

No. 08-1448

IN THE
Supreme Court of the United States

ARNOLD SCHWARZENEGGER, IN HIS OFFICIAL CAPACITY
AS GOVERNOR OF THE STATE OF CALIFORNIA, AND
EDMUND G. BROWN JR., IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Petitioners,

v.

VIDEO SOFTWARE DEALERS ASSOCIATION AND
ENTERTAINMENT SOFTWARE ASSOCIATION,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF *AMICUS CURIAE* EAGLE FORUM
EDUCATION & LEGAL DEFENSE
IN SUPPORT OF PETITIONERS**

ANDREW L. SCHLAFLY
Counsel of Record
939 Old Chester Road
Far Hills, NJ 07931
(908) 719-8608

Counsel for Amicus

QUESTIONS PRESENTED

California Civil Code sections 1746-1746.5 prohibit the sale of violent video games to minors under 18 where a reasonable person would find that the violent content appeals to a deviant or morbid interest of minors, is patently offensive to prevailing community standards as to what is suitable for minors, and causes the game as a whole to lack serious literary, artistic, political, or scientific value for minors. The respondent industry groups challenged this prohibition on its face as violating the Free Speech Clause of the First Amendment. The court of appeals affirmed the district court's judgment permanently enjoining enforcement of the prohibition.

The questions presented are:

1. Does the First Amendment permit any limits on offensive content in violent video games sold to minors?
2. Is a state regulation for displaying offensive, harmful images to children invalid if it fails to satisfy the exacting "strict scrutiny" standard of review?

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INTEREST OF *AMICUS CURIAE* ¹

Eagle Forum Education and Legal Defense Fund
("EFELDF"), a nonprofit organization founded in

¹ This brief is filed with the written consent of all parties, with timely notice provided in compliance with Rule 37.2(a) of the Supreme Court of the United States. Pursuant to its Rule 37.6, counsel for *amicus curiae* authored this brief in whole, and no counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amicus*, its members, or its counsel make a monetary contribution to the preparation or submission of this brief.

1981, is a pro-family group that has long advocated fidelity to the text of the U.S. Constitution. Its mission includes affirming the responsibility of parents and the government to protect minors from harmful influences, such as the extremely violent video games at issue in this case. EFELDF has a longstanding interest in defending First Amendment rights of free speech, but maintains that the First Amendment does not require the exacting standard of strict scrutiny with respect to judicial review of laws that simply protect minors against damage from extremely violent video games.

SUMMARY OF ARGUMENT

The First Amendment does not prevent state legislatures from protecting children against exploitation by increasingly violent images and role-playing games. The decision below, in holding that disturbing images for children receive full First Amendment protection, ran afoul of this Court's free speech framework with respect to minors. *Certiorari* is necessary here to establish that California Assembly Bill 1179, signed into law in 2005 and codified at Civil Code §§ 1746-1746.5, was constitutional in mandating that "[a] person may not sell or rent a video game that has been labeled as a violent video game to a minor" (§ 1746.1(a)) and in subjecting violators to a civil penalty of up to \$1,000 (§ 1746.3).

The First Amendment does not render our nation's youth defenseless against the predatory, billion-dollar video game industry that churns out increasingly graphic blood and gore for impressionable minds to imbibe. Disturbing, emotionally scarring video games predictably sell better than tame ones, and the industry produces what sells best. But the decision below that the First Amendment ties the

hands of state legislatures from protecting vulnerable children against such exploitation is baseless. It constitutes judicial supremacy for lower courts to invalidate, often with unjustified criticisms of well-intentioned legislators, laws protecting children against being drawn into brutally graphic video games.

The corruption of our nation's youth with increasingly deviant video games is a matter of national importance. Our nation's youth is in crisis, by any measure. A calamitous 30% of our nation's youth *fail* to graduate from public high school, and only 32% of those who attend public high school are ever qualified to attend a four-year college.² A substantial percentage of teenagers are hooked on these disturbing video games, and spend many hours each week playing them. Moreover, mass killings perpetrated by youngsters are frequently linked to addiction to violent video games. The First Amendment does not forbid state legislatures from keeping this harmful material from children. The California legislature, not known to be conservative, protected its youth against the predatory video game industry. It was an error with national implications for the Ninth Circuit to invalidate the California statute.

Voluminous research data reinforce the common-sense view that violent video games are hurtful to the young people addicted to them, and these games even place those around them at risk for being victimized too. Just as states properly regulate access by minors to pornography and games of chance (gambling), states should retain full authority to regulate access by minors to violent video games. It is not easy to

² http://www.manhattan-institute.org/html/ewp_03.htm

prove a direct causal link between pornography and gambling and the harm they cause, just as for decades it was difficult to prove that smoking causes cancer. But lower courts should not require a direct causal link between violent video games and hurtful behavior by children in order to sustain a law regulating the games. The First Amendment does not impose such an exacting standard when the state is protecting children against exploitation.

The Petition for Certiorari should be granted. The Court below unjustifiably interfered with a valid law duly enacted by a state legislature to protect children against the ravages of harmful images and destructive role-playing. This issue is one of national importance, and this case provides this Court with an ideal opportunity to clarify the authority of states to protect children against destructive and hurtful video games without having to prove a compelling interest under the First Amendment.

ARGUMENT

This Court should grant the Petition and clarify that violent video games marketed to children are not entitled to full First Amendment protection. The decision below correctly observed that “[t]he Supreme Court has not specifically commented on whether video games contain expressive content protected under the First Amendment.” *Video Software Dealers Ass’n v. Schwarzenegger*, 556 F.3d 950, 958 n.11 (9th Cir. 2009). This Court can remove that uncertainty by granting the Petition.

Violent video games hurt children in two ways. Their increasingly realistic and disturbing images burn into children’s impressionable minds much as pornography does, and the role-playing inherent in a

video game causes the child to buy into the rampages of murder and other heinous crimes that he is acting out. The early market leader in video games was Nintendo, which adopted a policy against “excessive blood and violence,” but it was trounced in sales by a 3 to 1 margin by more gory material produced by Sega, and Nintendo learned the message that “violence sells video games to children.” *Violent Video Game Effects, infra*, at 5 (inner quotes omitted). Such content for children lies far outside the scope of the First Amendment. The decision below places no limit, nor could it under its logical framework, on the age of the participant or the offensiveness of the video game. Regardless of whether there is a First Amendment right to communicate such images to adults, there is no cognizable right to communicate them to children.

Numerous studies confirm the obvious: violent video games do cause addiction and harm. Overlooking this legitimate state interest in avoiding this proven harm, the decision below conflicts with the First Amendment framework established by this Court with respect to children. There has never been a full First Amendment right to flash highly objectionable and disturbing images specifically at children, or to entice them to participate in destructive role-playing behavior.

The decision below, in bestowing full First Amendment protection on the sale to minors of violent video games and their images, no matter how foul and disturbing, conflicts with the First Amendment framework established by this Court on an issue of national importance. This Court should grant *certiorari* to clarify that states need not prove the nearly impossible compelling interest in order to

justify protecting children against these harmful images.

I. THIS COURT HAS NEVER EXTENDED FIRST AMENDMENT PROTECTIONS TO VIOLENT VIDEO GAMES FOR CHILDREN, AND THE DECISION BELOW CONFLICTS WITH THE CONCEPTUAL FIRST AMENDMENT FRAMEWORK ESTABLISHED BY THIS COURT.

This Court has held that the First Amendment does not confer protection on communications aimed at children as it does for adults. Children have always been afforded special protection by legislation that safeguards against their exploitation by businesses. Laws to protect children against smoking, alcohol, gambling and other vices are pervasive and can hardly be questioned. Laws having a rational basis which protect children against harmful images such as pornography are likewise both logical and constitutional. “[A] state or municipality can adopt more stringent controls on communicative materials available to youths than on those available to adults.” *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212 (1975).

The decision below failed to distinguish between a First Amendment right to communicate images to adults in contrast with the lack of such a right to communicate the same images to vulnerable and sensitive children. In a precedent central to the decision below, this Court held that:

[M]aterial which is protected for distribution to adults is not necessarily constitutionally protected from restriction upon its dissemination to children. In other words, the concept of obscenity or of unprotected matter *may vary according*

to the group to whom the questionable material is directed or from whom it is quarantined.

Ginsberg v. State of New York, 390 U.S. 629, 636 (1968) (emphasis added).

The *Ginsberg* Court made clear that proof of direct harm by the materials on children would not be required in order to sustain legislative protection of the children against receiving the materials:

[T]he growing consensus of commentators is that while these studies all agree that a causal link has not been demonstrated, they are equally agreed that a causal link has not been disproved either. We do not demand of legislatures “scientifically certain criteria of legislation.”

Id. at 642-43 (footnote omitted, quoting *Noble State Bank v. Haskell*, 219 U.S. 104, 110 (1911)). Although the court below said that it was not requiring the equivalent of “scientific certainty,” 556 F.3d at 964, it did not accept anything less as sufficient.

The *Ginsberg* opinion provided ample justifications for not extending First Amendment protection to the distribution of offensive material to children. One of those justifications quoted the later-Chief Judge Fuld of the New York Court of Appeals:

“While the supervision of children’s reading may best be left to their parents, the knowledge that parental control or guidance cannot always be provided and society’s transcendent interest in protecting the welfare of children justify reasonable regulation of the sale of material to them. It is, therefore, altogether fitting and proper for a state to include in a statute designed to regulate the sale of pornography to children special standards,

broader than those embodied in legislation aimed at controlling dissemination of such material to adults.”

Ginsberg, 390 U.S. at 640 (quoting *People v. Kahan*, 15 N. Y. 2d 311, 312, 206 N. E. 2d 333, 334 (Fuld, J., concurring)). Another rationale came from a prior U.S. Supreme Court decision: “this Court, too, recognized that the State has an interest ‘to protect the welfare of children’ and to see that they are ‘safeguarded from abuses’ which might prevent their ‘growth into free and independent well-developed men and citizens.’” 390 U.S. at 640-41 (quoting *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944)).

Justice Stewart added yet another justification for declining First Amendment protection for potentially offensive speech directed at minors, with his concurrence in *Ginsberg*:

When expression occurs in a setting where the capacity to make a choice is absent, government regulation of that expression may co-exist with and even implement First Amendment guarantees. So it was that this Court sustained a city ordinance prohibiting people from imposing their opinions on others “by way of sound trucks with loud and raucous noises on city streets.” And so it was that my Brothers BLACK and DOUGLAS thought that the First Amendment itself prohibits a person from foisting his uninvited views upon the members of a captive audience. I think a State may permissibly determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees.

390 U.S. at 649-650 (footnotes omitted) (Stewart, J., concurring).

Yet the decision below – and other decisions that have held likewise – never addressed these fundamental justifications for not extending full First Amendment protections to offensive communications to children. Instead, the lower court relied on a formalistic, superficial distinction: the *Ginsberg* case concerned pornography, while this case concerns disturbing images of violence. 556 F.3d at 959. None of the above reasons for drawing a distinction between communications directed at children and those directed at adults relies on that superficial difference in facts.

Stemming the tide of destructive material of various types to keep it from young people until they are old enough to avoid addiction or undue influence by it is a paramount duty of the State. This is not a usurpation of free speech, but is a rightful exercise of protection. “Children have a very special place in life which law should reflect.” *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring).

It is noteworthy, although not necessarily dispositive, that the historic meaning of “obscenity” is “filth,” which inherently encompasses degrading material beyond sexual material. The arbitrary limitation imposed by the court below to purely sexual content, and its extension of full First Amendment protection to all non-sexual communications to children, is untenable. *See* 556 F.3d at 960 n.13.

Displaying a shocking image to a child is conceptually identical to the utterance of “fighting words” to an adult, which this Court famously held to be outside of First Amendment protection in *Chaplinsky v.*

New Hampshire, 315 U.S. 568 (1942), holding that there is no First Amendment protection for communications:

which by their very utterance inflict injury or tend to incite an immediate breach of the peace . . . such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

Id. at 572.

Despite the above framework recognizing the authority to regulate offensive communications directed at children, lower courts have acted more like appellate courts for state legislatures rather than as dual sovereigns. For example, as it invalidated a legislative limitation on minors' access to violent video games, one district court wrote:

[T]he Court is concerned that the legislative record does not indicate that the Illinois General Assembly considered any of the evidence that showed no relationship or a negative relationship between violent video game play and increases in aggressive thoughts and behavior.

Entm't Software Ass'n v. Blagojevich, 404 F. Supp. 2d 1051, 1063 (N.D. Ill. 2005), *aff'd*, 469 F.3d 641 (7th Cir. 2006).

State legislatures do not have the diminished role of an administrative court in our federalist system, whereby state legislatures must justify their protection of children with a "legislative record." Another district court likewise invalidated state legislation by holding that the legislative record was not adequate: "The evidence that was submitted to the Legislature

in connection with the bill that became the Statute is sparse and could hardly be called in any sense reliable.” *Entm’t Software Ass’n v. Foti*, 451 F. Supp. 2d 823, 832 (M.D. La. 2006). Judicial restraint toward state legislation on this issue has been replaced with judicial supremacy. A grant of the Petition for *Certiorari* would restore the proper authority of state legislatures in our dual sovereignty.

II. NUMEROUS STUDIES DEMONSTRATE THAT VIOLENT VIDEO GAMES DO CAUSE HARM IN CHILDREN AND THERE IS A NATIONAL INTEREST IN ALLOWING STATES TO MINIMIZE THAT HARM.

There are many studies confirming what should be obvious: hours of violent video-game-playing by an impressionable, addicted child leads to increased likelihood of violent behavior. The research demonstrates the severe mental and social damage caused by such games. For example, Iowa State University psychology Professor Craig Anderson and Assistant Professor Douglas Gentile documented three studies concerning video games and children ranging from early grade school to college. See Craig Anderson, Douglas Gentile and Katherine Buckley, *Violent Video Game Effects on Children and Adolescents*, (Oxford: 2007) [hereinafter, *Violent Video Game Effects*].

One study surveyed 189 high school students and found that those with more exposure to violent video games were less forgiving, thought violence was more typical, and acted more aggressively in their everyday lives.³

³ <http://www.medicalnewstoday.com/articles/67221.php>

Dr. Anderson observed, “Violent video games are significantly associated with: increased aggressive behavior, thoughts, and affect; increased physiological arousal; and decreased prosocial (helping) behavior.” Craig Anderson, “Violent Video Games: Myths, Facts, and Unanswered Questions,” APA Online (October 2003).⁴ For example, an 11-year-old Mississippi boy shot his younger brother after an argument over a video game. “The younger brother allegedly got mad because he got beat at some video games and got the gun.” “Boy shot, dies after video game argument,” USA Today (June 9, 2009).⁵

In another study by Anderson and Gentile, college students and 9-12 year olds were randomly assigned violent and non-violent video games. After playing the video games, the participants participated in a computer game in which they could “punish” other participants by sending a noise blast to them. Those of both age groups who had played the violent games generally sent louder noise blasts, showing that their aggression was heightened, at least for a short time, after playing the violent video games.⁶

Video game harm is evident in heinous reported crimes. The Columbine massacre perpetrators were obsessed with the violent video game “Doom.” Indeed, there has been a “horrendous spate of school shootings by boys with a history of playing video games,” including West Paducah, Kentucky (Dec. 1997), Jonesboro, Arkansas (Mar. 1998), Springfield, Oregon (May 1998), Littleton, Colorado (Apr. 1999),

⁴ <http://www.apa.org/science/psa/sb-anderson.html>

⁵ http://www.usatoday.com/news/nation/2009-06-09-videogame-death_N.htm

⁶ <http://www.medicalnewstoday.com/articles/67221.php>

Santee, California (Mar. 2001), Wellsboro, Pennsylvania (June 2003) and Red Lion, Pennsylvania (Apr. 2003). *See Violent Video Game Effects, supra*, at 3. There have been numerous non-school shooting sprees associated with video game usage, which have left many dead, including the Washington, D.C. “Beltway” sniper shootings in Fall 2002. *See id.*

The popular “Grand Theft Auto” game has been associated with other murders by teenagers, including the murders of police officers. In the game, players kill police officers and commit other crimes, becoming desensitized and even brainwashed into violent thought and action patterns. In 2005, 17-year-old Devin Moore, who played the game avidly, shot two police officers and a civilian and escaped in a police car. All of these actions mimicked those he had rehearsed for hundreds of hours in the video game. *See* Chris Mautner, “Bloody Good Game, ‘Grand Theft Auto IV’ Could Restart Violence Criticism,” *Patriot News* (Harrisburg, PA) C01 (Apr. 28, 2008). “As electronic games become more immersible and more realistic in visual presentation, it can be more difficult for people who are vulnerable to this to be capable of distinguishing reality from the fantasy,” observed Penn State Professor Marolyn Morford. *Id.*

Video games certainly do immerse the player in interactive violence, often forming life-long habits of aggression. Video games teach the child how to kill and how to best target his aim, then train the child to enjoy the sport of killing, and desensitize him to the effects of his participatory violence. *See* Lt. Col. Dave Grossman and Gloria DeGaetano, *Stop Teaching Our Kids To Kill* 65-81 (1999). After studying a few hundred college students, Dr. Anderson noted, “We found that students who reported playing more

violent video games in junior and high school engaged in more aggressive behavior.” “Violent Video Games Can Increase Aggression,” APA Online (Apr. 23, 2000).⁷

The stress attributed to violent video games can even be physically harmful. Eighteen-year-old Peter Burkowski, an avid video gamer, collapsed and died of a heart attack while playing games in an arcade. Deputy coroner Mark Allen believed that “it’s possible that the stress of the games triggered the attack.” Stephen Kiesling, “Death of a Video Gamer,” *Video Games* 14-15 (Oct. 1982).⁸ Research has shown that violent video games “increase[] heart rate, blood pressure, and stress hormone levels.” *Violent Video Game Effects, supra*, at 149.

An article about Internet cafes in Shanghai describes that “a Taiwanese man died of exhaustion after playing computer games non-stop for 32 hours in an Internet cafe. He was found in the cafe’s toilets, bleeding from the nose and foaming at the mouth, and died before he reached hospital.” “Death by Computer Games,” *Shanghai Star* (May 1, 2003).⁹ The report added, “[j]ust days earlier a South Korean man perished in similar circumstances, after spending 86 hours in an Internet cafe.” *Id.*

Although such deaths are unusual, the stress violent video games cause can be seen in most players. Players’ limbs twitch; “[o]ften, they pound the machines as if they were battling real invaders.” Stephen Kiesling, “Death of a Video Gamer,” *supra*.

⁷ <http://www.apa.org/releases/videogames.html>

⁸ <http://home.hiwaay.net/~lkseitz/cvg/death.html>

⁹ <http://app1.chinadaily.com.cn/star/2003/0501/vo2-4.html>

Cardiologist Robert S. Eliot, M.D. at the University of Nebraska Medical Center has performed studies in which patients showed dramatic increases in heart rate and blood pressure after only one minute of playing a video game. *Id.* The intense addictiveness of video games can engross children, causing them to skip meals and exercise, at the expense of their health. “Death by Computer Games,” *Shanghai Star* (May 1, 2003). There is little doubt that these games cause real harm, particularly to vulnerable minors.

In addition to harming children psychologically and physically, violent video games undermine a child’s social abilities. “Friends and family are neglected. Homework is ignored. Other pastimes are given up. The ‘gamer’ soon becomes a lonely, underachieving nerd” “Death by Computer Games,” *Shanghai Star* (May 1, 2003).¹⁰

Children who play violent video games have difficulty obeying authorities, treating peers properly, and succeeding in school. A lecture presented to the American Psychological Association in 2005 by Jessica Nicoll and Kevin Keifer suggested the same thing as the studies by Anderson and Gentile: that at least for a short time after playing violent video games, the players exhibited greater aggressiveness. *See* Jessica Nicoll & Kevin M. Kieffer, “Violence in Video Games: A Review of the Empirical Research,” Presentation to the American Psychological Association (August 2005). One study of over 600 8th and 9th graders showed that participants who play violent video games had more disputes with people in authority and were more likely to be involved in fights or otherwise become physical with other stu-

¹⁰ <http://app1.chinadaily.com.cn/star/2003/0501/vo2-4.html>

dents. Time spent playing violent video games also correlated inversely with academic achievement.¹¹

Just as researchers could be found for decades to deny that smoking causes lung cancer, researchers can also be found to deny that violent video games cause harm despite common sense and overwhelming evidence indicating otherwise. Husband and wife Dr. Lawrence Kutner and Cheryl Olson used a \$1.5 million federal grant and compiled their pro-video-game views in a book marketed to parents. See Kutner and Olson, *Grand Theft Childhood: The Surprising Truth About Violent Video Games, and What Parents Can Do* (2008). In it they tell parents not to spank their children and to keep them away from guns. They excoriate state legislators who seek to protect children against violent video games, *id.* at 207, and even point fingers at populations: “New Orleans is known for having many of the real-world problems portrayed in such video games as the *Grand Theft Auto* series, including high levels of street and family violence, alcohol and drug abuse, drug importation, gangs, prostitution and corruption.” *Id.* at 206. These researchers insist that concerns for the violent video games that depict these problems as entertainment for children are “basically no different from the unfounded concerns previous generations had about the new media of their day.” *Id.* at 229. “Remember,” the researchers concluded in their final words, “we’re a remarkably resilient species.” *Id.*

Our “resilient species” can elect representatives to protect against the corruption of the youth. There should be no constitutional difficulty in passing

¹¹ <http://mentalhealth.about.com/od/cybermentalhealth/a/vidviolence805.htm>

legislation to prevent the display of addictive, disturbing images to children in violent video games, much less any social reason to reject such legislation.

Both scientific studies and incidents of shocking crimes support the claim that violent video games harm children psychologically, physically, and socially. Respecting state sovereignty in protecting children against peddlers of harmful images is an issue of national importance, particularly where, as here, the usage by teenagers is increasing:

In 1992 13.3% of the young men reported playing video games at least 6 hours per week during their senior year in college. By 2005 that figure had increased to 21.4%.

Video Game Effects at 3. A grant of *certiorari* is warranted here to prevent even greater harm caused by video games.

III. THE STATE MAY ENHANCE PARENTAL RIGHTS BY REQUIRING PARENTAL APPROVAL FOR POTENTIALLY HARMFUL VIDEO GAMES.

Parents have a right to protect their children from destructive exploitation, and this right can and should include protection from violent video games. The state may properly affirm, uphold, and augment these parental rights through laws protecting children from harmful video games. In contrast, the decision below prevents the State of California from furthering the right of a parent to choose whether his or her child plays violent video games.

Laws preventing children from accessing extremely violent video games enhance parental rights, giving parents greater control over child-rearing. The parent who wishes to protect his child from such

games is aided by laws prohibiting the purchase of the games without the parent's knowledge. The parent who wishes to allow his child to play violent video games can still purchase the game for the child. Violent video game regulations, like the one at issue here, enhance the ability of parents to protect their children from such games without inhibiting those parents who do not wish to shelter their children from violent video games.

The decision below erred in interpreting the First Amendment to interfere with these parental rights. The State of California properly exercised its constitutional authority to augment parental authority in protecting children against harmful images. As this Court explained in *Ginsberg*, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." *Ginsberg*, 390 U.S. at 639.

Children do not possess the same constitutional rights as adults. "We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." Nathan Phillips, "*Interactive Digital Software Ass'n v. St. Louis County: The First Amendment and Minors' Access to Violent Video Games*," 19 Berkeley Tech. L.J. 585, 600-601 (2004). But "recent decisions regarding local regulation of video games failed to acknowledge the ability of local governments to protect parental rights and the welfare of children." *Id.* at 586 (citing *Interactive Digital*

Software Ass'n v. St. Louis County, 329 F.3d 954 (8th Cir. 2003)).

Just as underage children are prevented from viewing movies with certain ratings, the constitutionality of which cannot be seriously disputed, the government may constitutionally prevent children from accessing extremely violent video games without parental consent. “The fact that parental rights are protected by allowing access when children are accompanied by their parents, similar to the motion picture industry, further supports the validity of the ordinance.” Rosalie Berger Levinson, “State and Federal Constitutional Law Developments,” 35 *Ind. L. Rev.* 1263, 1267 (2002).

Parental discretion and control are allowed—and encouraged—on other topics from smoking to using lead paint. Studies confirm that the harm caused by video games is greater than that caused by passive smoke, exposure to lead and even exposure to asbestos in connection with laryngeal cancer. *Violent Video Game Effects, supra*, at 144. States can properly regulate the latter, and should be able to regulate the former.

The State of California has not interfered with the video game industry’s right to produce and sell the most violent and extreme video games imaginable to *adults*. But California did enhance parental rights to supervise their children and, if desired, to limit their children’s access to violent video games. This statute constitutionally limited access by children to highly offensive, addictive, and potentially harmful images.

CONCLUSION

The Petition for Certiorari should be granted.

Respectfully submitted,

ANDREW L. SCHLAFLY
Counsel of Record
939 Old Chester Road
Far Hills, NJ 07931
(908) 719-8608

Counsel for Amicus

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