



## The Supreme Court Finds the Government's Ban on Depictions of Animal Cruelty Unconstitutional

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The Supreme Court in *United States v. Stevens* struck down as substantially overbroad a federal law making it a crime to depict animal cruelty in commercial speech. The statute at issue banned commercial depictions of “animal cruelty,” namely a depiction “in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed,” if the killing or other action violates the law where the “the creation, sale, or possession takes place.” The statute provided an exception for a depiction “that has serious religious, political, scientific, educational, journalistic, historical, or artistic value.” In an 8-1 decision authored by Chief Justice Roberts, the Supreme Court found the statute violated the First Amendment.

The Government’s main argument was that the statute complied necessarily with the First Amendment because depictions of animal cruelty, as a class, are categorically unprotected by the First Amendment. Finding that depictions of animal cruelty do not fall within the categories of speech historically protected by the First Amendment, the Court rejected this argument. In so doing, it clarified the Court’s dicta in cases such as *New York v. Ferber* that had suggested whether a given category of speech enjoyed First Amendment protection depended on a balancing of the value of the speech against its societal costs.

Furthermore, relying on the arguments offered by several hunting publication groups and the NRA as *amici*, the Court detailed how the statute could logically reach the sale of hunting magazines and videos in a state where the type or manner of hunting was legal if the depictions were filmed in a state where that type or manner of hunting violated state regulations.

In a final effort to save the statute, the Government contended that “[t]he Executive Branch construes [the statute] to reach only extreme cruelty and it neither has brought nor will bring a prosecution for anything less.” The Court did not find any comfort in the Government’s invocation of prosecutorial discretion, saying “the First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.”

Justice Alito dissented, arguing that the majority had unnecessarily struck down a valuable statute enacted to prevent horrific acts of animal cruelty. Rather than strike the statute in its entirety, Alito would have vacated the Court of Appeals’ decision and remanded it for the court to consider if the videos at issue were constitutionally protected. Put differently, Alito did not endorse the majority’s application of the “overbreadth doctrine” in this case.

## Related People

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