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COURT URGED TO UPHOLD FEDERAL LAW BANNING SALE OF ANIMAL TORTURE VIDEO

(United States v. Stevens, No. 08-769)

The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to uphold the conviction of a Virginia man for selling videos depicting animal torture. WLF argued that the federal animal torture statute under which the man was convicted does not violate his First Amendment rights.

In a brief filed in *United States v. Stevens*, WLF urged the Court to reverse a federal appeals decision that struck down the statute as unconstitutional and overturned the conviction. WLF argued that the selling of visual depictions of criminal conduct is not entitled to First Amendment protection when the result of such sales is to finance the underlying criminal conduct.

“We are concerned that the decision striking down the federal animal cruelty statute creates a major void in the federal government’s enforcement powers,” WLF Chief Counsel Richard Samp said after filing WLF’s brief. “The decision is an unwarranted expansion of First Amendment rights and impedes the government’s ability to take effective action against acts of cruelty to animals undertaken for commercial purposes,” Samp said.

The defendant, Robert J. Stevens, was convicted of selling videos depicting pit bulls fighting each other to the death. He also sold videos showing hunting excursions in which pit bulls were used to “catch” wild boars, as well as gruesome footage of pit bulls undergoing training by attacking the lower jaw of a domestic farm pig. He was convicted under a federal statute, 18 U.S.C. § 48, which makes it a crime to create, sell, or possess a depiction of animal cruelty with the intention of placing that depiction in interstate commerce.

The U.S. Court of Appeals for the Third Circuit struck down § 48 as facially invalid on First Amendment grounds and overturned the conviction. The U.S. Supreme Court later agreed to review the appeals court decision.

In a brief urging the High Court to reinstate Stevens’s conviction, WLF argued that depictions of illegal dog fighting and other forms of animal torture are one of a small number of speech categories (including fighting words, incitements to violence, and child pornography) that are not entitled to First Amendment protection. WLF argued that speech may be restricted when its utterance is no essential part of any exposition of ideas

and when its social value is so minuscule that any value is far outweighed by the government's interest in suppressing the speech in the interests of order and morality.

WLF noted that § 48 limits its application to depictions that lack “any serious religious, political, scientific, educational, journalistic, historical, or artistic value” – thus ensuring that the statute will not be used to suppress expressions with any real value. WLF also noted that dog fighting and other forms of animal cruelty are already banned in all 50 states, but that detecting such activity has proven to be very difficult for law enforcement personnel. WLF argued that the federal ban on videos depicting animal cruelty is an important means of detecting and rooting out the underlying activity.

WLF argued that the ban on animal cruelty videos can be justified for the reasons used to justify bans on child pornography, which have routinely been upheld in the federal courts over the past 20 years. Bans on the possession of images of children engaged in sexual activity have been upheld on the grounds that eliminating the market for such images makes the underlying conduct less profitable and thereby less frequent. WLF argued that an identical rationale justifies the ban on depictions of animal cruelty – particularly where the depictions lack any societal value.

WLF is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to defending the authority of government to enforce widely accepted societal norms, such as the ban on animal cruelty. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.