

High Court Upholds the Ideals of the First Amendment

July 2011

In *Brown v. Entertainment Merchants Association, Inc.*, the Supreme Court struck down a California statute that sought to prohibit the sale or rental of violent video games to minors. In so doing, the Court held that even the at times "astonishing" violence depicted in some video games is nevertheless "speech" protected by the First Amendment. The ruling affirmed the Ninth Circuit's decision below.

Writing for the five-Justice majority, Justice Antonin Scalia reminded legislatures that the First Amendment exempts only "well-defined" and "narrowly limited" classes of speech, such as obscene speech, from its protections. Legislatures cannot, therefore, add "new" categories of speech (such as violent speech) to the list of unprotected speech "without persuasive evidence that a novel restriction on content is part of a long (if heretofore unrecognized) tradition of proscription." Nor will the Court be persuaded by arguments that attempt to "shoehorn speech about violence into obscenity." Indeed, "the obscenity exception...does not cover whatever a legislature finds shocking, but only depictions of 'sexual conduct.'"

Justice Scalia also criticized California for failing to identify a compelling state interest to justify its statute. The Court held that, at best, the research presented by California in support of its arguments evidenced mere correlation between violent video games and harm to minors, proof that fell short of the requisite causation. Besides that, the Court held that the law is "wildly underinclusive" as a means of protecting children because it excludes portrayals of violence other than in video games and allows parents to "veto" the prohibition simply by purchasing the games for their children. As a final death blow, the Court noted that the law's attempt to assist parents who forbid their children from purchasing violent video games is "vastly

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overinclusive" because it abridges the First Amendment rights of young people whose parents do not impose such restrictions.

Justice Samuel Alito, joined by Chief Justice John Roberts, concurred with the majority. Justice Clarence Thomas and Justice Stephen Breyer dissented, each writing separately.

The *Brown* decision signals the Court's strong support of the principles enshrined in the First Amendment's free speech guarantee. It suggests that—at least for the time being—the Court will be loath to extend the few exceptions it has recognized to the First Amendment's protections to other categories of speech.