

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

ENTERTAINMENT SOFTWARE )  
ASSOCIATION AND )  
ENTERTAINMENT MERCHANTS )  
ASSOCIATION, )

Plaintiffs, )

vs. )

MIKE HATCH, in his official capacity as )  
Attorney General of the State of )  
Minnesota, )

Defendant. )

Civil File No. \_\_\_\_\_

**COMPLAINT**

Plaintiffs Entertainment Software Association (“ESA”) and Entertainment Merchants Association (“EMA”), by and through their attorneys, aver and allege as follows:

**NATURE OF THE ACTION**

1. Plaintiffs are associations whose members include companies that create, publish, manufacture, distribute, sell, or rent video games to the public. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 seeking declaratory and injunctive relief against enforcement of a new Minnesota statute that significantly infringes upon constitutionally protected rights of free expression.

2. The challenged act, Chapter 246, Statutes of 2006 (hereinafter, the “Act”), was signed into law on May 31, 2006, and will go into effect on August 1, 2006. The Act penalizes the purchase or rental of video games based solely on their expressive content and imposes strict signage requirements, in violation of the First Amendment. Specifically, the Act makes it illegal for a person under 17 to buy or rent a game rated “M” or “AO” by the Entertainment Software

Rating Board. Minn. Stat. § 325I.07(1). A minor who buys or rents an “M” or “AO” game is subject to a \$25 civil penalty. Minn. Stat. § 325I.07(2). The Act also unconstitutionally compels speech by retailers by requiring that any retailer who sells or rents video games must post “a sign in a location that is clearly visible to consumers” in 30-point type that says “[a] person under the age of 17 is prohibited from renting or purchasing a video game rated AO or M. Violators may be subject to a \$25 penalty.” Minn. Stat. § 325I.07(3)

3. The Act violates the First Amendment and other provisions of the United States Constitution by imposing penalties on the purchase or rental of video games based solely on a game’s content. The First Amendment prohibits such content-based censorship. Not only does the Act directly restrict the dissemination and receipt of a considerable amount of fully protected expression, but by incorporating the voluntary rating system into a legal proscription, it also violates basic tenets of due process, by delegating to a private entity the authority to determine what actions are illegal for minors to perform under the Act.

4. The Eighth Circuit Court of Appeals, in an opinion that squarely controls the outcome here, has struck down a similar law restricting minors’ access to video games.

*Interactive Digital Software Ass’n v. St. Louis County*, 329 F.3d 954, 957 (8th Cir. 2003)

(“*IDS*”). In *IDS*, the Eighth Circuit considered a St. Louis County ordinance that banned the sale or rental of “graphically violent video games” to minors. In striking down the ban, the Eighth Circuit held that video games are protected expression; that a content-based ban on video games is subject to strict scrutiny; that there was no evidence suggesting that the games harmed minors; and that the government had no legitimate interest in deciding for minors and their parents what games are suitable for minors. *Id.* at 958-60.

5. Indeed, every governmental attempt to restrict video games based on content has been struck down as unconstitutional abridgement of protected speech. *Am. Amusement Mach.*

*Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001); *Entertainment Software Ass'n v. Blagojevich*, 404 F. Supp. 2d 1051 (N.D. Ill. 2005); *Entertainment Software Ass'n v. Granholm*, No. 05-73634, 2006 WL 901711, --- F. Supp. 2d --- (March 31, 2006, E.D. Mich.); *Video Software Dealers Ass'n v. Schwarzenegger*, 401 F. Supp. 2d 1034 (N.D. Cal. 2005); *Video Software Dealers Ass'n v. Maleng*, 325 F. Supp. 2d 1180 (W.D. Wash. 2004); see also *James v. Meow Media, Inc.*, 300 F.3d 683, 696 (6th Cir. 2002) (confirming that the First Amendment protects the communicative aspect of video games, and rejecting attempts to impose tort liability on "violent" video games); *Sanders v. Acclaim Entm't, Inc.*, 188 F. Supp. 2d 1264, 1279 (D. Colo. 2002) (same); *Wilson v. Midway Games, Inc.*, 198 F. Supp. 2d 167, 181 (D. Conn. 2002) (same).

6. Just as the Act restricts protected expression in violation of clear and binding precedent, it imposes an additional significant First Amendment burden on those who sell and/or rent video games. As explained in Paragraph 2 hereof, the Act requires that all video game retailers in Minnesota display a sign in at least 30-point type that says "[a] person under the age of 17 is prohibited from renting or purchasing a video game rated AO or M. Violators may be subject to a \$25 penalty." Minn. Stat. § 325I.07(3). This requirement—which conflicts with the voluntary labeling system already employed by the video game industry—significantly burdens the expression rights of Plaintiffs' members. It also unconstitutionally compels speech by forcing Plaintiffs' members to relay a government message with which they may disagree, and for which there is no legitimate, much less substantial, underlying purpose.

7. By penalizing the purchase or rental of certain video games based on those games' content, the Act will violate the First Amendment rights of Plaintiffs' members and their willing listeners. The Act will violate the free speech rights of Plaintiffs' members not only through direct restriction, but also as a result of the Act's inevitable chilling effect on video game expression.

8. Plaintiffs maintain that (a) the Act is void and of no force and effect because it is unconstitutional under the First and Fourteenth Amendments to the Constitution of the United States and thus actionable under 42 U.S.C. § 1983; and (b) Plaintiffs and their members, as well as many citizens of Minnesota, will suffer immediate, serious, and irreparable injury if the Act takes effect.

### **JURISDICTION AND VENUE**

9. This action arises under the Constitution of the United States, the First and Fourteenth Amendments thereto, and the laws of the United States, 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1343(a)(3). This action is brought against the defendant in his official capacity pursuant to 42 U.S.C. § 1983.

10. Venue is proper in the District of Minnesota. Many of Plaintiffs' members are located in and/or do business in this judicial district, and the claims thus arise in this district. Upon information and belief, Defendant Hatch also resides in this judicial district, and is responsible for enforcing the Act within this judicial district.

### **PARTIES**

11. Plaintiff ESA is a nonprofit trade association organized under the laws of the State of Delaware with its principal place of business in the District of Columbia. A fundamental purpose of ESA is to serve and promote the business and public affairs interests of companies that publish entertainment software used for video games, including such companies' right to publish and distribute works of expression that are protected under the First Amendment to the United States Constitution and similar provisions of the constitutions of various states. ESA members include a number of entities that publish, distribute, and/or supply video games to owners and operators of sales and rental outlets within the City of Minneapolis and throughout Minnesota.

12. Plaintiff EMA is a not-for-profit international trade association dedicated to advancing the interests of the \$32 billion home entertainment industry. It was established in April 2006 through the merger of the Video Software Dealers Association and the Interactive Entertainment Merchants Association. EMA is incorporated in the State of Delaware and its principal place of business is Los Angeles, California. EMA represents more than 1,000 companies throughout the United States, Canada, and other nations. Its members operate more than 20,000 retail outlets in the United States, including approximately 400 in Minnesota, that sell and/or rent DVDs and computer and console video games. Membership comprises the full spectrum of retailers (from single-store specialists to multi-line mass merchants), distributors, the home video divisions of major and independent motion picture studios, and other related businesses that constitute and support the home entertainment industry.

13. The interests that Plaintiffs ESA and EMA seek to protect in this action are germane to the purposes of each organization, and neither the claims nor the forms of relief sought in this action require participation by individual members of Plaintiffs. One or more members of each association have standing to bring this action in their own right.

14. In this facial challenge to the Act, Plaintiffs have standing to assert not only their own rights and harm, but also that of the potential recipients of speech from Plaintiffs' members. The Act will cause irreparable harm to willing listeners who will be deprived of the ability to receive speech from Plaintiffs' members. Once the Act is in force, minors will be subject to liability for purchasing or renting works fully protected under the First Amendment.

15. Plaintiffs are also threatened with immediate, serious, and irreparable injury as a result of the enactment and imminent enforcement of the Act. The Act will directly restrict the ability of video game creators, publishers, manufacturers, and retailers to disseminate their constitutionally protected expression to willing listeners. The Act will also have an immediate and

significant chilling effect upon constitutionally protected speech because those who sell, rent, or permit to be sold or rented video games will, to avoid selling ostensibly prohibited games to minors, refrain from offering for rental or sale a wide array of games to minors. This will in turn chill the expression of video game creators, publishers, manufacturers, and distributors. As a result, minors will be deprived of protected speech as game creators and retailers shy away from creating and disseminating games that carry the risk of making purchasers liable. Plaintiffs will also be unlawfully compelled by the Act to disseminate a message on behalf of the State of Minnesota that is not tied to a legitimate regulatory purpose.

16. Defendant Mike Hatch is the Attorney General of the State of Minnesota. He is the “chief law officer” of the State and maintains his common law authority to “institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of this state, the preservation of order, and the protection of legal right” *Humphrey ex rel. State v. McLaren*, 402 N.W.2d 535, 539 (Minn. 1987). These powers have long included the authority to enforce civil penalties on behalf of the state. *See State v. Robinson*, 112 N.W. 269, 272-73 (Minn. 1907) (holding that attorney general had common law power to enforce statutory civil penalty against a town alderman for malfeasance). Additionally, Attorney General Hatch has the statutory authority to appear for the state in all civil causes in the state courts whenever, in his opinion, the interests of the state require it. *See Minn. Stat. § 8.01*. *See also Head v. Special School Dist. No. 1*, 182 N.W. 2d 887, 892 (Minn. 1971) (“The attorney general also possesses explicit statutory powers to commence litigation,” including “all civil causes” where the “interests of the state require it.”) (quoting Minn. Stat. § 8.01) (overruled in part on other grounds). Finally, “the attorney general is provided broad statutory authority under Minn. Stat. § 8.31 to investigate violations of law regarding unlawful business practices . . . and to seek injunctive relief and civil

penalties on behalf of the state” *Ly v. Nystrom*, 615 N.W. 2d 302, 310 (Minn. 2000). This injunctive action is brought against Attorney General Hatch in his official capacity.

## **BACKGROUND**

### **Video Games and the First Amendment**

17. The Act seeks to regulate the content of a certain medium of expression (defined as “video games” under the Act) and limit access to certain video games based solely on the content of the expression depicted or contained therein.

18. As the Eighth Circuit has held unequivocally, video games are a form of artistic expression much like other forms of protected expression, such as movies, books, and music. *IDS*, 329 F.3d at 957-58. Video games contain extensive storylines and character development, comparable to that of books and movies. The storylines and plot, and associated dialogue among characters, continue throughout the game play and are an integral part of the game itself. Like the best of literature, the storylines often involve familiar themes such as good versus evil, triumph over adversity, struggle against corrupt governments and rulers, and/or quest for adventure. Expression in other media, such as movies and books, often draws thematic ideas directly from video games. Video games similarly draw and evolve themes from other media.

19. Video games also feature the artwork of some of the best modern graphic artists. The typical video game contains many different animated or computer-generated illustrations. Video games also contain music, much of it original and performed by top musicians and orchestras. Like the music that plays during movies, the music in video games enhances and complements the expression conveyed by the images and dialogue, often in dramatic fashion.

20. The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech, or of the press,” U.S. Const. amend. I, and the prohibitions of the First Amendment apply to the State of Minnesota, U.S. Const. amend. XIV.

21. The First Amendment shields verbal expression, written expression, visual expression, entertainment, art, and music. The protections of the First Amendment apply just as much to video games as they do to books, newspapers, films, theater, and music. *IDS*, 329 F.3d at 958.

22. The First Amendment also protects expressions and depictions of violence devoid of obscene sexual content. Thus, video games depicting violence—like movies or illustrations that depict violence—are fully protected by the First Amendment.

23. The First Amendment limitations on governmental action are in general “no less applicable when [the] government seeks to control the flow of information to minors.” *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 (1975).

#### **The ESRB and Game Ratings**

24. The Entertainment Software Rating Board (“ESRB”) is a private self-regulatory body formed in 1994 by ESA. ESRB independently applies and enforces ratings for video games. Game console manufacturers will not permit games to be published for their system unless they have an ESRB rating. Many major retailers will not stock games unless they have an ESRB rating.

25. ESRB gives one of six age-specific ratings to each game it rates: EC (Early Childhood); E (Everyone); E10+ (Everyone 10 and older); T (Teen); M (Mature); AO (Adults Only). The ESRB also assigns content descriptors to the game, such as “Cartoon Violence,” “Crude Humor,” “Fantasy Violence,” “Mild Violence,” and “Strong Language.”

26. ESRB ratings give consumers and parents advance information about content to enable them to determine for themselves the age appropriateness and to make informed purchase and rental decisions for their children.



27. "M" rated games are those that have content that ESRB suggests may be considered suitable for persons ages 17 and older. Titles in this category may contain intense violence, blood and gore, sexual content and/or strong language. "AO" rated games are games that ESRB suggests are appropriate for persons 18 years or older. Titles in this category may include prolonged scenes of intense violence and/or graphic sexual content and nudity.

28. Nearly all video games sold at retail are rated by ESRB. Games rated by ESRB have a designation with their rating and content descriptors displayed on the game packaging and in advertising materials.

#### **The Act's Restrictions on Protected Speech**

29. The Act was passed by the Minnesota Legislature on May 20, 2006, and was signed into law by Governor Pawlenty on May 31, 2006. The Act has not yet been officially published. A copy of the bill, S.F. No. 785, 2<sup>nd</sup> Engrossment, passed during the 84<sup>th</sup> Legislative Session (2005-2006), is attached hereto as Exhibit 1, and is incorporated herein as if fully set forth. On information and belief, the bill is identical to the Act signed by Governor Pawlenty and which will be codified in Chapter 325I of the Minnesota Statutes. The Act is due to go into effect on August 1, 2006.

30. The Act seeks to suppress expression in games deemed "restricted," defined by the Act as games that have received an "M" or "AO" rating from the ESRB.

31. Section 325I.07(2) of the Act imposes restrictions on freedom of expression by making it unlawful for any "person under the age of 17" to "knowingly rent or purchase a restricted video game."

32. Any minor who violates this Act is subject to a civil penalty in the amount of \$25. Minn. Stat. § 325I.07(2).

33. The Act further provides that “[a] person or entity engaged in the retail business of selling or renting video games from a location or structure with access to the public shall post a sign in a location that is clearly visible to consumers. The sign must display the following language in 30-point font or larger: ‘A person under the age of 17 is prohibited from renting or purchasing a video game rated AO or M. Violators may be subject to a \$25 penalty.’” Minn. Stat § 325I.07(3).

34. The Act makes no findings in support of its restrictions on protected expression nor provides any rationale for them.

#### **The Act Violates the Constitution**

35. By restricting the sale or rental of video games rated “M” or “AO,” the Act imposes penalties based on the content of the games’ expression. The Act therefore is subject to strict scrutiny under the First Amendment.

36. The Act offers no interest – much less a compelling interest – in support of its restrictions on speech. Nor could the State demonstrate a compelling interest here. Every court to have considered the question, including the Eighth Circuit, has rejected the proposition that the government has a compelling interest in regulating minors’ access to video games. Those courts have recognized that there is no substantial evidence supporting the claim that video games harm minors. Those courts have also recognized that except for material that is (a) obscene for minors or (b) intended and likely to cause imminent violence, the government has no interest in restricting protected expression because it might influence how minors think or behave. Instead, under the Constitution that role is accorded to parents, not the government.

37. A rating of “M” or “AO” does not indicate that a game is intended and likely to cause imminent violence, and nor could it be shown that such games are intended and likely to cause imminent violence. A rating of “M” or “AO” is not a legal determination that a game is

obscene for a minor. Indeed, a video game could receive a restricted rating under the Act simply because it includes “strong language.”

38. Even assuming, *arguendo*, that the state had put forward a legitimate state interest in abridging the First Amendment rights of minors, the Act is not the least restrictive means of achieving the State’s goals, as the Legislature refused to consider less speech-restrictive means of regulating minors’ access to “violent” video games, including those that were proposed by Plaintiffs and their members (such as educational efforts, parental controls, and encouragement of voluntary retailer enforcement initiatives). To the contrary, the Act would nullify existing agreements many of EMA’s members have made with parents, wherein they have agreed to honor the parents’ instructions with regard to what video games their children may rent.

39. The Act’s signage requirement imposes an additional content-based burden on Plaintiffs’ members that is unsupported by a compelling state interest. The video game industry has already invested significant amounts of money and resources into developing labels, signs, and materials that educate parents and consumers about the industry’s voluntary rating system. That system — which the FTC has called the “most comprehensive” of industry-wide media rating systems — is implemented by the ESRB. The Act’s requirement that retailers post signs stating that individuals under the age of 17 are prohibited by law from purchasing or renting certain video games is fundamentally inconsistent with the *voluntary* rating system, and would convey a stigmatizing message that Plaintiffs’ members would not choose for themselves. The signage requirement unconstitutionally compels retailers to disseminate a State message for which there is no underlying substantial regulatory interest.

40. Some of the video games created, published, manufactured, distributed, rented, sold, and/or otherwise made available to the public by Plaintiffs or their members, while fully protected by the United States Constitution, may be deemed by law enforcement officials in

Minnesota, including the Defendant, to meet the Act's definitions for "restricted," thus subjecting game purchasers to civil penalties, and correspondingly impinging upon Plaintiffs' members First Amendment right to create and disseminate protected expression. This will have the effect of reducing the number of games available for all individuals despite the fact these games are protected by the First Amendment.

41. The Act would infringe the First Amendment rights of (i) potential Minnesota customers of businesses located in Minnesota who, because of the Act's restrictions, will be deprived of the opportunity to receive fully protected speech, (ii) businesses physically present in Minnesota, including Plaintiffs' members, who will not be able to disseminate constitutionally protected material and who must post signage as a form of compelled speech, and (iii) businesses located outside Minnesota, including members of Plaintiffs, whose ability to distribute their creative works within Minnesota will be burdened based on the content of those works of expression.

42. The Act threatens Plaintiffs, their members, and other businesses that create, publish, manufacture, distribute, sell, or rent video games, as well as adults and those under 17 who wish to receive the speech in those games, with serious, immediate, and irreparable injury for which there is no adequate remedy at law.

43. In this facial constitutional challenge to the Act, Plaintiffs have standing to assert the rights of, and harm to, the potential customers of Plaintiffs and their members.

44. By vesting authority in a private organization to define which games are illegal for minors to buy or rent, the Act also violates due process. The Act functions as an unconstitutional prior restraint, impermissibly delegates the authority to separate lawful from unlawful speech to a private entity, and fails to provide clear and fixed standards as to which games are covered by the Act. As with every attempt to give force of law to film ratings issued by the Motion Picture

Association of America, the Act is unconstitutional. *E.g., Swope v Lubbers*, 560 F. Supp. 1328, 1334 (W.D. Mich. 1983) (rejecting a state institution's effort to prohibit the showing of "X"-rated movies on campus, stating that "it is well-established that the Motion Picture ratings may not be used as a standard for a determination of constitutional status"); *Engdahl v. City of Kenosha*, 317 F. Supp. 1133 (E.D. Wis. 1970); *Motion Picture Ass'n of America v. Specter*, 315 F. Supp. 824 (E.D. Pa. 1970); *Borger v. Bisciglia*, 888 F. Supp. 97, 100 (E.D. Wis. 1995); *State v. Watkins*, 191 S.E.2d 135, 143-44 (S.C. 1972) (unconstitutional delegation for legislation to exempt from obscenity law films rated by MPAA), *vacated and remanded on other grounds*, 413 U.S. 905 (1973); *Potter v. State*, 509 P.2d 933, 935-36 (Okla. Crim. App. 1973) (same).

45. The Act would cause Plaintiffs and their members to be subjected to the deprivation of rights, privileges, and immunities secured to them by the Constitution and laws of the United States. The Act thus constitutes a deprivation of rights actionable under 42 U.S.C. § 1983.

46. In the event Plaintiffs prevail on any claims under the Constitution of the United States set forth in this Complaint, Plaintiffs are entitled to recover attorneys' fees under 42 U.S.C. § 1988.

## COUNT I

### (First and Fourteenth Amendments—Freedom of Expression)

47. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 46 as if fully set forth herein.

48. The Act would restrict access to video games based solely upon their content. The expression made subject to these restrictions is not obscene or obscene as to minors. Nor does it fall within any other category of expression that may constitutionally be regulated based solely upon its content.

49. The Act imposes unconstitutional content regulation by prohibiting any minor under 17 from purchasing or renting any video game that is rated “M” or “AO” by the ESRB, and requiring all video game retailers to post signs indicating the existence of the Act and the penalty for violators. The Act restricts the freedom of video game creators, publishers, manufacturers, distributors, and retailers, as well as purchasers, renters, and other players of such games, to communicate and receive expression that is constitutionally protected and as such not subject to regulation based upon its content. The Act’s suppression of “restricted video games” is unsupported by any legislative finding, or underlying evidence, that exposure to such expression is harmful or directed to and likely to cause imminent violent action by the game player, and nor could such a showing be made. Not only does the Act fail to serve a compelling governmental interest, but the Act is not narrowly tailored to serve any such interest, and the Legislature did not give adequate consideration to less speech-restrictive means of achieving its goals. The Act would also function as an unconstitutional prior restraint by requiring protected speech to be reviewed for its content in advance of its publication.

50. Furthermore, the Act’s signage requirement compels video game retailers to disseminate the government’s message that minors should be denied access to certain video games, even though the games are fully protected as to both minors and adults. Forcing individuals to disseminate a message on behalf of the State of Minnesota violates the First Amendment every bit as much as restricting the dissemination of individuals’ own messages.

51. For each of the reasons set forth above, and others, the Act is unconstitutional under the First Amendment to the United States Constitution, as applied to the State of Minnesota by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The Act would cause Plaintiffs and their members to be subjected to the deprivation of rights,

privileges, and immunities secured to them by the Constitution and laws of the United States. The Act thus constitutes a deprivation of rights actionable under 42 U.S.C. § 1983.

## **COUNT II**

### **(Fourteenth Amendment—Due Process)**

52. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 51 as if fully set forth herein.

53. The Act would convert the ESRB's voluntary ratings into a prohibition on speech backed by government penalties. By codifying the voluntary rating system without the specificity required for government regulation, the Act would unlawfully delegate legislative authority to a private entity. The Act unlawfully delegates governmental authority by vesting in a private third party the power to define which expression is illegal for minors. The ESRB's dynamic standards – although sufficiently clear for a private, voluntary rating system – are not designed or intended for use as a bright-line delineation between legal and illegal content.

54. For the foregoing reasons, and others, the Act is unconstitutional under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The Act would cause Plaintiffs and their members to be subjected to the deprivation of rights, privileges, and immunities secured to them by the Constitution and laws of the United States. The Act thus constitutes a deprivation of rights actionable under 42 U.S.C. § 1983.

## **COUNT III**

### **(Fourteenth Amendment—Equal Protection)**

55. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 54 as if fully set forth herein.

56. The Act penalizes and regulates video game expression. These regulations, restrictions, and penalties do not apply to other works of expression containing the same or similar

content, but communicated in other media, including, by way of example only, cable television, broadcast television, movies, books, magazines, and the like. Indeed, many of these other media—which compete with video games for consumers—contain expression that is based on video games that could fall within the prohibitions of the Act. Likewise, video games that could fall within the Act’s prohibitions may themselves be based on similar speech in other, unregulated media.

57. The Act arbitrarily and irrationally would establish a legislative scheme of classifications that burden fundamental rights and that are not closely related to any compelling state interest.

58. For the foregoing reasons, and others, the Act is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Act would cause Plaintiffs and their members to be subjected to the deprivation of rights, privileges, and immunities secured to them by the Constitution and laws of the United States. The Act thus constitutes a deprivation of rights actionable under 42 U.S.C. § 1983.

#### **PRAYER FOR RELIEF**

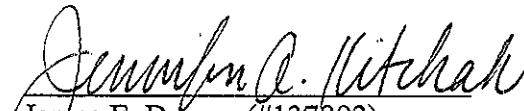
WHEREFORE, Plaintiffs demand that this Court enter a judgment in Plaintiffs’ favor and against Defendant as follows:

- (a) That this Court issue a declaratory judgment that the Act is void and of no force and effect;
- (b) That this Court issue a preliminary injunction and a permanent injunction against Defendant, enjoining him or his representatives from enforcing, or directing the enforcement of, the Act in any respect;
- (c) That Plaintiffs be awarded their attorneys’ fees under 42 U.S.C. § 1988;
- (d) That Plaintiffs be awarded their costs herein; and



- (e) That this Court order such other general and equitable relief as it deems fit and proper.

Dated: June 6, 2006.



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**EXHIBIT A**



# Minnesota Senate

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**S.F. No. 785, 2nd Engrossment - 84th Legislative Session (2005-2006)** Posted on May 22, 2006

- 1.1 A bill for an act
- 1.2 relating to crime prevention; prohibiting children under the age of 17 from
- 1.3 renting or purchasing certain video games; providing penalties; proposing coding
- 1.4 for new law in Minnesota Statutes, chapter 325I.
- 1.5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:**
  
- 1.6 Section 1. **[325I.07] RESTRICTED VIDEO GAMES; PROHIBITIONS.**
- 1.7 Subdivision 1. Definition. As used in this section, "restricted video game" means a
- 1.8 video game rated AO or M by the Entertainment Software Rating Board.
- 1.9 Subd. 2. Prohibited acts; penalty. A person under the age of 17 may not knowingly
- 1.10 rent or purchase a restricted video game. A person who violates this subdivision is subject
- 1.11 to a civil penalty of not more than \$25.
- 1.12 Subd. 3. Posted sign required. A person or entity engaged in the retail business of
- 1.13 selling or renting video games from a location or structure with access to the public shall
- 1.14 post a sign in a location that is clearly visible to consumers. The sign must display the
- 1.15 following language in 30-point font or larger: "A person under the age of 17 is prohibited
- 1.16 from renting or purchasing a video game rated AO or M. Violators may be subject to a
- 1.17 \$25 penalty."
- 1.18 **EFFECTIVE DATE.** This section is effective August 1, 2006, and applies to
- 1.19 violations committed on or after that date.

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