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# Justices Reject Ban on Violent Video Games for Children

By **ADAM LIPTAK**

WASHINGTON — The [Supreme Court](#) on Monday [struck down](#) on First Amendment grounds a California law that banned the sale of violent video games to children. The 7-to-2 decision was the latest in a series of rulings protecting free speech, joining ones on funeral protests, videos showing cruelty to animals and political speech by corporations.

In a second decision Monday, the last day of the term, the court also [struck down](#) an Arizona campaign finance law as a violation of the First Amendment.

Justice Antonin Scalia, writing for five justices in the majority in the video games decision, *Brown v. Entertainment Merchants Association*, No. 08-1448, said video games were subject to full First Amendment protection.

“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),” Justice Scalia wrote. “That suffices to confer First Amendment protection.”

Depictions of violence, Justice Scalia added, have never been subject to government regulation. “Grimm’s Fairy Tales, for example, are grim indeed,” [he wrote](#), recounting the gory plots of “Snow White,” “Cinderella” and “Hansel and Gretel.” High school reading lists and Saturday morning cartoons, too, he said, are riddled with violence.

The California law would have imposed \$1,000 fines on stores that sold violent video games to anyone under 18.

It defined violent games as those “in which the range of options available to a player includes killing, maiming, dismembering or sexually assaulting an image of a human being” in a way that was “patently offensive,” appealed to minors’ “deviant or morbid interests” and lacked “serious literary, artistic, political or scientific value.”

The definitions tracked language from decisions upholding laws regulating sexual content. In 1968, in [Ginsberg v. New York](#), the court allowed limits on the distribution to minors of sexual materials like what it called “girlie magazines” that fell well short of obscenity, which is unprotected by the First Amendment.

Justice Scalia rejected the suggestion that depictions of violence are subject to regulation as obscenity. “Because speech about violence is not obscene,” he wrote, “it is of no consequence that California’s statute mimics the New York statute regulating obscenity-for-minors that we upheld in” the Ginsberg decision.

The video game industry, with annual domestic sales of more than \$10 billion, welcomed Monday’s ruling.

“Everybody wins on this decision,” John Riccitiello, chief executive of Electronic Arts, one of the largest public video game companies, said in a statement. “The court has affirmed the constitutional rights of game developers, adults keep the right to decide what’s appropriate in their houses, and store owners can sell games without fear of criminal prosecution.”

Leland Yee, a California state senator who wrote the law, said in a statement that “the Supreme Court once again put the interests of corporate America before the interests of our children,” adding: “It is simply wrong that the video game industry can be allowed to put their profit margins over the rights of parents and the well-being of children.”

The industry had viewed the court’s decision to hear the case as worrisome, given that the lower courts had been in agreement that laws regulating violent expression were unconstitutional.

The justices had, moreover, agreed to hear the case just after issuing their 8-to-1 decision last year in [United States v. Stevens](#), striking down a federal law making it a [crime to buy and sell depictions of animal cruelty](#) like [dog fighting](#) videos.

That also suggested that at least some of the justices had viewed California’s law as problematic.

But on Monday, the majority said the Stevens decision required the court to strike down the California law. Only a few kinds of speech, like incitement, obscenity and fighting words, are beyond the protection of the First Amendment, Justice Scalia said, adding that the court would not lightly create new excluded categories.

Stevens did not involve speech directed to minors, but the majority said the California law’s goal of protecting children from seeing violence did not alter the constitutional analysis.

“No doubt a state possesses legitimate power to protect children from harm,” Justice Scalia wrote,

“but that does not include a free-floating power to restrict the ideas to which children may be exposed.”

Justices Anthony M. Kennedy, Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan joined the majority opinion in the case.

Justice Samuel A. Alito Jr., in a concurrence joined by Chief Justice John G. Roberts Jr., voted with the majority but did not adopt its reasoning. Justice Alito said the California law was too vague. A more carefully worded law, he wrote, might survive constitutional scrutiny.

Justice Alito said the majority opinion was too quick to dismiss differences between current video games and other media.

“The objective of one game is to rape a mother and her daughters,” he wrote. In another, “players attempt to fire a rifle shot into the head of President Kennedy as his motorcade passes by the Texas School Book Depository.”

Soon, he added, children may play three-dimensional high-definition games wearing equipment that will allow them to “actually feel the splatting blood from the blown-off head” of a victim.

Justice Scalia acknowledged that Justice Alito had identified some disturbing images. “But disgust,” Justice Scalia wrote, “is not a valid basis for restricting expression.”

Justices Clarence Thomas and Stephen G. Breyer filed separate dissents. Justice Thomas said the drafters of the First Amendment did not understand it to protect minors’ free speech rights.

“‘The freedom of speech,’ as originally understood, does not include a right to speak to minors (or a right of minors to access speech) without going through the minors’ parents or guardians,” Justice Thomas wrote.

Justice Scalia, who shares with Justice Thomas a commitment to interpreting the Constitution in accord with its original meaning, parted ways with his usual ally on this point. “He cites no case, state or federal, supporting this view, and to our knowledge there is none,” Justice Scalia wrote of Justice Thomas.

Justice Breyer also dissented, saying the statute survived First Amendment scrutiny. He relied on studies that he said showed violent video games were positively associated with aggressive behavior.

“Unlike the majority,” Justice Breyer wrote, “I would find sufficient grounds in these studies and expert opinions for this court to defer to an elected legislature’s conclusion that the video games in

question are particularly likely to harm children.”

*Matt Richtel contributed reporting from San Francisco.*