

**STATEMENT OF CONGRESSMAN GARY C. PETERS**

**Before the Subcommittee on Crime, Terrorism & Homeland Security of the  
House Committee on the Judiciary**

**United States House of Representatives**

**Hearing On:**

**“United States v. Stevens: The Supreme Court’s Decision  
Invalidating the Crush Videos Statute”**

**PRESENTED ON MAY 26, 2010**

Good morning, Mr. Chairman and Members of the Subcommittee. Thank you for inviting me to testify today on the Supreme Court's decision last month in *United States v. Stevens* and its implications for new legislation banning depictions of animal cruelty going forward.

Animal torture videos are heinous, barbaric and completely unacceptable and we must stop them once and for all. It's hard to believe that this sort of thing even exists, and that a new law is needed to prevent it. Animal torture is outrageously disturbing and common decency and morality dictates that those engaged in it should not be profiting from it, they should be in prison.

This is why I have introduced H.R. 5337, the Animal Torture Prevention Act of 2010. Before I get into the specifics of this legislation, I would like to commend the leadership of my colleagues, Representatives Moran and Gallegly, on animal protection issues generally and specifically on anti-crush video legislation. As Co-Chairs of the Congressional Animal Protection Caucus, of which I am a member, Representatives Moran and Gallegly are committed to advancing commonsense animal protection legislation.

As you know, the Supreme Court's decision invalidated the federal law enacted in 1999 and codified as 18 U.S.C. § 48. This law criminalized the creation, sale, and possession of depictions of animal cruelty. The law addressed what was then a growing market for so-called "crush videos," depictions of small animals being slowly crushed to death. Many of these horrific videos feature women inflicting torture upon cats, dogs, and other animals with their bare feet or while wearing high heeled shoes.

While such cruelty to animals was, and remains, illegal under most state law, prosecutors had difficulty obtaining convictions. Generally, these videos omitted the faces of the participants, and other possible corroborating information such as the locations, times, and dates of the acts could not be ascertained from the depictions themselves. Defendants were often able to successfully assert as a defense that the state could not prove its jurisdiction over the place where the act occurred or that the actions took place within the relevant statute of limitations. These difficulties were addressed by § 48, which prohibited the creation, sale, and possession of the depictions of such acts. Estimates suggest that approximately 2,000 crush videos were in circulation, some selling for as much as \$400, at the time § 48 was codified in 1999. This law was considered to be generally effective at chilling the market for crush videos.

Last month, the Supreme Court found that the statute was overbroad, failed strict scrutiny, and was therefore invalid under the First Amendment. Over a decade after § 48's enactment, with far more internet users than there were during the 1990s, I fear that these unconscionable videos could become even more widespread than before if new legislation is not passed to stop the creation and distribution of depictions of these heinous acts.

As a member of the Congressional Animal Protection Caucus, a pet owner, and a strong supporter of animal rights legislation, I believe Congress must respond purposefully and deliberately to the *Stevens* decision. With *United States v. Stevens*, the Supreme Court left Congress very little room to regulate. We must enact new, narrowly tailored, legislation that carefully parses and responds to Chief Justice Roberts' opinion. Any newly enacted law must be drafted to survive another round of judicial review.

Last week, I introduced H.R. 5337, the Animal Torture Prevention Act of 2010. This bill will ban the creation, sale, or distribution of depictions of extreme animal cruelty in interstate commerce. The Animal Torture Prevention Act is aimed at vicious and illegal acts of cruelty, and narrowly tailored to survive strict scrutiny by the Supreme Court.

This legislation targets a very narrow and specific set of behaviors we are trying to regulate, specifically the depiction of extreme animal cruelty that appeals to a particular sexual fetish. The Animal Torture Prevention Act addresses this by requiring that a “depiction of extreme animal cruelty” appeal “to the prurient interest.” This clause focuses the legislation and effectively prevents this bill from prohibiting hunting videos, a concern the Court expressed in the *Stevens* opinion.

Citing *New York v. Ferber*, the Court told us that a depiction of illegal behavior is still subject to First Amendment protection, unless the crime is “intrinsically related” to the creation of the video. This is a critical distinction that § 48 did not make. The original law the Supreme Court struck down failed to show that Congress must go after the makers of crush videos to prevent these horrible acts of animal cruelty.

H.R. 5337 requires any prohibited “depiction of extreme animal cruelty” to depict actual torture, maiming, mutilation or subjection of animals to other acts of extreme cruelty to be committed for the primary purpose of creating a depiction of animal cruelty. This will target and chill the market for these appalling videos and should significantly mitigate concerns that a new law could be overbroad in regards to surveillance cameras, advocacy videos by animal rights groups, and other depictions that were never intended to perpetuate the market for these kinds of materials.

The Court also expressed concerns that § 48 did not appear to require that the intentional killing or wounding of an animal in the depiction actually be cruel. Rather, it applied broadly to all depictions of the intentional killing, maiming, or wounding of an animal regardless of whether the killing was, in fact, “cruel.” While § 48 required that the conduct had to be illegal, the Court noted that the statute made no distinctions based on the reasons an intentional killing might be illegal, noting that the humane slaughter of a stolen cow could be covered.

H.R. 5337 explicitly outlaws “depiction[s] of extreme animal cruelty,” and requires that such depicted conduct “must violate a criminal prohibition of intentional cruelty to animals.” This should substantially mitigate the concerns that hunting videos or other depictions of the treatment of animals that is criminal in some jurisdictions, but not *cruel*, might be included within the sweep of the statute.

Additionally, new legislation must carefully but clearly expand the scope of the exceptions clause. The Supreme Court noted that most protected speech has very little religious, scientific, or political value, and a savings clause using an obscenity standard will not save an unconstitutional statute. New legislation should specifically eliminate the existing requirement that the depiction have “*serious* religious, political, scientific, educational, journalistic, historical, or artistic value.” The Animal Torture Prevention Act of 2010 has a savings clause with a significant change; depictions with a “*de minimis* religious, political, scientific, educational, journalistic, historical, or artistic value” are excepted. This important distinction allows depictions with a minimal amount of societal value to avoid penalty under the law, which will help it survive strict scrutiny.

Finally, while drafting new legislation that follows the *Stevens* opinion must be an exercise in restraint to avoid overbreadth concerns, we must not miss the opportunity to crack down on depictions of extreme animal cruelty when we can do so within the bounds of the First Amendment. The original law did not address the distribution of these depictions, just the creation, sale, or possession thereof. As I mentioned earlier, the proliferation of broadband and file sharing over the internet markedly increases the ability to transmit and distribute these horrific depictions, for profit or otherwise, in an anonymous manner. H.R. 5337 will prohibit the distribution of these depictions.

I believe that H.R. 5337 substantially responds to the concerns expressed by the Court in *United States v. Stevens*, and provides a constitutional framework to effectively crack down on the torture of innocent, helpless animals. I hope to have the opportunity to work with the Judiciary Committee, the Subcommittee on Crime, Terrorism & Homeland Security, and Representatives Moran, Gallegly, and Blumenauer to advance and enact legislation prohibiting “crush videos” and other depictions of extreme animal cruelty.

I look forward to the Subcommittee’s panel of constitutional experts, and I appreciate their testimony on this important issue.

Thank you, Mr. Chairman, for the opportunity to testify today on these important matters.