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Supreme Court animal cruelty ruling: All sides find positives

Free-speech advocates say the Supreme Court protected the First Amendment. Animal-rights advocates say it showed how Congress could pass a new anti-animal cruelty law.



In this March 17, 2010 photo, a Humane Society police officer with Pennsylvania SPCA poses for a photograph with a dog recovered from a suspected dogfighting operation. The Supreme Court ruled Tuesday that a law designed to stop depictions of animal cruelty was overbroad.

Matt Rourke/AP

By Warren Richey, Staff writer / April 20, 2010

Washington

Free speech advocates praised Tuesday's US Supreme Court decision striking down a federal law banning depictions of animal cruelty.

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At the same time, animal rights groups are calling on Congress to enact a new, more targeted law, to prevent trafficking in photos and videos depicting acts of severe animal cruelty, including so-called "crush" videos.

In striking down the 1999 Depiction of Animal Cruelty Act, Chief Justice John Roberts said the law was substantially overbroad and could criminalize depictions of entirely lawful conduct such as hunting videos and magazines. The vote was 8 to 1.

"It is clear from the opinion and the size of the majority that the court heard the many voices concerned about this law," said David Horowitz, executive director of the Media Coalition, a free-speech advocacy group. "This law put at risk a broad range of newspaper articles, films, books, and images of hunting and wasn't limited to dogfighting videos," he said.

The 1999 law was aimed in part at outlawing the production and distribution of “crush videos” involving depictions of small animals being tortured and killed by women in high heel shoes. The videos were sold in an underground trade as part of a sexual fetish.

But the 1999 law also outlawed depictions of other acts of animal cruelty.

Free-speech advocates

The high court case stemmed from the arrest and conviction of a Virginia-based documentary producer named Robert Stevens who sold videos containing scenes of dogfights. Mr. Stevens said his videos were aimed at portraying the aggressive characteristics of pit bulls and the use of pit bulls in hunting. He argued that his documentaries were protected by the First Amendment.

A federal judge disagreed and a jury convicted him of selling banned depictions of dog fights in violation of the 1999 law. He was sentenced to three years in prison.

A federal appeals court overturned the conviction by declaring the underlying law unconstitutional. On Tuesday, the US Supreme Court also declared the law unconstitutional, but on different legal grounds.

In doing so, the high court rejected an attempt by the Obama administration to create a free speech balancing test that would weigh the value of the disputed speech against its societal costs to determine if it qualified for First Amendment protection.

“As a general principle, the First Amendment bars our government from dictating what Americans are allowed to see, read, speak, or hear,” said Gene Schaerr, a Washington lawyer who filed a friend of the court brief in the case on behalf of the Cato Institute. “Although one may debate the importance of public expression with regard to cruelty to animals ... the government’s effort to remove any area of public expression from the First Amendment’s protection would have been highly troubling,” he said in a statement.

Mr. Horowitz agreed. “Giving the government freewheeling authority to judge the social worth of words and images is a dangerous proposition,” he said. “This landmark ruling affirms that First Amendment protections are not subject to balancing tests or limited to speech with so-called serious value.”

Animal-rights advocates

Officials at the Humane Society said they were disappointed by the decision striking down the law, but were hopeful Congress would pass new legislation.

“The Supreme Court’s decision gives us a clear pathway to enact a narrower ban on the sale of videos depicting malicious acts of cruelty, including animal crush videos and dogfighting,” said Wayne Pacelle, president of the Humane Society of the United States.

“Congress should act swiftly to make sure the First Amendment is not used as a shield for those committing barbaric acts of cruelty, and then peddling their videos on the Internet,” he said in a statement.

The group quoted from Justice Samuel Alito’s dissenting opinion. Justice Alito said the 1999 law was a “valuable statute that was enacted not to suppress speech, but to prevent horrific acts of animal cruelty – in particular the creation and commercial exploitation of crush videos, a form of depraved entertainment that has no social value.”

Alito said that the animals depicted in crush videos are “living creatures that experience excruciating pain.”

He said American society has long banned such cruelty.

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