



In Supreme Court Brief, Media Coalition Urges Rejection of California's Misguided and Unconstitutional Restrictions on Video Games Depicting Violence

Booksellers, Publishers, Librarians and Authors, with the Recording, Advertising and Arcade Industries, Join Forces to Fight Censorship of Video Games

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NEW YORK – In a friend-of-the-court brief filed today, Media Coalition, a trade association that defends the First Amendment rights of mainstream media, urged the Supreme Court to strike down California's restrictions on video games with violent themes, saying that the Court should not create a new exception to the First Amendment for speech with violent content for video games or any other media.

At issue in *Schwarzenegger v. EMA (No. 08-1448)* is a challenge to a 2005 California law that prohibits the sale or rental to minors of any video game containing certain violent content. The law – blocked by a federal judge in 2006 before it took effect – also requires manufacturers to include an “18 and older” warning label on the front of the package, and provides civil penalties of up to \$1,000 for violations. The case will be argued before the Justices on Tuesday, Nov. 2.

“This law may be aimed at video games, but any restriction on violent content could then be applied to a much wider range of media. The potential impact of this law is clearly reflected in the wide range of mainstream groups that have joined our brief opposing this law,” said David Horowitz, Executive Director of Media Coalition. “There is no First Amendment exception for violent speech in books, movies, music, or other mediums, and we believe that the Supreme Court should not open the door to a new category of unprotected speech for video games or otherwise.”

The Media Coalition brief was signed by five of its members -- **American Booksellers Foundation for Free Expression, Association of American Publishers, Inc., Freedom to Read Foundation, National Association of Recording Merchandisers, and Recording Industry Association of America** -- as well as by four other industry groups: **Association of National Advertisers, Amusement & Music Operators Association, PEN Center USA, and The Recording Academy.**

In the brief, the groups argue that California's proposed new law "would open a large hole in the First Amendment." The state "appears to suggest that the new technologies represented by video games require a reassessment of First Amendment principles," the brief said. But as history has shown, every new medium, from movies to television to the Internet -- and now video games -- "has brought with it the fear that the new technology would corrupt the young. But there is no reason to permit fear of novel technologies to diminish fundamental constitutional rights such as the First Amendment."

Indeed, to be insulated from depictions and descriptions of violence, "one would have to be insulated from the great works of religion, history, art, literature, and culture," including Shakespeare, the Bible, and the Iliad, Media Coalition said in its brief. (An appendix presents numerous examples of books that were challenged, restricted or removed from libraries based on violent content between 1990 and 2009, demonstrating the type of speech that could be at risk if the Court allows violence speech to be criminalized.)

Further, as the district court noted in enjoining California's law, the state has not offered any proof that video games are different from other types of media, nor does any generally accepted study exist to support the idea that the interactive nature of video games leads to violent behavior.

Over the past few decades, Media Coalition has played a key role in challenging laws that attempt to curtail violent speech. Notably, Media Coalition successfully challenged laws in Ohio and Tennessee, both of which were cited in the state's Supreme Court brief -- erroneously -- as examples of current laws that regulate speech with violent content. (The cases are, respectively, *Bookfriends Inc. v. Taft* (2003) and *Davis-Kidd Booksellers v. McWherter* (1993).)

In addition to the challenges in Ohio and Tennessee, Media Coalition filed amicus briefs in this case in the 9th Circuit, and in victorious challenges to similar state and local laws in Indiana, Illinois, Minnesota, Missouri, and Washington. In all of these cases, the courts ruled that that government cannot ban speech with violent themes, and that computer and video games are forms of artistic expression that, like movies, books, and music, are fully protected by the First Amendment.

Media Coalition's brief was authored by Michael A. Bamberger and Richard Zuckerman of the law firm Sonnenschein, Nath & Rosenthal. Bamberger is also general counsel to Media Coalition.

The brief is online at
http://mediacoalition.org/mediaimages/Schwarzenegger%20v%20EMA_Media%20Coalition%20Amicus%20Brief_09.16.10.pdf

A Media Coalition fact sheet on laws attempting to ban depictions of violence is online at
[http://www.mediacoalition.org/mediaimages/Violent%20Content%20LETTERHEAD\[2\].pdf](http://www.mediacoalition.org/mediaimages/Violent%20Content%20LETTERHEAD[2].pdf)

Media Coalition, Inc., founded in 1973, is an association that defends the First Amendment right to produce and sell books, movies, magazines, recordings, DVDs, videotapes, and video games, and defends the American public's First Amendment right to have access to the broadest possible range of opinion and entertainment.

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