

# ISAR In The Supreme Court Of The United States

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In our blog of January 12, 2009, entitled "[Free Speech and Cruelty to Animals](#)" we wrote of an important case heading for the Supreme Court, *United States v. Stevens*.

The *Stevens* case involves a 1999 federal statute which made it a crime to "create, sell, or possess" depictions of illegal cruelty to animals, especially so-called "crush videos" (the nature of which I leave to the reader's imagination).

It's important to understand that the statute did not criminalize the illegal cruelty itself, which was and is a crime, as it should be, under the laws of all fifty states. The statute criminalized *creating, selling, or possessing depictions of cruelty to animals*.

Thus, because videos, DVDs, movies, books, magazines and other graphic materials are exercises of speech (and often press) rights, the prohibitory federal felony statute seemed to create an exception to First Amendment protection.

After enactment of the statute, a legal search of the home of a Virginia man, Robert J. Stevens, turned up three videos depicting illegal cruelty to animals which were introduced, narrated and commented on by him. Accompanying printed material of which he was the author was also seized.

Stevens was indicted on three counts of violating the statute, convicted in the trial court, and sentenced to 37 months in prison and three years of supervised release.

On appeal, the United States Court of Appeals for the Third Circuit (in a 10-3 vote) ruled the law to be an unconstitutional abridgment of Steven's First Amendment right of free speech, and reversed his conviction.

The court majority's decision turned on whether the First Amendment's free speech guaranty was outweighed by the federal government's interest in prohibiting depictions of illegal animal cruelty. As the dissenting three judges wrote:

*The majority today declares that that the Government can have no compelling interest in protecting animals from intentional and wanton acts of physical harm, and in doing so invalidates as unconstitutional a federal statute targeting the distribution and trafficking of depictions of these senseless acts of animal cruelty. Because we cannot agree, in light of the overwhelming body of law across the nation aimed at eradicating animal abuse, that the Government's interest in ensuring the humane treatment of animals is anything less than of paramount importance, and because we conclude that the speech prohibited by [the statute] to be of such minimal redeeming social value that its restriction may be affected consistent with the First Amendment, we respectfully dissent.*

Thus, what separated the majority and the dissent-what separated the statute's

unconstitutionality from its constitutionality-was application of the test employed by the Supreme Court of the United States when "fundamental rights" such as free speech are restricted by legislation: does the law serve a "*compelling government interest and, if it does, is the law "narrowly tailored" to achieve the sought goal? If it does and is, the law will be upheld; if not, not.*

On December 15, 2008 the government asked the Supreme Court to review the case.

Our January 2009 blog promised that if the Court agreed to hear the case ISAR would submit an *amicus curiae* ("Friend-of-the-Court") brief.

This week, the Supreme Court accepted *United States v. Stevens* for review.

Accordingly, ISAR will submit an *amicus curiae* brief.

Our brief will be prepared by ISAR's chairman, Professor Henry Mark Holzer and attorney Lance Gotko, a partner in the New York law firm of Friedman Kaplan Siler and Adelman.

When ISAR's brief is filed with the Court, we will post it on our website. Those persons and organizations who want to be informed when our brief is posted should register on our website for the ISAR E-Newsletter and simply enter in the "[contact](#)" box "Please notify about brief."

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Among the many blessings of the Internet is the phenomenon called the "Weblog"--- or "Blog" for short.

Originally mostly a vehicle for the expression of the author's personal views on any subject that interested him, Blogs have evolved into a means for organizations such as ISAR to communicate with its supporters and others who may be interested in the Blogger's activities.

Essays include such topics as "ISAR In The Supreme Court Of The United States", "Another ISAR Legislative Idea is Copied", "'Animals Today' Announcement: Program of April 12, 2009", "ISAR and 'Animals Today' Radio Show", "Only ISAR 'Gets It' About Mandatory Spay/Neuter", "Free Speech and Cruelty to Animals", "Half a Loaf", "ISAR's International Homeless Animals' Day™ 2008", "ISAR's Model Mandatory Spay/Neuter Statute Garnering Attention", "UBS and Other Generous Matching Donations", "Important New Publication: Stanford Journal of Animal Law and Policy", "Annotated Text of ISAR's Model Mandatory Spay/Neuter Statute", "Websites Providing Information About Animal Law", "Overview of ISAR's Revolutionary Model Mandatory Spay/Neuter Statute", "The Case Against Zoos", "ISAR's Revolutionary Model Mandatory Spay/Neuter Statute", "Vive Brigitte Bardot", "ISAR's 'Harming Companion Animals' Monograph To Be Used In Law School 'Animal Law And Rights Course'", "ISAR and Animal Rights in Europe", "Harming Companion Animals: Liability and Damages", "Redemption: The Myth of Pet Overpopulation in America by Nathan J. Winograd", "Get Political for Animals and Win the Laws They Need by Julie E. Lewin", "Suing on Behalf of Animals: New Case", "Capitol Hill's Animal Friends", "ISAR as Friend-of-the-Court", "Harming Companion Animals", "Celebrities and Animal Abuse", "ISAR's Brand New Website", "Animal Rights Books for Sale", "Descartes is Dead", "ISAR in Action", "Mother Jones Meets an ISAR Billboard", "Token Mandatory Spay/Neuter in Palm Beach, Florida", "Another Municipal Adoption of ISAR's Model Mandatory Spay/Neuter Statute", "Heart Bleeding for Vick, But Not His Victims", "What made Michael Vick?"

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