



Written by [Raven Clabough](#) on June 28, 2011

## Supreme Court Rules Against Ban on Violent Video Games

To the chagrin of nanny state advocates in California, the U.S. Supreme Court has ruled that the state of California cannot ban violent video games from being sold or rented to children. The ruling came down through a 7 to 2 decision. The Blaze writes:



The high court agreed Monday with a federal court's decision to throw out California's ban on the sale or rental of violent video games to minors. The 9th U.S. Circuit Court of Appeals in Sacramento said the law violated minors' rights under the First and Fourteenth amendments.

The law in question would have banned the sale of violent video games to anyone under the age of 18. Anyone in violation of the act would have been subject to a fine of \$1,000.

If passed, the law would have been sure to impact the video game industry in the state of California. Nationally, 46 million American households possess at least one video game system. The video game industry garnered at least \$18 billion in 2010.

According to the majority ruling, the state does not have the "power to restrict the ideas to which children may be exposed" despite the presence of graphic material.

Written by Justice Scalia, the opinion reads:

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.

Unlike depictions of sexual conduct, there is no tradition in the United States of restricting children's access to depictions of violence, pointing out the violence in the original depiction of many popular children's fairy tales like Hansel and Gretel, Cinderella and Snow White.

Hansel and Gretel kill their captor by baking her in an oven, Cinderella's evil stepsisters have their eyes pecked out by doves and the evil queen in Snow White is forced to wear red hot slippers and dance until she is dead.

Certainly the books we give children to read — or read to them when they are younger — contain no shortage of gore.

The decision is a victory for liberty lovers who believe that the Constitution does not protect the right of the judicial, legislative, or executive branch to regulate parental rights.

Writing for the minority was Justice Clarence Thomas. According to Thomas, "The practices and beliefs of the founding generation establish that 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."

The Supreme Court began to hear the case of *Schwarzenegger vs. Entertainment Merchants*



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*Association*. Since Governor Schwarzenegger left office, the case has been changed to *Brown vs. EMA*. *The Huffington Post* [observes](#) that it “marks the first time the Supreme Court has considered the issue of violent video games, a hot-button topic that has been debated nationwide for years.”

The California legislature passed a law in 2005 that punished retailers who sold or rented violent video games, or mature-rated video games to anyone under age 18. The law was struck down by the lower court on the grounds of free speech. Similar pieces of legislation have been attempted in other states, but have faced similar opposition in lower courts.

The Supreme Court agreed to hear the California case in April 2010 and listened to both arguments in November. At the time, the attorney for California, Zackery Morazzini, argued that the state retains the right to prohibit the sale of those video games to minors. On behalf of the EMA, attorney Paul Smith compared the efforts of California to ban the video games to other “misguided” efforts to restrict the sale of comic books, music, and movies.

HollywoodReporter.com [bemoaned](#) the length of time it took the Supreme Court to come to a conclusion on a ruling:

The silence on this pertinent free speech issue is only more deafening thanks to the stakes. The Supreme Court could uphold the primacy of the First Amendment and tell states to be careful about restraining the speech found in entertainment content. Or, the justices could create a new exception to the First Amendment for violence deeming some entertainment fare to be the importance of shouting fire in a crowded theater.

However, the majority of the Supreme Court left the responsibility of protecting children from harmful influences with their parents, not government, and decided that the right to free speech outlined in the Bill of Rights outweighs the states’ interest in such cases.



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