

KEY EXCERPTS FROM THE OPINION OF THE COURT:

Brown v. Entertainment Merchants Association & Entertainment Software Association

“Like the protected books, plays, and movies that preceded them, video games communicate ideas—and even social messages—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.” (p. 2)

- “Video games qualify for First Amendment protection. Like protected books, plays, and movies, they communicate ideas through familiar literary devices and features distinctive to the medium.” (p. 1)
- “[A] legislature cannot create new categories of unprotected speech simply by weighing the value of a particular category against its social costs and then punishing it if it fails the test.” (p.1)
- “[T]he State wishes to create a wholly new category of content-based regulation that is permissible only for speech directed at children. That is unprecedented and mistaken. This country has no tradition of specially restricting children’s access to depictions of violence.” (pp. 1-2)
- “Psychological studies purporting to show a connection between exposure to violent video games and harmful effects on children do not prove that such exposure causes minors to act aggressively.” (p. 2)
- “Any demonstrated effects are both small and indistinguishable from effects produced by other media. Since California has declined to restrict those other media, *e.g.*, Saturday morning cartoons, its video-game regulation is wildly underinclusive, raising serious doubts about whether the State is pursuing the interest it invokes or is instead disfavoring a particular speaker or viewpoint.” (p. 2)
- “California also cannot show that the Act’s restrictions meet the alleged substantial need of parents who wish to restrict their children’s access to violent videos. The video-game industry’s voluntary rating system already accomplishes that to a large extent.” (p. 2)
- “No doubt a State possesses legitimate power to protect children from harm... but that does not include a free-floating power to restrict the ideas to which children may be exposed.” (p. 7)
- “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. Certainly the *books* we give children to read—or read to them when they are younger—contain no shortage of gore.” (p. 8)

- “Justice Alito has done considerable independent research to identify... video games in which ‘the violence is astounding,’... Justice Alito recounts all these disgusting video games in order to disgust us—but disgust is not a valid basis for restricting expression.” (p. 11)
- “Even taking for granted Dr. Anderson’s conclusions that violent video games produce some effect on children’s feelings of aggression, those effects are both small and indistinguishable from effects produced by other media.” (p. 13)
- “California has (wisely) declined to restrict Saturday morning cartoons, the sale of games rated for young children, or the distribution of pictures of guns. The consequence is that its regulation is wildly underinclusive when judged against its asserted justification, which in our view is alone enough to defeat it.” (p. 14)
- “California has singled out the purveyors of video games for disfavored treatment—at least when compared to booksellers, cartoonists, and movie producers—and has given no persuasive reason why.” (p. 14)
- “The California Legislature is perfectly willing to leave this dangerous, mind-altering material in the hands of children so long as one parent (or even an aunt or uncle) says it’s OK. And there are not even any requirements as to how this parental or avuncular relationship is to be verified; apparently the child’s or putative parent’s, aunt’s, or uncle’s say-so suffices. That is not how one addresses a serious social problem.” (p. 15)
- “By requiring that the purchase of violent video games can be made only by adults, the Act ensures that parents can decide what games are appropriate. At the outset, we note our doubts that punishing third parties for conveying protected speech to children *just in case* their parents disapprove of that speech is a proper governmental means of aiding parental authority.” (p. 15)
- “Not all of the children who are forbidden to purchase violent video games on their own have parents who *care* whether they purchase violent video games. While some of the legislation’s effect may indeed be in support of what some parents of the restricted children actually want, its entire effect is only in support of what the State thinks parents *ought* to want.” (p. 16)
- “California’s effort to regulate violent video games is the latest episode in a long series of failed attempts to censor violent entertainment for minors.” (p. 17)
- “[The law] abridges the First Amendment rights of young people whose parents (and aunts and uncles) think violent video games are a harmless pastime.” (p. 18)