

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

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UNITED STATES *v.* STEVENSCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE THIRD CIRCUIT

No. 08–769. Argued October 6, 2009—Decided April 20, 2010

Congress enacted 18 U. S. C. §48 to criminalize the commercial creation, sale, or possession of certain depictions of animal cruelty. The statute addresses only *portrayals* of harmful acts, not the underlying conduct. It applies to any visual or auditory depiction “in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed,” if that conduct violates federal or state law where “the creation, sale, or possession takes place,” §48(c)(1). Another clause exempts depictions with “serious religious, political, scientific, educational, journalistic, historical, or artistic value.” §48(b). The legislative background of §48 focused primarily on “crush videos,” which feature the torture and killing of helpless animals and are said to appeal to persons with a specific sexual fetish. Respondent Stevens was indicted under §48 for selling videos depicting dogfighting. He moved to dismiss, arguing that §48 is facially invalid under the First Amendment. The District Court denied his motion, and Stevens was convicted. The Third Circuit vacated the conviction and declared §48 facially unconstitutional as a content-based regulation of protected speech.

*Held:* Section §48 is substantially overbroad, and therefore invalid under the First Amendment. Pp. 5–20.

(a) Depictions of animal cruelty are not, as a class, categorically unprotected by the First Amendment. Because §48 explicitly regulates expression based on content, it is “‘presumptively invalid,’ . . . and the Government bears the burden to rebut that presumption.” *United States v. Playboy Entertainment Group, Inc.*, 529 U. S. 803, 817. Since its enactment, the First Amendment has permitted restrictions on a few historic categories of speech—including obscenity, defamation, fraud, incitement, and speech integral to criminal con-

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duct—that “have never been thought to raise any Constitutional problem,” *Chaplinsky v. New Hampshire*, 315 U. S. 568, 572. Depictions of animal cruelty should not be added to that list. While the prohibition of animal cruelty has a long history in American law, there is no evidence of a similar tradition prohibiting *depictions* of such cruelty. The Government’s proposed test would broadly balance the value of the speech against its societal costs to determine whether the First Amendment even applies. But the First Amendment’s free speech guarantee does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. *New York v. Ferber*, 458 U. S. 747, distinguished. Pp. 5–9.

(b) Stevens’s facial challenge succeeds under existing doctrine. Pp. 9–20.

(1) In the First Amendment context, a law may be invalidated as overbroad if “a ‘substantial number’ of its applications are unconstitutional, ‘‘judged in relation to the statute’s plainly legitimate sweep.’’’” *Washington State Grange v. Washington State Republican Party*, 552 U. S. 442, 449, n. 6. Stevens claims that common depictions of ordinary and lawful activities constitute the vast majority of materials subject to §48. The Government does not defend such applications, but contends that the statute is narrowly limited to specific types of extreme material. Section 48’s constitutionality thus turns on how broadly it is construed. Pp. 9–10.

(2) Section 48 creates a criminal prohibition of alarming breadth. The statute’s definition of a “depiction of animal cruelty” does not even require that the depicted conduct be cruel. While the words “maimed, mutilated, [and] tortured” convey cruelty, “wounded” and “killed” do not. Those words have little ambiguity and should be read according to their ordinary meaning. Section 48 does require that the depicted conduct be “illegal,” but many federal and state laws concerning the proper treatment of animals are not designed to guard against animal cruelty. For example, endangered species protections restrict even the humane wounding or killing of animals. The statute draws no distinction based on the reason the conduct is made illegal.

Moreover, §48 applies to any depiction of conduct that is illegal in the State in which the depiction is created, sold, or possessed, “regardless of whether the . . . wounding . . . or killing took place” there, §48(c)(1). Depictions of entirely lawful conduct may run afoul of the ban if those depictions later find their way into States where the same conduct is unlawful. This greatly expands §48’s scope, because views about animal cruelty and regulations having no connection to

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cruelty vary widely from place to place. Hunting is unlawful in the District of Columbia, for example, but there is an enormous national market for hunting-related depictions, greatly exceeding the demand for crush videos or animal fighting depictions. Because the statute allows each jurisdiction to export its laws to the rest of the country, §48(a) applies to any magazine or video depicting lawful hunting that is sold in the Nation’s Capital. Those seeking to comply with the law face a bewildering maze of regulations from at least 56 separate jurisdictions. Pp. 11–15.

(3) Limiting §48’s reach to crush videos and depictions of animal fighting or other extreme cruelty, as the Government suggests, requires an unrealistically broad reading of the statute’s exceptions clause. The statute only exempts material with “serious” value, and “serious” must be taken seriously. The excepted speech must also fall within one of §48(b)’s enumerated categories. Much speech does not. For example, most hunting depictions are not obviously instructional in nature. The exceptions clause simply has no adequate reading that results in the statute’s banning only the depictions the Government would like to ban.

Although the language of §48(b) is drawn from the Court’s decision in *Miller v. California*, 413 U. S. 15, the exceptions clause does not answer every First Amendment objection. Under *Miller*, “serious” value shields depictions of sex from regulation as obscenity. But *Miller* did not determine that serious value could be used as a general precondition to protecting *other* types of speech in the first place. Even “‘wholly neutral futilities . . . come under the protection of free speech.’” *Cohen v. California*, 403 U. S. 15, 25. The First Amendment presumptively extends to many forms of speech that do not qualify for §48(b)’s serious-value exception, but nonetheless fall within §48(c)’s broad reach. Pp. 15–17.

(4) Despite the Government’s assurance that it will apply §48 to reach only “extreme” cruelty, this Court will not uphold an unconstitutional statute merely because the Government promises to use it responsibly. Nor can the Court construe this statutory language to avoid constitutional doubt. A limiting construction can be imposed only if the statute “is ‘readily susceptible’ to such a construction,” *Reno v. American Civil Liberties Union*, 521 U. S. 844, 884. To read §48 as the Government desires requires rewriting, not just reinterpretation. Pp. 18–19.

(5) This construction of §48 decides the constitutional question. The Government makes no effort to defend §48 as applied beyond crush videos and depictions of animal fighting. It argues that those particular depictions are intrinsically related to criminal conduct or are analogous to obscenity (if not themselves obscene), and that the

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ban on such speech would satisfy the proper level of scrutiny. But the Government nowhere extends these arguments to other depictions, such as hunting magazines and videos, that are presumptively protected by the First Amendment but that remain subject to §48. Nor does the Government seriously contest that these presumptively impermissible applications of §48 far outnumber any permissible ones. The Court therefore does not decide whether a statute limited to crush videos or other depictions of extreme animal cruelty would be constitutional. Section 48 is not so limited but is instead substantially overbroad, and therefore invalid under the First Amendment. Pp. 19–20.

533 F. 3d 218, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, THOMAS, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. ALITO, J., filed a dissenting opinion.