



What Others Are Saying

Thoughts on Brown v. Entertainment Merchants Association and 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.”

- **Justice Antonin Scalia, *Brown v. Entertainment Merchants Association/Entertainment Software Association, June 27, 2011***

“The court got it right Monday in *Brown v. Entertainment Merchants Association*. The justices rejected a radical challenge to free speech — in the process protecting all of us, not just children.”

- **Catherine J. Ross, *The Washington Post, June 27, 2011***

“It’s probably safe to say that America’s Founders never contemplated video games, violent or otherwise. But they knew all about the dangers of restricting speech, which is why the Supreme Court was right Monday in giving the makers of violent video games the same protections as the pamphleteers, printers and orators of the 18th century.”

- **Editorial, *USA Today, June 27, 2011***

“In striking down the law, the court bolstered anew the protections of the 1st Amendment.”

- **Editorial, *Los Angeles Times, June 28, 2011***

“Experts have found the video game industry has steadily improved its rating system in recent years. That should give parents some comfort as they gauge the appropriateness of a video game for minors just as they do on Netflix or Xfinity when renting a movie.”

- **Editorial, *Sacramento Bee, June 30, 2011***

“Finally, this case demonstrates why ongoing social problems are best addressed by voluntary measures, not government mandates. A 2009 Federal Trade Commission study found that 87 percent of underage teens were prevented from purchasing M-rated games...Without government regulations, video game retailers have been more effective in preventing minors’ access to mature content than their counterparts in the music, movie and DVD industries.”

- **Editorial, *Orange County Register, June 27, 2011***

“The Supreme Court was right in ruling this week that video games, even ones that depict scenes of graphic violence, are protected speech under the First Amendment and that states can’t pass laws restricting their sale to minors. The better approach is a voluntary rating system similar to the one that many video game manufacturers and sellers already have adopted, which is akin to the Motion Picture Association of America’s ratings for violence and sexual content in movies.”

- **Editorial, *Baltimore Sun, June 28, 2011***

“A U.S. Supreme Court majority was wise to reject a California law criminalizing the sale of violent video games to children... the law, had the court allowed it to stand, would have carved a new exception out of the Constitution’s First Amendment. The government might have used that exception in the future to control other forms of expression — movies, television, even news coverage.”

- **Editorial, *Orlando Sentinel, June 29, 2011***

“The majority decision also carefully noted that the research used to support the California law was unable to document a causal link between violent video games and any harm to minors, and was riddled with flaws. I am a psychologist and one of the leading researchers on this issue, and I was gratified that the Supreme Court undertook a careful review of the science and did not give in to the extreme rhetoric of anti-game activists and some scholars.”

- **Christopher Ferguson, Ph.D. Behavioral Applied Sciences, Texas A & M University, *Orlando Sentinel*, July 1, 2011**

“As technology has advanced, violent images of imaginative horrors in comic books, moving pictures, television and now video games have become convenient targets for censorship, which is why they continue to require thoughtful appraisal, not action based on emotional disgust. Without careful deliberation, emotion-based actions could quickly create a slippery slope, allowing the government to limit liberties the Founding Fathers sought to protect with the First Amendment.”

- **Suzanne Fields, *The Washington Times*, June 29, 2011**

“In striking down a ban on violent video games, the U.S. Supreme Court affirmed once and for all the notion that video games deserve constitutional protection as much as other expressions of speech, including literature, plays and movies.”

- **Editorial, *Seattle Times*, June 30, 2011**

“Amici believe that California’s ban on the sale and rental of violent video games to minors is based on profoundly flawed research and disregards recent empirical evidence contradicting the harm to minors that California asserts arises from the playing of violent video games (or any other harm).”

- **Brief Filed by the Social Scientists, Medical Scientists, and Media Effects Scholars**

“This page believes that the law is neither wise nor necessary, and that it's the responsibility of parents, aided by a voluntary ratings system, to protect their children from entertainment they consider inappropriate.”

- **Editorial, *The Los Angeles Times*, November 1, 2010**

“Whether the motion picture or the video game comes first, the increasing overlap in visual elements, themes, and storylines renders it more difficult to draw clear lines between the two media. At a minimum, therefore, any restrictions on the content of video games would inevitably have some effect on the content of corresponding motion pictures.”

- **Brief Filed by Motion Picture Association of America Et Al**

“The state never made a convincing case that criminalizing the sale of such video games was the only or the best way to protect children from content unsuitable to their age. As a matter of policy, the Legislature should have left that task to parents, aided by a voluntary rating system.”

- **Editorial, *Los Angeles Times*, May 1, 2010**

“Your video game is your video game and you don't think the government should have any role whatsoever in applying any artistic sanction to it or any stamp of approval -- you can say that but you can't say that -- because that's not permitted.”

- **Rush Limbaugh, *The Rush Limbaugh Show*, October 29, 2010**

“We hope it [The Supreme Court] agrees that this law is unconstitutional.”

- **Editorial, *The New York Times*, May 5, 2010**

“Malleable constitutional standards foster uncertainty; uncertainty adds risk; and risk discourages innovation and production. Because even minor sanctions can chill constitutionally protected speech, the boundaries of the First Amendment must remain stable and clear.”

- **Brief Filed by the Chamber of Commerce of the United States of America**

“This is a well-intentioned but ill-conceived law that not only undermines several generations of legal progress toward making free speech a day-to-day reality in this country, but also threatens an emerging expressive industry in which California and the United States currently play a leading role. More important, it's an unnecessary gesture toward child protection in an area millions of parents already are handling competently on their own.”

- **Tim Rutten, *Los Angeles Times*, April 28, 2010**

“The California statute is also unconstitutional because its effort to define violent video games by reference to this Court's definition of obscenity is both legally unsupportable and unworkable in practice.”

- **Brief Filed by the American Civil Liberties Union, The National Coalition Against Censorship & The National Youth Rights Association**

“As video games have become more violent and more sophisticated and the sales of video games have skyrocketed in the last few decades, youth violence has plummeted.”

- **Chris Ferguson, Ph.D. Behavioral Applied Sciences, Texas A & M University, *Los Angeles Times*, May 3, 2010**

“Whatever the state's interests, parents today already have the capacity to choose and control their children's videogame consumption based on their own household standards. Government can help build awareness of parental control tools and methods, and punish deception, but there is no Constitutional justification for restricting this new and evolving form of speech.”

- **Brief Filed by the Progress & Freedom Foundation & The Electronic Frontier Foundation**

“The strongest argument against California's law is the constitutional one.”

- **Editorial, *USA Today*, October 28, 2010**

“Trouble is, California's... 2005 law pretty clearly runs afoul of constitutional free-speech protections.”

- **Editorial, *The Inquirer*, October 16, 2010**

“Concerns over violence in popular entertainment and its effect on minors have been present for centuries. The appropriate response has always been industry self-regulation and parental involvement—and that is true here as well. The current ratings system effectively affords parents the ability to control their children's exposure to violence while avoiding unwarranted limitations on free expression. California's legislation would at best be a poor substitute for the voluntary system, and likely would do far more harm than good.”

- **Brief Filed by the Cato Institute**

“Never in First Amendment jurisprudence has violence served to support a constitutional regulation on expressive material, and all of the Circuit Court decisions interpreting violent video game regulations agree that no exception may be constitutionally made for interactive media.”

- **Brief Filed by the First Amendment Lawyers Association**

“We believe the best reason to oppose the California law is its limitations on freedom of speech. The First Amendment specifically prohibits government from infringing on that right, and the California law appears to do just that.”

- **Editorial, *Salt Lake Tribune*, August 23, 2010**

“The video game industry, like the television industry, has adopted a voluntary and widely used rating system for video games, supported by technology that allows parents to limit a child’s access to games based on the ratings. The California regulatory scheme simply ignores this less restrictive approach to achieving its putative goal of child protection. In so doing, it runs roughshod over the First Amendment rights of content producers, retailers, and consumers.”

- **Brief Filed by the National Association Of Broadcasters**

“We need not have legislation for every facet of life. We don’t need laws for video games. We need responsible parenting.”

- **John T. Adams, Reading District Attorney, *Reading Eagle*, May 8, 201**

“Blunt legislative instruments and threats of liability such as those in the California law may influence retailers’ decisions to not carry these works at all, and as a result reduce adult choice to that which is fit for children.”

- **Brief Filed by The Consumer Electronic Retailers Coalition, Retail Industry Leaders Association, and State Retailer Federations**

“One of the lessons learned by children who are fortunate enough to grow up in a free society is that books, magazines, newspapers, movies, television programs, video games, and other forms of expression do not need ‘societal approval.’... California’s effort to jettison the free-speech rights of minors by creating a new category of unprotected speech in a misguided effort to protect them cannot be squared with the First Amendment.”

- **Brief Filed by the American Booksellers Foundation For Free Expression, Association Of American Publishers, Freedom To Read Foundation, National Association Of Recording Merchandisers, Recording Industry Association Of America, Amusement & Music Operators Association, Association Of National Advertisers, Pen Center USA, and the Recording Academy**

“...it’s better to rely on parents to impose limits, rather than expecting the heavy hand of government to do the job for them.”

- **Editorial, *USA Today*, October 28, 2010**

“[M]odern videogames comprise a highly diverse electronic art form with one common characteristic... videogames tell stories.... [T]hose stories are neither more nor less entitled to First Amendment protection than stories from other media intended to entertain, inform, persuade, and teach.”

- **Brief Filed by the International Game Developers Association And Academy Of Interactive Arts And Sciences**

“Rather than battling real-world violence and crime by hiring more police officers or by better enforcing already-on-the-books laws that target actual illegal conduct, Petitioners’ have chosen, instead, to fight a surrogate battle over fictional, entertainment-based violence by adopting a statute that targets speech – not conduct – and that, in the process, jeopardizes First Amendment freedoms.... [O]ne must wonder whether California will next target images of real-life violence from the wars in Afghanistan and Iraq or whether it will attack its own Hollywood-centric film studios that churn out violent content like the Terminator movies starring Petitioner Arnold Schwarzenegger.”

- **Brief Filed by the Marion B. Brechner First Amendment Project and Pennsylvania Center For The First Amendment**

“If violence is deemed to be an unprotected category of speech as it applies to minors, there will be little standing in the way of the same critics making the argument that newspapers should not be sold to minors because they contain violent content.... Even worse, it would become much easier to make the argument that violent content in newspapers should be censored.”

- **Brief Filed by the Reporters Committee For Freedom Of The Press, The American Society Of News Editors, The First Amendment Project, The National Press Photographers Association, The Radio-Television Digital News Association, The Society Of Professional Journalists, and Student Press Law Center**

“Young people have free-speech rights, and video games are clearly a form of protected expression.”

- **Adam Cohen, *Time*, October 27, 2010**

“Any regulation of online content that imposes age-based requirements will encounter very significant practical and constitutional problems. A decision upholding such requirements in the offline world – for a new type of content previously unregulated – would be sure to lead to constitutional problems in the online context.”

- **Brief Filed by the Computer & Communications Industry Association, Consumer Electronics Association, Information Technology Industry Council, Techamerica, Center For Democracy & Technology, And The Digital Liberty Project Of Americans For Tax Reform**

“California should not be permitted to sell out America’s First Amendment heritage simply because it succumbed to the latest moralistic campaign. This Court should heed journalist Heywood Broun’s warning that ‘censorship of any sort should never be entrusted to professional crusaders.’”

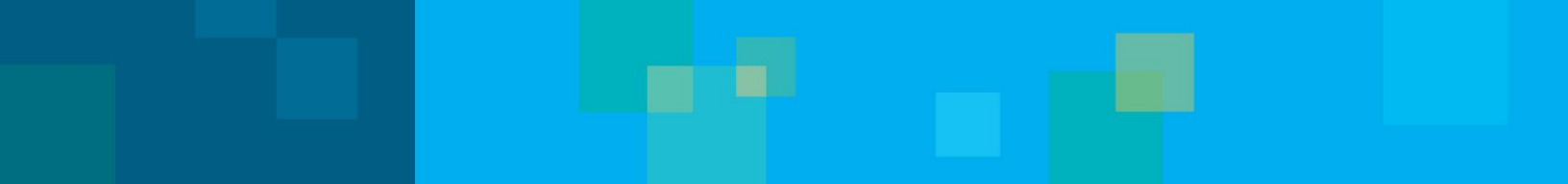
- **Brief Filed by the Comic Book Legal Defense Fund**

“Petitioners urge this Court to adopt an open-ended approach to First Amendment analysis: Rather than requiring the government prove that unwelcome speech falls within an established exception to free speech, courts should consider creating a new category of unprotected expression anytime government claims it has a rational basis for wanting to suppress speech. This Court rejected such an approach in *Stevens* and it should do so in this case.”

- **Brief Filed by the Thomas Jefferson Center For The Protection Of Free Expression And The Media Institute**

“...the legal question to be argued at the Supreme Court on Tuesday is whether government — in this case, the state of California — has a role in deciding which games ought to be banned. We think not.”

- **Editorial, *USA Today*, October 28, 2010**



“If petitioners were to have their way, therefore, it appears that States would be free to regulate any form of speech that they deemed potentially harmful to minors’ emotional development, all without effective judicial supervision. This is simply bad constitutional law. In the end, government restrictions on speech should remain the exception, not the rule, even where speech to minors is concerned.”

- **Brief Filed by the National Cable & Telecommunications Association**

“A decision upholding the statute would have ominous implications for freedom of expression... it would suggest that the government can, by tinkering with the language of the obscenity test, regulate almost any kind of speech or imagery it finds offensive. That is a scenario fraught with perils much scarier than anything found in most video games.”

- **Len Niehoff, *The National Law Journal*, November 1, 2010**