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## Animal Cruelty vs. Freedom of Speech

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# Animal cruelty vs. freedom of speech

Should Congress be able to send someone to jail for selling videos containing images of animal cruelty? That question is before the Supreme Court in a case involving a man who sold pit bull films that show dogfights and dogs hunting wild boar. He was sentenced to 37 months in prison (14 more than Michael Vick!).

The relevant law was enacted by Congress in 1999 in response to "crush videos" — movies that feature scantily clad women wearing spike heels to impale insects and small animals. Yet the law reaches beyond crush videos. It criminalizes the sale of animal-cruelty images in states where the depicted acts would be illegal (images of Sarah Palin gutting moose could be sold in Alaska, since moose hunting is legal there). The law does exempt images with serious educational, political, scientific or journalistic value.

Keeping in mind that videos are considered "speech," does this law violate the First Amendment? If you sat on the Supreme Court, would you vote to uphold it or strike it down? Consider the following arguments and then be prepared to vote.

**The law is constitutional because the speech is harmful and has little societal value.** Few would say that dogfight movies are on a par with Shakespeare. But should government be allowed to ban speech by saying its harm outweighs its benefits?

Whom in government can we trust to do this balancing? Legislators? But they could be responding to constituents who have no qualms about suppressing unpopular voices. Indeed, legislators in some parts of the country would happily ban speech about evolution, gay marriage or gun rights.

Should we trust Supreme Court justices to decide what speech deserves protection? But why should nine unelected justices de-

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So how will you vote: (a) to uphold the law; (b) to invalidate the law and say criminalizing animal-cruelty images is never constitutional; or (c) to find the law unconstitutionally overbroad but suggest a law targeted at crush videos would be constitutional? Or perhaps you'd choose a different option. Whatever you decide, please share your thoughts with us at [www.delawareonline.com/opinion.com](http://www.delawareonline.com/opinion).

cide what the rest of us can hear?

Or, maybe it's best to just forbid all government censorship. Indeed, perhaps the First Amendment's purpose is to prevent suppression of ideas, even unpopular ones.

**The law is constitutional because exposure to animal cruelty will lead people to commit animal cruelty.** It's not easy to prove that watching images of animal cruelty will cause people to commit such acts. But it is certainly plausible. So why not ban the images on this basis?

Yet if government can ban images that encourage people to commit illegal acts, shouldn't it be able to ban the endless images of violence in movies, television and video games?

Do we really want government trying to influence our behavior by limiting what we can hear and see? Or is that Orwellian mind control?

Remember, the First Amendment per-

mits the government to punish acts of violence toward people or animals. The question here is only whether selling images of violence can be punished.

**The law is constitutional because it protects the animals involved in making the images.** The Supreme Court has used similar reasoning to hold that child pornography is unprotected by the First Amendment. So why not use the same logic for images of animal cruelty?

This sounds good, although the analogy is imperfect. Child abuse in making pornography is driven by demand for the images. So shutting down the pornography market protects children by destroying the incentive to create the images.

But dogfighting and other animal blood sports may be driven by paying spectators and gambling and not by demand for images of the abuse. So stopping the sale of images may do little to stop the abuse.

Our society also unequivocally condemns child abuse. But we are schizophrenic toward animal abuse. On the one hand, all 50 states punish certain types of animal abuse. Yet, our society thinks nothing of raising animals in factory farms and slaughtering them for dinner.

**The law would be constitutional if it targeted only crush videos.** Perhaps a law targeting crush videos should be constitutional, but the current law is too broad. The current law potentially implicates bullfighting images captured in Spain or even the movie "Conan the Barbarian," in which horses were tripped by wires, if they are not found to have "serious" societal value.

After the justices vote in conference, they traditionally have lunch together. So bon appétit! Will you be ordering the veal or the foie gras?

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