Japan Pit Fights*, show footage of organized dog fights that occurred in the U.S. and involved pit pulls from Japan. The third video, entitled *Catch Dogs*, shows footage of hunting excursions in which pit bulls were used to catch wild boars, as well as footage of pit bulls being trained to perform the function of catching and subduing hogs or boars. Stevens narrates and comments in each of these three videos. The videos come with literature written by Stevens.

Following the sale of these videos by Stevens to these undercover officers, a search warrant was obtained. The officers found many copies of these three videos as well as other dog fighting merchandise. A few months later, March 4, 2004, a grand jury in Pennsylvania convicted Stevens for knowingly selling these illegal tapes. On January 13, 2005, the jury sentenced Stevens to 37 months of imprisonment and three years of supervised release. Stevens appealed his sentence.

“The stakes here are very high, and extend well beyond the specific context of depictions of animal cruelty,” says Rodney Smolia, Washington and Lee University Law Dean. Smolia is part of a group of First Amendment scholars on Stevens’ side. Smolia and others believe that if the Supreme Court decides against Stevens, then images of animal cruelty, child pornography, and other obscene visual materials would be banned, and that this ban would extend to other highly offensive images.

“The Court is saying the law here is not related enough to the goal of preventing animal cruelty. But of course it is,” says Laura Allen, Executive Director of the Animal Law Coalition.

“Possessing the film may not hurt the animal any longer, but that misses the point. The animal is harmed so that the film can be made and then sold for people to possess and watch it. Those possessing these films are actually supporting the creation of more of these films and more animal cruelty.”

“The Court is saying here that if the purpose of this law was to aid in ‘the enforcement of an already comprehensive state and federal anti-animal-cruelty regime,’ then that would outweigh free speech rights,” Allen explains. “The Court is quibbling with how the purpose of the law has been presented.”

According to Pacelle of HSUS, “New York University’s Center on the Administration of Criminal Law also filed a brief in support of banning depictions of illegal acts of animal cruelty. The Center is a leading academic think tank, which frequently weighs in on important government issues before the high court.”

”As explained in the brief,” says Pacelle, “the Depiction of Animal Cruelty Act criminalizes depictions of animal cruelty that have no significant redeeming political, social, or artistic value. This is essentially the same test for stopping the production and sale of certain forms of human obscenity. Indeed there are strong arguments that such material, like child pornography, should not be entitled to any First Amendment protection at all. The makers and sellers of these videos are not making an argument or expressing a viewpoint—they are simply profiting from extreme cruelty, from predation on the weakest among us. This is a far cry from the values that the First Amendment is supposed to protect.”

Animal rights and environmental law expert David Cassuto, explains, “This is a fundamental issue protecting animals.” Cassuto, a professor of law at Pace Law School and Director of Pace Law School’s Brazil-American Institute for Law and Environment, says, “You have to ask how much speech is being killed by this over the welfare of animals. Do we as a society condemn cruelty of animals?” Cassuto [blogs](#) about animal rights.

While I value our freedom of speech, I cannot understand how harming animals can be a question of our First Amendment. Mahatma Gandhi said, “The greatness of a nation and its moral progress can be judged by the way its animals are treated.” I totally agree.

Please pass this post onto others. You can still contact your congress person about this case, and you can send letters to editors at newspapers, blogs, and websites.

Posted by Pet News and Views at [10/6/2009 1:19 PM](#) 

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