

Supreme Court Calls Animal Cruelty Law Too Broad

by NINA TOTENBERG

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Editor's note: NPR joined other news organizations in filing a brief in this case arguing that the statute was unconstitutional.

The U.S. Supreme Court has struck down a federal law banning photos, videos and other depictions of animal cruelty.

By an 8-to-1 vote, the court said the law violates the First Amendment right of free speech.

Enacted in 1999, the law was aimed at "crush videos." These videos of women in high heels crushing small animals, like mice and kittens, are apparently a sexual fetish for some people. The law, however, has broad language. It makes it a crime to possess or sell any depiction of animal cruelty -- specifically the killing, wounding, torturing or mutilation of an animal -- if the conduct is illegal in the place where the prosecution is brought.

Enter Robert Stevens, a pit bull lover or exploiter, depending on who is telling the story. He did not make any dogfighting films or stage any fights. Instead, he compiled films made by others, films of pit bulls fighting, mainly in Japan, where it is legal. Stevens sold the films commercially. His critics said he was exploiting dogfighting for profit. He denies that, saying his videos are part of his educational work on the breed.

"My genre ... was not to sensationalize and show bloody, gory stuff," he said, explaining that he had edited out the bloody scenes, but wanted to show the "gladiator" tendencies of pit bulls.

In more than 10 years, Stevens was the only person prosecuted under the animal cruelty law. The Virginia resident was convicted in Pennsylvania and sentenced to three years in prison. But on Tuesday, the Supreme Court threw out his conviction and declared the law unconstitutional.

Writing for the eight-member court majority, Chief Justice John Roberts first tackled the government's assertion that a law can ban any category of speech if Congress deems that category not "worthy" of protection under the First Amendment guarantee of free expression. The government's assertion, said the chief justice, is "startling and dangerous."

Yes, said Roberts, the court has long held that certain categories of speech are not protected by the First Amendment -- child pornography, obscenity and fraud, for instance -- but, he said, that does not mean that the court has "freewheeling authority to declare new categories of speech outside the scope of the First Amendment."

In this case, the court continued, Congress used language of such "alarming breadth" that it would make it a crime to sell hunting videos in the District of Columbia, where hunting is illegal.

The court also said that the various exceptions Congress wrote into the law -- for "serious" scientific, journalistic or artistic work -- could not save the statute. After all, the justices said, hunting videos don't fit any of the categories protected from prosecution, since these videos are generally considered "entertainment."

The court declined to say whether Congress could in the future write a statute that would be sufficiently targeted at crush videos. But Wayne Pacelle, president of the Humane Society of the United States, is urging Congress to try.

"We really do believe that Congress can find a way to pass a law that forbids illegal acts of animal cruelty and that will pass constitutional muster," Pacelle said. He said Congress could specifically exempt hunting and fishing from the animal cruelty ban.

But hunting and fishing enthusiasts, like Laurie Lee Dovey, executive director of the Professional Outdoor Media Association, are doubtful that would be enough.

"I don't believe there can be" such a law, Dovey said. "We must in America rely on our First Amendment rights to speak freely and to discuss things that are not comfortable to discuss. That's what makes us America."

The lone dissenter in Tuesday's ruling was Justice Samuel Alito, who charged that the "practical effect" of the court's ruling would be to legalize "a form of depraved entertainment."

The court's decision not only stuck down a law enacted by Congress, but it also delivered a rather pointed rebuke to two individuals. First, Solicitor General Elena Kagan, a top contender for the U.S. Supreme Court, whose brief on behalf of the Obama administration was thoroughly repudiated in the strongest terms.

Gene Schaerr, who filed a brief on the other side for the libertarian Cato Institute, said if Kagan supervised the writing of the brief she signed, "I would agree that it does seem to raise questions about her judgment."

The other loser was former federal prosecutor Mary Beth Buchanan, now a Republican candidate for Congress in Pennsylvania. Her decision to bring the Stevens case, the court said, was evidence the government could not be trusted to act responsibly.

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Darren M (Darren) wrote:

Mary Howe wrote:

"How amazing our Courts are. They are so busy protecting the written laws that they miss the point of the laws all together"

Actually they are supposed to focus on the written laws - not the supposed point. Since laws are crafted by dozens, altered by dozens more, and voted on by literally hundreds of people. It is THE WORDS THAT MATTER.

It may be a difficult concept, but there is this thing called UNINTENDED CONSEQUENCES.

This law was full of them, also a lot of potential chilling of journalism.

Hopefully a new and more well crafted law will quickly pass through Congress and be signed - this law, though well intentioned was not well crafted.

Wednesday, April 21, 2010 8:53:44 AM

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Darren M (Darren) wrote:

I am amazed an disappointed, Not with NPR - but with so many who obviously have made their decisions on the case without actually going to the trouble of informing themselves by reading the statute and learning about the arguments.

(1) Stevens was neither accused of creating, producing, owning or sharing a crush film. (His films were about pit bull fighting, which is, for better or worse legal in many countries. He also, according to both him and the prosecution, significant amounts of the violence.)

(2) The statute as it reads 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." While there is an exemption for "serious" science, religion or journalism - the statute is overly broad, and the exemption is very non-specific. Considering we have people argue that evolution and humanity caused climate change are not scientific, there is plenty of room for individual prosecutions based on the whims of the attorneys. Ditto for journalism. I am not ready to lose Discovery channel or Nova to the whims of one U.S. Attorney.

Wednesday, April 21, 2010 8:44:13 AM

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Tom Fiorill (tomf) wrote:

Apparently NPR removed my comment about this piece and my concerns about NPR filing a brief in it because I suggested that I may not renew my membership to NPR because of their position, so much for free speech!

Wednesday, April 21, 2010 3:50:10 AM

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