In The
Supreme Court of the United States

THE UNITED STATES OF AMERICA

Petitioner,

v.

ROBERT J. STEVENS

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR PETITIONER

Please serve:

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Question Presented

Is a federal statute that makes it illegal to create, sell, or possess depictions of animal cruelty unconstitutional?

Constitutional Provisions

A. The ruling of *Schenck v. United States* states that a law is considered constitutional if it prevents the use of words that instill “clear and present danger,” being an exception to the First Amendment.

B. U.S.C Title 18,48 states that “whoever knowingly creates, sells, or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain, shall be fined under this title or imprisoned not more than 5 years, or both,” with the exception of media that has “serious religious, political, scientific, educational, journalistic, historical, or artistic value.”

A. Statement of Case

Robert J. Stevens, hereinafter referred to as "Stevens," was the owner of a business called "Dogs of Velvet and Steel." Out of this business, he sold informational materials about the handling and care of pitbulls, as well as dog fighting videos. Although some of his footage was shot in Japan, where dog fighting is legal, many of the videos were made in America. He did not film the fights, but took video clips, edited them together, and produced them. Stevens was caught selling the videos in Pennsylvania to undercover agents. During the trial in January 2005, the defense claimed that the videos showed the supremacy of pitbulls among other dogs, and therefore are protected by the First Amendment. However, his videos showed brutally violent images of dogs and other animals being maimed by each other. His videos also included suggestions on which breeds of dogs were the best to bet on. Therefore, it shows that it shows that the making, selling, and possessing these inhumane and gruesome videos were not only used for educational purposes. In fact, the selling of these unique, unnecessary videos provide an economic motive for creating these appalling depictions of animal abuse. The videos in question appeal only to a very small group of individuals with a perverse idea of entertainment. The jury ruled that there was no value to the videos, and therefore are not protected by the First Amendment. Stevens was convicted of violating Federal Law 18 U.S.C 48. He appealed the decision, saying that Section 48's prohibition of depictions of animal cruelty, made, sold, or possessed for commercial gain was in direct violation of his right to free speech under the First Amendment. However, this right is not absolute, and Federal Statute 18 U.S.C. 48 is constitutional.

B. The First Amendment is Not Absolute

Although the First Amendment states that "Congress shall make no law…abridging the freedom of speech, or of the press," there have been many cases where the Supreme Court has decided this amendment is not absolute. One such case decision stated very broadly that "the right to free speech is not absolute at all times during all circumstances." *See Chaplinsky v. New Hampshire*. This clearly and directly overturns Stevens' assumption that any form of speech or press is immediately protected under the First Amendment. Among those unprotected words are libel, slander, obscenities, and child pornography. Long since established is the idea that "the unconditional phrasing of the First Amendment was not intended to protect every utterance." *Roth v. United States*. Possibly one of the best and simplest put explanations of this idea is Oliver Wendell Holmes' opinion concerning "clear and present danger," saying, "The most stringent protection of free speech would not protect a man falsely shouting fire in a theater and causing a panic." *Schenk v. United States*. If words that propose a "clear and present danger" are limited, how can a statute that limits similar speech be deemed unconstitutional. The notion that anything said will not have consequences under the law is foolish.

C. The Court's Ruling on Obscene Images

In the case of *Miller v. California* (1973), the Court stated that "Obscene material is not protected by the first amendment," and that "A work may be subject to state regulation where that work, when taken as a whole, appeal to the prurient interest." While there is no national standard to the word "obscene," it is to be taken on a case by case basis. Clearly in the case of

Stevens v. U.S., the videos fall under the category of obscene. The videos in question appeal only to a certain, very small group of individuals. The average person would be appalled by the scenes and would categorize them as “obscene,” and therefore is not supported or protected by the First Amendment.

D. The Videos in Question are an Extension of the Criminal Activity Related to Dog Fighting

Catching dog fighting rings in the act is an extremely difficult task. The events are held in secret and law enforcement officials commonly have complicated times getting information in order to break up these illegal activities. With the videos of these events being illegal, the police can zero in on their sales, which can then lead to the arrest of those who support, attend, and organize dog fighting events. Allowing the videos in question is encouraging more of these events to happen. With the banning of videos depicting animal cruelty, it is very likely that less animal cruelty will occur.

E. 18 U.S. 48 Regulates Images Similar to Those Already Regulated by Other Statutes.

The same rulings that apply to child pornography can also be applied to these dog fighting videos. In *New York v. Ferber*, the Court ruled that media can be banned without qualifying as “obscene” under the rules of *Miller v. California* for five reasons, here applied to child pornography:

1. The government has a very compelling interest in preventing the sexual exploitation of children.
2. Distribution of visual depictions of children engaged in sexual activity is intrinsically related to the sexual abuse of children. The images serve as a permanent reminder of the abuse, and it is necessary for government to regulate the channels of distributing such images if it is to be able to eliminate the production of child pornography.
3. Advertising and selling child pornography provides an economic motive for producing child pornography.
4. Visual depictions of children engaged in sexual activity have negligible artistic value.
5. Thus, holding that child pornography is outside the protection of the First Amendment is consistent with the Court's prior decisions limiting the banning of materials deemed "obscene" as the Court had previously defined it. For this reason, child pornography need not be legally obscene before being outlawed.

These same reasons can be applied to dog fighting videos. The government does have an interest in preventing the abuse of animals as it has been banned in all 50 states. Being able to record these legal acts has an economic benefit, and therefore encourages individuals to commit these crimes in order to record and sell them for profit. The dog fighting videos in question have no value artistically and therefore should not be protected by the First Amendment.

F. Conclusion

The United States of America suggests that the decision by the decision by the Third Circuit Court of Appeals be reversed and a rule be adopted that makes dog fighting, which is illegal in all 50 states, a non-questionable aspect not protected by the First Amendment. Dog fighting is illegal in all 50 states, so how can it be protected by the First Amendment? Dog fighting is an illegal activity and those who partake, whether for "educational" purposes or not, should have no protection from the First Amendment on that matter.

THEREFORE, the United States of America hopes the decision by overturned and there no longer be question considering the matter of dog fighting.

Respectfully Submitted,

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