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EDITORIAL: Court upholds free speech

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Justices declare an animal cruelty law unconstitutional

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First Amendment cases have exposed the U.S. Supreme Court to some of the seamiest sides of American society — from hate speech to child pornography to — in a ruling issued Tuesday — depictions of animal cruelty.

In a powerful reaffirmation of the First Amendment, the court struck down a federal law that criminalized videos of dogfighting and other forms of animal cruelty, saying the law violated free speech rights protected under the Bill of Rights.

As a result of the 8-1 decision, animal cruelty will not join obscenity, fraud, incitement and the few other categories of constitutionally unprotected speech. That doesn't mean animal cruelty isn't despicable, or that Congress can't enact more narrowly crafted legislation. As Chief Justice John Roberts wrote, the First Amendment "reflects a judgment by the American people that the benefits of its restrictions on the government outweigh the costs."

Roberts rightly admonished the Obama administration for proposing to the court a balancing test that weighs the "value" of any speech against its "societal costs." "As a free-floating test for First Amendment coverage, that sentence is startling and dangerous," the chief justice wrote.

The decision, in which Justice Samuel Alito was the sole dissenter, arose from the prosecution of Robert Stevens, whose Web site offered videos showing dogfights, as well as others showing pit bulls killing pigs. Stevens insisted the videos were intended to document characteristics of pit bulls and not to promote dogfighting.

The case, U.S. vs. Stevens, focused on whether Congress overstepped its authority in 1999 when it passed a law prohibiting the creation, sale or possession of any depiction of animal cruelty with the intent to distribute and sell it. The law was specifically aimed at banning underground "crush" videos, in which women wearing high heels step on small animals to satisfy the peculiar sexual cravings of viewers. But lawmakers went further, criminalizing a wider range of material and including any

depictions of “animal cruelty” in which living animals are intentionally maimed, mutilated, wounded or killed.

As Roberts noted, that expansive approach created a federal law with a criminal prohibition of “alarming breadth.” Instead of targeting specific violations such as crush videos, lawmakers declared an entire area of ideas and images off-limits to the public.

As the court has made clear numerous times in the past, unpopular and even dangerous and despicable speech can merit protection in a free society.

The nearly unanimous ruling provides reason to hope that the Roberts court will continue to defend free speech rights rigorously. With justices soon to consider First Amendment cases involving anonymous speech, the right of free association and a federal law that limits speech supporting terrorist organizations, Tuesday’s ruling offers hope the court has a proper appreciation for the First Amendment.

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