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Invoking “Basic Principles” of Free Speech, Supreme Court Strikes Down Ban on Video Games with Violent Themes, 7-2

Media Coalition Welcomes Declaration that First Amendment Protection “Does Not Vary” With New Mediums

NEW YORK – In a resounding 7-2 decision, the Supreme Court today struck down a California law banning video games with violent themes and images, saying that the state’s attempt to create a new category of First Amendment regulation for minors was “unprecedented and mistaken.” Media Coalition, a trade association that defends the First Amendment rights of mainstream media, said the ruling sends a clear message to legislators that such efforts to restrict free expression would find no welcome at the Court.

“The Court clearly saw this law for what it was – an ill-advised attempt to create a whole new category of speech unprotected by the First Amendment,” said David Horowitz, executive director of Media Coalition, which filed a friend-of-the-court brief in the case on behalf of its members and other media trade associations. “As the Court today made clear, violent images and themes in video games are entitled to the same full First Amendment protection as those found in books, movies, comic books, music, and every other form of expression.”

Horowitz added: “The future will doubtless bring us new mediums of communications and entertainment that we cannot yet imagine, but with today’s ruling, we can at least be confident that they will receive First Amendment protection.”

At issue in *Brown v. Entertainment Merchants Association*, No. 08-1448, was a challenge to a California video game law, enacted in 2005, that prohibited 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 required such manufacturers to include an “18 and older” warning label on the front of the package, and provided civil penalties of up to \$1,000 for violations.

Writing for the 7-2 majority, Justice Antonin Scalia noted that “this country has no tradition of specially restricting children’s access to depictions of violence,” citing historic attempts to restrict violence in movies, comic books and the “dime novels” of the 1800s.

In his opinion, Justice Scalia said that acknowledging that states have a legitimate interest in protecting minors “does not include a free-floating power to restrict the ideas to which children may be exposed.” His opinion cited numerous examples of graphic and gory violence in classical children’s literature, including a number that were listed in an appendix to Media Coalition’s *amicus* brief, from *Grimm’s Fairy Tales* and Homer’s *Odyssey* to *Lord of the Flies*.

The Court was equally unimpressed with the social science offered by California to prove that such images in video games are damaging to minors, noting that the studies it cited “have been rejected by every court to consider them, and with good reason: They do not prove that violent video games cause minors to act aggressively (which would at least be a beginning).”

“The Court has now made it abundantly clear that it will not tolerate bans on free expression simply because it is disfavored or distasteful – whether it’s violent video games, depictions of animal cruelty or hateful protests at funerals,” Horowitz said, referring to recent Supreme Court rulings rejecting such attempts. “The Court today reaffirmed that legislatures cannot create a new category of unprotected speech simply because, in the Court’s words, ‘it is too harmful to be tolerated.’”

In addition to filing an *amicus* brief in the California case, Media Coalition in 2004 brought a successful challenge to an Ohio law that banned speech with violent themes in all media (*Bookfriends v. Taft*). Media Coalition also filed *amicus* briefs in victorious challenges to similar state and local laws in Indiana, Illinois, Minnesota, Missouri, and Washington. Laws were successfully challenged in Louisiana, Michigan, and Oklahoma as well. In all of these cases, the courts ruled that the 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.

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 media groups: **Association of National Advertisers, Amusement & Music Operators Association, PEN Center USA, and The Recording Academy.**

Media Coalition’s brief in *Brown v. EMA* (originally *Schwarzenegger v. EMA*) was authored by Michael A. Bamberger and Richard Zuckerman of the law firm SNR Denton U.S.. Bamberger is also general counsel to Media Coalition.

Today’s ruling is online at <http://www.supremecourt.gov/opinions/10pdf/08-1448.pdf>

The Media Coalition 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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