United States v. Stevens

Facts

Congress passed a federal law criminalizing the commercial creation, sale, or possession of certain depictions of animal cruelty in interstate or foreign commerce. Robert J. Stevens was convicted of violating this law for selling videotapes with footage of dog fights.

Procedural History

Third Circuit Court of Appeals overturned his conviction on the grounds that the statute was unconstitutional. The Federal Government appealed to the Supreme Court by filing a petition for certiorari.

Issues

Does the statute violate the Free Speech Clause of the 1st Amendment?

Holding

Yes, the statute is substantially overbroad

Judgment

Affirmed

Legal Reasoning for majority, concurrence and dissent

Roberts (for 8-1 Majority):

1. Text of the 1st: “Congress shall make no law… abridging the freedom of speech”
	1. Statute in question regulates expression based on content (whether animals are being intentionally harmed). Consequently it is presumed constitutionally invalid; the Government has the burden to argue why the statute is valid.
2. Restrictions on speech is permitted in some limited areas, depictions of animal cruelty isn’t one of them
	1. In this case, the Government has proposed a test to determine whether or not animal cruelty should be categorically excluded from the 1st’s protection: “balancing the value of the speech against societal cost”
		1. The proposed test is startling and dangerous
	2. While the Court has ruled in the past to limit speech based on tests that measured potential social value against social interest in order and morality (Chaplinsky), such precedents don’t set forth a test that can be generally applied to allow Government to restrict speech based on ad hoc and manipulable cost-benefits analyses
	3. While there may exist new categories of speech that fall outside the 1st’s protection, there is no evidence that “depictions of animal cruelty” is one of them
3. An overbreadth analysis determines that the statute is substantially overbroad and therefore invalid
	1. The statute bans depictions of animal cruelty but doesn’t explicitly say the depicted conduct needs to be cruel (the text instead bans “maiming, mutilating, torturing, wounding, killing”)
		1. “Wounding” and “killing” don't imply cruelty
	2. The statute requires that the depicted conduct be illegal in the state where the commercial activity takes place
		1. Individuals wishing to comply face a myriad of regulations from at least 56 separate jurisdictions that sometimes contradict one another
	3. While there is an exceptions clause, the 1st protects forms of speech that might not qualify for exception but still would get banned by the statute
		1. The Government has not defended the constitutionality of the statute’s ban on depictions other than crush videos and animal fighting (ex: non-instructional hunting videos, depictions of methods of slaughter)
		2. Hunting magazines and videos, which fall under the scope of the statute, have a far bigger market than dog fighting videos.
		3. Consequently, the question isn’t about whether a statute limited to animal crush videos, animal fighting, or other extreme acts of cruelty would be constitutional, it’s about substantial overbreadth

Alito (dissenting):

1. The Court should have let the Court of Appeals decide whether the videos in question are constitutionally protected
2. The Court should not have done an overbreadth analysis
	1. The 1st’s overbreadth doctrine creates a narrow exception to the rule that a party must show a statute has violated that party’s own rights
	2. It was needlessly applied in this case, it should be used as a last resort
3. Disagrees with Court’s ruling that the statute is substantially overbroad
	1. In order to determine substantial overbreadth, Court must determine that there is a real danger the statute would compromise 1st Amendment protections for parties that are not before the Court
	2. For this case, the Court mainly relied on examples of hunting game and methods of slaughter to argue that the statute extends too far
		1. But hunting is legal in all 50 states
		2. Vast Majority of depictions of hunting fall outside the statute’s reach
		3. Virtually all state laws define “animal” to exclude wildlife
		4. Hunting would fall under the statute’s exception anyways
		5. Even opponents of the legislation when it was still in Congress acknowledged that it would not affect depictions of hunting
		6. Methods of slaughter would also qualify under the statute’s exception
4. The statute was meant to be a pragmatic solution to stop the creators of crush videos from violating state animal cruelty laws and also curtail the success of the criminal dog fighting culture
	1. Following the Third Circuit’s decision, crush videos depicting the illegal action have returned online
	2. Commercial sales of dog fighting videos help fuel the market for real dog fighting
	3. The 1st does not force Congress aside to allow crimes to be committed
5. New York v. Ferber
	1. Court held that child pornography is not protected speech
	2. While protecting animals is not as important as protecting children, the Government has compelling interest in preventing the torture depicted in crush videos and protecting dogs from long term physical and psychological harm sustained from fighting

Relation To Other Cases, Precedent

New York v. Ferber, Chaplinsky v. New Hampshire, Miller v. California

Van Geel Analysis with Chaplinsky as Precedent:

Chaplinsky: Up

Stevens: Sd

*Box B, Limits Permissible*

Source of Law

1st Amendment, free speech clause

Interpretative style for majority and dissent

Majority: Originalist, starts with text of 1st Amendment, argues that the intention of the amendment reflects the judgment that restrictions placed on Government outweigh the costs

Dissent: Originalist, argues that 1st Amendment wasn’t meant to prevent Congress from ensuring that crimes aren’t committed