

## *United States v. Stevens*

Argued: October 6, 2009

Decided: April 20, 2010

### **Facts**

The freedom of speech clause of the First Amendment protects all forms of communication – speeches, books, art, movies, television, radio, and other media – from government censorship. The right to free speech is not absolute, however. There are some situations where the government can restrict speech based on its content, including when it contains obscenities, threats, child pornography, or is likely to incite violence.

In this case, the Court has been asked to decide whether a government ban on videos showing cruelty to animals violates the First Amendment. In 1999, Congress was concerned about the existence of “crush videos,” which showed small animals being stomped to death. Since the people in the videos were not identified, law enforcement officers were having trouble prosecuting them for animal cruelty, which is illegal in all 50 states. Congress passed a federal law that made it a crime to:

make, sell, or possess any depiction of killing or abusing a live animal, if that abuse was illegal in the state at the time the depiction was made, sold, or possessed.

The law contained an exception for depictions that had “serious religious, political, scientific, educational, journalistic, historical, or artistic value.”

Robert Stevens owned a business called “Dogs of Velvet and Steel” which sold informational materials about the care and safe handling of pit bulls as well as videos of dogs fighting each other and other animals. Some of these videos were filmed in Japan, where dog fighting is legal, while others were old footage of American dogfights. Stevens did not film the animal abuse, but pieced video clips together to create the films. He was tried and convicted in federal court for selling and distributing these dogfight videos in violation of the federal law.

Stevens appealed this ruling to the Third Circuit Court of Appeals, arguing that the law was an unconstitutional violation of his First Amendment right to free speech. The Third Circuit ruled in favor of Stevens. The United States government appealed and the Supreme Court agreed to hear the case.

### **Issue**

Does a law banning the sale of images of animal cruelty violate the speaker’s First Amendment right to the freedom of speech?

### **Constitutional Amendments and Precedents**

#### *First Amendment*

“Congress shall make no law ... abridging the freedom of speech.”

The Court has interpreted the First Amendment to say that, in almost all cases, the government cannot ban speech because of its content. There are a few categories of speech that the government can punish, however, including incitements to violence, defamation, obscenity, and child pornography. The Supreme Court said in *Texas v. Johnson* (1989), a case about flag burning, "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

*Chaplinsky v. New Hampshire* (1942)

Walter Chaplinsky, a Jehovah's Witness, was passing out pamphlets on a public sidewalk, gathering a large crowd as he condemned organized religion. When approached by the police, Chaplinsky shouted insulting words at the cop, and was arrested for violating a state law banning offensive speech directed at an individual in a public place. The Supreme Court held that the speech was "fighting words" intended to harm the listener and to incite others around the speaker to riot. This type of speech is of low value to society and therefore does not deserve First Amendment protection. The Court applied a balancing test to determine that the speaker's words had no social benefit (they were insults), and the costs to society (a potential riot) were too great.

*New York v. Ferber* (1982)

The owners of an adult bookstore were arrested for selling child pornography films. The Supreme Court held that child pornography is not protected speech. Even though depictions of other crimes (like murder, robbery, or assault) are protected under the First Amendment, the Court said the government had more leeway in regulating child pornography for several reasons. They said that child pornography could be banned because it met the following criteria:

- The government has a compelling interest in safeguarding the physical and psychological well being of minors.
- The sale of child pornography is fundamentally related to the abuse of children because it creates a permanent record of the abuse. The existence of the video or picture can continue to harm the children after the abuse ends.
- The sale and possession of child pornography provides an economic motive for the abuse to take place. Therefore, banning the depiction can help end the actual abuse.
- The social value of permitting child pornography is very limited.

**Arguments for the United States:**

- The government has a compelling interest in preventing animal cruelty. Banning these depictions of animal cruelty will help the government catch and prosecute people who engage in cruel behavior. It will also deter future incidents of animal cruelty.
- Congress relied on studies showing that people who engage in cruelty towards humans often begin their criminal behavior by torturing animals. The government wants to keep people from being desensitized to animal cruelty.

- These videos depicting animal cruelty are patently offensive and have no social worth. Like *Chaplinsky*, the government's interest in preventing cruelty outweighs the value of permitting this type of speech.
- The law is not too broad – it was designed to target extreme conduct and is carefully written to allow exceptions for depictions that have political, historical, scientific, artistic, or educational value.
- Like *Ferber*, the sale of these videos provides an economic motive for their creation. One way to stop those acts is by preventing the sale of the depictions.
- The conduct depicted in the videos is illegal in all 50 states and DC, which shows that the country as a whole agrees that the government has a compelling interest in preventing animal cruelty.

#### **Arguments for Stevens:**

- A ban on depictions of animal cruelty does not fit into one of the existing categories of speech that the government can punish– fighting words, obscenity, inciting violence, child pornography. Those categories are all the same in that the speech banned causes a grave threat to the well being of humans, or appeals to the prurient interest. This law is different.
- This law is not like the law in *Chaplinsky*. There, the government was worried about the serious and immediate harm that his words could cause the people around him by starting a violent fight. Here, the creation, sale, or possession of the videos is not likely to incite violence.
- This case is not like *Ferber*, which banned child pornography in part because the videos live on after the abuse ends, which continues to harm the children involved. Depictions of animal cruelty don't cause the animal any more harm than the abuse alone did (and that abuse is already illegal).
- Unlike *Ferber*, the government does not have a compelling interest in protecting animals. Protecting animals doesn't rise to the same level as protecting children.
- Statutes banning animal cruelty already exist in all 50 states. Banning the depictions of that abuse isn't them most effective way to stop it – the government should enforce the existing animal cruelty laws.
- The government argues that being exposed to animal cruelty could desensitize people to it and lead them to commit criminal acts. However, the mere tendency for a speech or depiction to encourage crime isn't enough to ban it.
- The law is too broad and vague – as written; it could ban a video about hunting, where the hunter kills an animal out of season. How will people know what a jury or judge will consider “serious artistic, educational, scientific, or historical value?” The people might begin to censor themselves for fear that their speech would violate the law.
- Speech doesn't have to have great social value to be protected by the First Amendment.