

Written Testimony of David Horowitz, Executive Director of Media Coalition, Inc, for the
Record on the Hearing on the Impact of Media Violence on Public Safety

The members of Media Coalition appreciate the opportunity to submit written testimony to the Senate Public Safety Subcommittee on Gangs, Guns, and Drugs. They have asked me to write to express their views. Our preference would be to testify in person but this was not possible due to the short advance notice for the hearing and the July 4 holiday.

Founded in 1973, Media Coalition's mission is to defend the First Amendment right to produce and distribute books, movies, magazines, recordings, home video and video games, and protects the American public's First Amendment right to have access to the broadest possible range of information, opinion and entertainment. The trade associations and other organizations that comprise Media Coalition have many members throughout the country including California.

We are concerned that this hearing could perpetuate the notion that violent themes or images in the media cause people to commit actual violence. Media Coalition recently released a 13-page report, [*Only a Game: Why Censoring New Media Won't Stop Gun Violence*](#), in an effort to educate the public on this issue. Among the report's key findings:

- Censorship of violent content is barred by the First Amendment for all types of media, but industry self-regulation works.
- Research into the effects of video games on aggression is contested and inconclusive. Much of it suffers from methodological deficiencies and provides insufficient data to prove a causal relationship.
- Real world evidence such as crime statistics do not support the theory that media causes actual violence.

I have attached the report to be included in the record. We hope the members of the Committee will review the full report but I have taken the opportunity in this testimony to highlight the key findings in the report and expand on the legal analysis.

I. First Amendment Bars the Government from Regulating Media with Violent Content

In *Brown v. Entertainment Merchants Association*, the Supreme Court struck down a California law that banned minors from buying or renting video games with certain violent imagery. 564 U.S. ___, 131 S. Ct. 2729 (2011). The Court ruled that video games are entitled to constitutional protection the same as books, newspapers, movies or music. Justice Scalia, writing for the majority, specifically acknowledged that, "[L]ike the protected books, plays, and movies that preceded them, video games communicate ideas—and even social messages—

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through many familiar literary devices (such as characters, dialogue, plot, and music) and through features distinctive to the medium (such as the player's interaction with the virtual world). That suffices to confer First Amendment protection.” *Id.* at 2733. He also dismissed the state’s argument that video games should be treated differently than books or movies because they are interactive.

The Court went on to find that there is no historic exception to the First Amendment for content with violent depictions or descriptions even as to minors. Justice Antonin Scalia noted that “California’s argument would fare better if there were a longstanding tradition in this country of specially restricting children’s access to depictions of violence, but there is none.” *Id.* at 2736. The opinion then mentions a long list of books read by children that are filled with violent and gory themes. Since the law imposed a restriction on speech based on its content, the Court then applied strict scrutiny analysis and found that the law violated the First Amendment. It ruled that California did not establish a compelling state interest to justify barring minors from buying or renting these video games because the social science studies relied on by the state “do not prove that violent video games *cause* minors to *act* aggressively” *Id.* at 2739. The opinion went on to find that even if California could establish a compelling state interest, the law would fail strict scrutiny since it only applied to video games but not to other media and it was not the least restrictive means as there are parental control tools provided by the video game industry to allow individual parents to bar their children from accessing such material. In *Brown v. EMA*, California paid the plaintiffs about \$1,000,000 in attorneys’ fees and expenses.

It is unlikely that such a restriction on speech would survive strict scrutiny even if the media effects research demonstrated a certain connection between consumption of media with violent content and future antisocial behavior. The Supreme Court has been reluctant to accept such a justification for restricting speech. In *Ashcroft v. Free Speech Coalition*, Justice Kennedy writing for the majority said, “The Government may not prohibit speech because it increases the chance an unlawful act will be committed ‘at some indefinite future time.’” 535 U.S. at 1397 (citing *Hess v. Indiana*, 414 U.S. 105, 108(1973)). The limited exceptions to this rule are the commission of a crime in creating the speech or when the speech is intended to cause an imminent commission of a crime and is likely to do so. Even where speech directly advocates actual violence or illegal activity, it may be banned only if intended to incite imminent unlawful activity and is likely to do so. *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

Nor can the state give legal effect to voluntary rating systems. Courts have repeatedly struck down such laws. Voluntary ratings exist to help parents determine what is appropriate for *their* children, but a government body violates the First Amendment if it enforces these rating systems whether directly or indirectly. Most recently in *Entertainment Software Ass’n v. Hatch* 443 F. Supp. 2d 1065 (D. Minn. 2006) *aff’d sub nom. Entertainment Software Ass’n v. Swanson*, 519 F. 3d 768 (8th Cir. 2008) the district court struck down a Minnesota law that barred anyone less than 17 years old from buying or renting a video game carrying a “Mature” or “Adults Only” rating under the video game industry’s voluntary rating system. Courts in many states have held it unconstitutional for the government to enforce the Motion Picture Association of America’s rating system or to financially punish a movie that carries specific rating designations. In *Engdahl v. City of Kenosha*, 317 F. Supp 1133 (E.D. Wis. 1970), the court threw out a Kenosha ordinance that used MPAA ratings to bar minors from accessing certain films. In

MPAA v. Specter, 315 F. Supp. 824 (E.D. Pa. 1970), the court enjoined enforcement of a Pennsylvania statute that penalized exhibitors showing movies unsuitable for family or child viewing as determined by a voluntary rating system created by the motion picture industry. In *Eastern Federal Corporation v. Wasson*, 316 S.E. 2d 373 (S.C. 1984), the court ruled that a tax of 20 percent on all admissions to view movies rated either “X” or unrated was an unconstitutional delegation of legislative power to a private trade association. *See also Swope v. Lubbers*, 560 F. Supp. 1328 (W.D. Mich. 1983) (use of motion picture rating system was improper as a basis for determination of constitutional protection); *Drive-In Theater v. Huskey*, 435 F.2d 228 (4th Cir. 1970) (sheriff enjoined from prosecuting exhibitors for obscenity based on “R” or “X” rating).

II. Research Does Not Support the Claim that Media Causes Actual Antisocial Behavior

Despite the often far-reaching claims of those who seek to blame the media for violence, there have been numerous reviews by government bodies and the courts and all have found that the science does not show that media with violent content causes actual violence let alone “rampage killings.” Our report *Only A Game* explains the numerous problems with media effects research but it is important to note that when the research is reviewed by independent bodies it has repeatedly been found inadequate and unpersuasive.

Government reviews find social science flawed and inconclusive

Government bodies in Sweden and Australia did recent reviews of the literature as part of the process to consider restricting access to certain video games. In 2012, the Swedish Media Council released a report on its comprehensive survey of all available literature published in international research journals studies of video games with violent content and aggressive behavior during the period from 2000 to 2011. The Council reviewed 161 articles which altogether contained 106 empirical studies and 55 articles consisting of “meta studies,” research overviews, scientific debate articles, method critiques or comments on the articles of others. The Council concluded that “there was no evidence for VCG (violent computer games) causing aggressive behaviour [sic].” The report went on to state that much of the research suffers “from serious methodological deficiencies.” www.statensmedierad.se. A similar 2010 review by the Australian Attorney General’s Department found that the studies on video games effects on aggression are divided. <http://www.ag.gov.au/cca>. The report summary notes that “[O]verall, as illustrated in this review, research into the effects of VVGs [violent video games] on aggression is contested and inconclusive.” “Significant harmful effects from VVGs have not been persuasively proven or disproven.”

Several domestic reviews were conducted following the shootings at Columbine. The Surgeon General’s lengthy 2001 report *Youth Violence: A Report of the Surgeon General* extensively explored the causes of youth violence. The authors concluded that, despite a “diverse body” of research, it was not possible to come to a conclusion about the effect of media consumption on minors in either the short or long-term. In September 2000, the Federal Trade Commission released its report “Marketing Violent Entertainment to Children: A Review of the Self-Regulation and Industry Practices in the Motion Picture, Music Recording and Electronic

Game Industries” which included an appendix that reviewed media effects research. The report stated that “[m]ost researchers and investigators agree that exposure to media violence alone does not cause a child to commit a violent act, and that it is not the sole, or even the most important, factor in contributing to youth aggression, antisocial attitudes, and violence.” The National Research Council’s comprehensive 1993 report *Understanding and Preventing Violence* offered a matrix of the risk factors for violent behavior. Media with violent content was not cited as a factor.

Judicial reviews of the literature and testimony of researchers found unpersuasive

Courts have been more dismissive of the social science literature and testimony from leading researchers. In addition to the law in California, there have been eight other successful challenges to state and local laws barring minors from buying or renting video games with violent images. In most of these cases lawyers for the respective government bodies submitted social science research, public reports and statements from medical and psychology trade associations to justify the laws. In each case where the court examined social science research it ultimately concluded that the social science failed to establish a causal link between content with violent images and real world anti-social behavior.

The research of Dr. Craig Anderson, a prominent academic proponent of the theory that media causes violence, is frequently offered to support the premise that there is a causal link between violent content and violent behavior. His research was most closely scrutinized in *Entertainment Software Ass’n v. Blagojevich* in which U.S. District Court Judge Kennelly heard testimony from Dr. Anderson regarding his research on media causing aggression in minors. The court also heard testimony from Dr. Jeffrey Goldstein and Dr. Dmitri Williams that challenged Dr. Anderson’s conclusions based on their own research and their review of his work. Judge Kennelly concluded, “we agree with Dr. Goldstein and Dr. Williams that neither Dr. Anderson’s testimony nor his research establish a solid causal link between violent video games exposure and aggressive thinking and behavior.” 404 F. Supp. 2d at 1066 *aff’d* 469 F.3d 641 (7th Cir. 2006). The Ninth Circuit added in *Video Software Dealers Ass’n v. Schwarzenegger*, “We note that other courts have either rejected Dr. Anderson’s research or found it insufficient to establish a causal link between violence in video games and psychological harm. *See AAMA v. Kendrick*, 244 F.3d at 578; *Granholm*, 426 F. Supp. 2d at 653; *Entm’t Software Ass’n v. Hatch*, 443 F. Supp. 2d 1065, 1069 & n.1 (D. Minn. 2006); *Blagojevich*, 404 F. Supp. 2d at 1063.” 556 F. 3d 950 at 963.

In *Brown*, Justice Scalia summarized the social science, “These studies 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)....[T]hey show at best some correlation between exposure to violent entertainment and minuscule real-world effects, such as children’s feeling more aggressive or making louder noises in the few minutes after playing a violent game than after playing a nonviolent game. *Brown*, 131 S. Ct. at 2379

III. No Statistical Correlation between Violent Content and Actual Measures of Violence

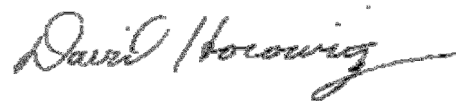
Crime statistics disprove the claims that there is a correlation between violent content in media and the commission of crimes. Media consumption has steadily increased with the increasing availability of content. Despite this, in 2011, [the FBI reported](#) a homicide rate of 4.7 per 100,000—lower than in 1964. [The Washington Post](#) recently reported that there is no correlation between crime rates and media consumption when comparing different countries. Many societies saturated with media have low levels of crime. Nor is there a correlation between media proliferation and incident of mass shootings. As criminologist noted in the [Boston Globe](#), the incidents of mass shootings have stayed reasonably steady since 1980 despite the proliferation of media.

Michael Males, a Senior Researcher for the Center on Juvenile and Criminal Justice and Sociology Lecturer at University of California at Santa Cruz, demonstrated the lack of correlation between media deemed to have violent content and actual crime statistics in his comment submitted to the FCC in response to Notice of Inquiry MB Docket No. 04-261. <http://apps.fcc.gov/ecfs//document/view.action?id=6516794018>. The Notice of Inquiry was seeking comment on violence on television and the impact on children and while the statistics are slightly dated but the trends remain the same even as video games have become more and more common.

Finally, there is a long history of blaming the media for antisocial behavior by minors and adults. At one time or another, books, movies, opera, jazz, blues, rock and roll, heavy metal and rap music, television, radio, comic books, video games, Internet, and social networking have all been accused of causing such behavior among minors (and adults). The fears of the impact of other media were no less palpable. In the '50s, the battle against comic books was championed by Dr. Frederic Wertham, a psychiatrist and advocate of the threat of comic books. He conducted extensive research that he claimed was proof that comic books turned kids into criminals. When the Senate held hearings to investigate how comic books were corrupting minors he told the Judiciary Committee “as long as the crime comic books industry exists in its present forms there are no secure homes.” Marjorie Heins’ book, *Not in Front of the Children: “Indecency,” Censorship, and the Innocence of Youth* (Hill and Wang 2001), offers an overview of the recurring argument for censoring speech to “protect” children.

If you would like to discuss further our position on this issue, please contact me at 212-587-4025 x3 or at horowitz@mediacoalition.org.

Respectfully submitted,

A handwritten signature in dark ink, reading "David Horowitz". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

David Horowitz
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