



***United States v. Stevens:* A Half-Full, Not Half-Empty Decision**

Last week the Supreme Court of the United States, by a vote of 8-1, held unconstitutional the federal statute criminalizing creation, possession or sale of material depicting cruelty to animals.

ISAR had submitted an *amicus curiae* ("friend-of-the-court") [brief](#) in the case and our Chairman, Professor Henry Mark Holzer, presented two audio commentaries about it--[one](#) after our brief was filed and the [other](#) following oral argument.

Although the case, and the issue which remains unsettled, was of obvious importance to the animal protection movement, so too did it implicate the First Amendment's guarantee of free speech.

Exceptions to that guarantee--defamation, "fighting words," hard-core pornography--are rare, yet the Court was being asked to create another one by upholding the suppression of the speech that the challenged statute criminalized: depictions of cruelty to animals.

In declining to create that exception, *the Supreme Court did not rule that government--Congress or the states--lacked a substantial (the lawyerly term is "compelling") interest in illegalizing depictions of animal abuse.* The "compelling interest" issue was raised in the *Stevens* case, and the Court could have decided it--but despite being invited to, it didn't. (Although in his dissent, Justice Alito stated unequivocally that the federal government *did* have a compelling interest in preventing the conduct that the statute was aimed at.)

Instead, the Court's eight member majority ruled that *the statute was "overbroad,"* meaning that the law could be interpreted to suppress speech of activities which, though distasteful to many (like hunting), were perfectly legal. In other words, the Court objected to the potential broad sweep of the statute, not its intention to protect

animals from certain forms of unquestionable cruelty by suppressing depictions of that cruelty.

Already legislation has been introduced in Congress to comport with the Court's invitation that the legislature craft a statute narrowly reflecting its substantial interest in curbing cruelty to animals--a law which is not overbroad and targeted more specifically to the goal that all members of the Court share: ending the scourge of crush videos and dog fighting by suppressing the depiction.

ISAR will stay on top of developments and provide ongoing commentary.