

- 1 [Refusing to Accept Letterman's Apology](#) Mara Gay, The Atlantic Wire
- 2 [What Role Should Generals Play in the War Debate?](#) Max Fisher, The Atlantic Wire
- 3 [Bloggers Bristle At New Blog Regulation](#) Carl Franzen, The Atlantic Wire
- 4 [Is There Really an Autism Epidemic?](#) Mara Gay, The Atlantic Wire
- 5 [5 Ideas to Win Afghan War](#) Max Fisher, The Atlantic Wire

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Balancing Free Speech Concerns and Outrage Against Animal Cruelty

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By Heather Horn on October 07, 2009 8:10am

The Supreme Court is set to hear a case challenging the constitutionality of a ban on depictions of animal abuse. The challengers argue that the ban, legislated in the 1990s over a series of videos showing stilettoed women crushing small animals as a perverse form of sexual entertainment, violates the First Amendment right to free speech. Making the matter more complicated, the perpetration of animal cruelty is already outlawed--the question is whether selling videos of it should be likewise forbidden, particularly if videos are meant to be educational (for example in the case of hunting instruction). Editorial boards, bloggers, and think tanks are all weighing in. Here's what they're saying:

- **Question of Defining 'Obscene'** "I would expect," writes [Tom Head](#) on his civil liberties blog, "the Court to ask two questions: Does this law serve a compelling interest, and does it use the least restrictive means possible to meet that interest?" Head suspects the answer will be "yes." There is also, he says, "the more -long term question [of] ... what content ... qualifies as obscene rather than merely indecent," and therefore can be banned.
- **Law Completely Reasonable--These People Are Sick** The editors of the [Ventura County Star](#) discussed the videos of women crushing animals that led to the original ban. They agreed:

Videos showing the intentional killing and maiming of living, breathing animals--whether they be kittens, puppies, rabbits, hamsters or mice--just to satisfy someone's perverse, sexual fetish, are not free speech. The people who sell these repugnant videos should not be protected.
- **'Even Disturbing Speech' Protected** The [New York Times](#) editorial board disagrees. Naturally, they say, "[a]nyone with an ounce of decency should be tempted to ban animal-abuse videos, but anyone with an appreciation for the First Amendment understands why we cannot." It is the same, they argue, for Nazi marches and racist rhetoric. "If legislatures have the power to disapprove certain categories of unpopular speech, a lot of expression could become illegal." Also, it is "extraordinarily difficult to carve out ... exceptions" for when offensive material is depicted for educational purposes.
- **'Balancing' Dangerous** In an amicus brief for the case in question, the [Cato Institute](#) notes the danger in banning "new categories of speech" based on a "balancing test that invites the judiciary to determine the 'value' of the expression and weigh it against the Government's interest, not in suppressing a depiction, but in suppressing the conduct depicted." Such a test, they contend, would mean "the Government may criminalize expression on an entire class of subject matter simply by designating it 'low value.'"

- **What Is Art?** [The Pitt News](#) editors take a slightly different track: "Observers must distinguish between the act and the image," they declare, noting that "[o]ther laws already criminalize animal abuse, so only the footage is in question." Calling animal cruelty "the work of a dark, deplorable spirit" they nevertheless write that "owning and exchanging" images of animal abuse "still might be historical or educational, and it probably constitutes something akin to art."
- **Threat to Journalism** [The Washington Post](#) offered yet another perspective. Their editorial board suggests that the law banning the videos "is written so broadly that it could be used to chill or even ensnare legitimate newsgathering exercises or put in legal jeopardy those who capture hunting expeditions on tape."

The Debate

- [Animal Cruelty Isn't Obscene?](#) Tom Head, Tom
- [In Support of Small Animals](#) Editorial Board, Ventura County Star
- [Dogs, Videos, and Violence](#) Editorial Board, The Washington Post
- [The Pitt News](#) Editorial Board, Dogfights and Civil Rights
- [Cato Amicus Brief](#) Cato Counsel for Amicus Curiae, Cato Institute
- [Animal Cruelty and Free Speech](#) Editorial Board, The New York Times
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