Benefiting Society and Children Through Violent Media: As Evidenced by First Amendment Protection for Violent Video Games

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Introduction

The cumulative effects violent video-games have on society and children produce the type of well rounded American adults our country needs. In recent years, the video gaming industry has become the center of a growing controversy focusing on the affects of violent video-games on children.¹ Many parents are under the misguided impression that violent video-games are responsible for causing violent tendencies in children.² Without researching the games themselves, parents generally rely on the minimal information fed to them by news reports of company X releasing video-game Y and the tremendous level of violence present in that one singular game. What those news reports generally tend to omit from their articles are that most video-games, even the violent ones, actually tell stories, act out situations, and use artistically creative graphics.³ This might illicit the inevitable “so what” from most parents, but to those who actually take a second to think about it, this means that the video-game is actually an interactive form of expression.⁴ If video-games are a form of expression, then to deny access to them is to deny access to the constitutionally protected right of freedom of speech.⁵

² See Generally James v. Meow Media, Inc., 300 F.3d 683, 683 (6th Cir. 2002) (concerning parents of victims attempt to hold video-game company liable for causing aggressive behavior in the murderer); Sanders v. Acclaim Entm’t, Inc., 188 F. Supp. 2d 1264, 1264 (D. Colo. 2002) (concerning parents of victims claiming video-game companies and movie companies caused two teenagers to kill their classmates).
³ Am. Amusement Machine Ass’n v. Kendrick, 244 F.3d 572, 577-78 (7th Cir. 2001) (comparing the story found in a video-game to age old themes in literature).
⁴ Kendrick, 244 F.3d at 577-78 (comparing video-games to classic literature in that they both contain the same age old forms of expression).
⁵ U.S. CONST. AMEND. I.
As of 1983, at which time video-games began to be viewed as forms of expression, video-games began employing First Amendment protection. Regardless of this fact, legislators have continuously attempted to regulate who could purchase and play violent video-games. Furthermore, civil cases have also ensued claiming that video-game companies are responsible for certain violent acts committed by children. However, in spite of all this, the courts have continuously found in favor of these video-game companies. With this, it becomes evident that the American justice system has a profound respect for First Amendment rights and that video-games garner the full protection offered by these rights.

What is it that the courts rely upon in making these decisions which seem to give violent video-games a free pass? This is one of the main questions this article will answer. As stated above, the First Amendment seems to have much weight in this issue. However, this is not as ironclad a defense as some would be led to believe. This is especially true in regards to children,

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6 Since 1983, there has not been a single significant case rejection per se the First Amendment viability of video games that has survived appeal. Several cases, most notably Kendrick and IDSA, make it clear that games are exactly the type of expression that is protected by the First Amendment and that regulations must pass the high bar of strict scrutiny. Numerous scholars have agreed with these judicial assessments. While the United States Supreme Court has yet to rule on the issue, recent case law suggests that video games are an expressive medium that fall well within the ambit of the First Amendment. Therefore, like other media recognized under the First Amendment, the legal test for legislation that silenced that expression would be strict scrutiny.


9 See generally Kendrick, 244 F.3d at 580 (holding that violent video-game regulatory legislation was not enforceable); James v. Meow Media, Inc., 300 F.3d 683, 701 (6th Cir. 2002) (holding that video-game company was not liable for violent shooting incident); Video Software Dealers Ass’n v. Schwarzenegger, 401 F. Supp. 2d 1034, 1048 (N.D. Cal. 2005) (holding that violent vide-game regulatory legislation was not enforceable).

10 See generally Kendrick, 244 F.3d at 579-80 (basing decision against violent video-game regulatory legislation primarily upon taking into consideration First Amendment rights); Schwarzenegger, 401 F. Supp. 2d at 1043 (basing decision against violent video-game regulatory legislation primarily upon taking into consideration First Amendment rights).
whose constitutional rights are occasionally diluted in exchange for broader protections from the outside world.\footnote{Prince v. Massachusetts, 321 U.S. 158 (1944) (holding that certain invasions of protected freedoms are acceptable to control the conduct of children whereas they may not be as to adults).}

In \textit{Ginsberg v. State of New York} the Supreme Court reviewed a case in which a vendor violated state statute in selling a sixteen year old minor a ‘girlie’ magazine.\footnote{Ginsberg v. State of New York, 390 U.S. 629, 629 (1969).} The Court comes to the conclusion that due to the obscene nature of the magazine, minors under the age of 17 were not protected by freedom of speech.\footnote{\textit{Id.} at 635-36.} From this, \textit{Ginsburg} established that certain exceptions to freedom of speech\footnote{U.S. CONST. AMEND. I.} can be made in order to protect children from specific forms of obscene materials.\footnote{\textit{Ginsberg}, 390 U.S. at 645 (holding that sexually explicit forms of expression may be censored from children).} Even though this may add fuel to the hopes of those looking to regulate violent video-games, the courts have continuously expressed their reluctance to apply \textit{Ginsberg} to anything other than mediums of speech involving “sexual” obscenity.\footnote{See generally \textit{Am. Amusement Machine Ass’n v. Kendrick}, 244 F.3d 572, 579-80 (7th Cir. 2001) (applying First Amendment to find video-game regulatory legislation unenforceable); \textit{James v. Meow Media, Inc.}, 300 F.3d 683 (6th Cir. 2002) (stating that video-game company was protected by freedom of speech); \textit{Video Software Dealers Ass’n v. Schwarzenegger}, 401 F. Supp. 2d 1034, 1048 (N.D. Cal. 2005) (holding that violent video-game regulatory legislation was not enforceable).}

In \textit{Ginsberg}, the Court found that sexually explicit material exceptionally detrimental to a developing child outweighs any freedom of speech concerns.\footnote{See \textit{Ginsberg}, 390 U.S. at 635-36.} If this be the case, then by the courts continuously finding in favor of video-game companies, they must believe that the possible negative effects of exposure to violent video-games on children must not outweigh the benefits conferred by the First Amendment.\footnote{See generally \textit{Kendrick}, 244 F.3d at 579-80 (holding that violent video-game regulatory legislation was not enforceable); \textit{James}, 300 F.3d at 683 (holding that video-game company was not liable for violent shooting incident); \textit{Schwarzenegger}, 401 F. Supp. 2d at 1048 (holding that violent video-game regulatory legislation was not enforceable).} Several specific points of contention are found throughout the relevant case laws providing distinct reasons as to why the First Amendment
should protect children’s rights to play violent video-games. In this article, these reasons will be organized, analyzed, and compared with the arguments put forth by advocates of violent video-game regulatory legislation. Once the comparison is made, it will become clear that although proposed legislation to censor violent video-games may be made with the best of intentions, its drawbacks would cause far more harm to our nation’s children than good.

With the above in mind, this article will then further explain how protecting a child’s constitutionally protected right to play violent video-games in fact protects all American citizens from the possibility of censorship. Although this particular analysis is centered upon the video-game industry and children, it is simply just one example of legislative attempts to censor forms of expression. Movies, music, and television are all forms of expression which could ultimately be affected if violent video-game regulatory legislation is held to be constitutional. By the courts telling the legislators that they may not censor violent video-games for children, they are in fact telling them that they may not censor anything which is rightfully protected by freedom of speech. The overall concept that seems to come to mind is the domino effect. Although it may seem small and insignificant to censor children from violent video-games today, it would set forth a precedence from which several other forms of media could be swallowed up tomorrow.

Furthermore, this article will explain how honoring the constitutionally protected right of freedom of speech confers several benefits to children by properly preparing them for life as an adult in the real world. Of course with children, freedom of speech seems to become a more difficult subject. The legislators, and for that matter most concerned parents, want to protect

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19 See infra Parts I-VI.
20 Sanders v. Acclaim Entm’t, Inc., 188 F. Supp. 2d 1264, 1264 (D. Colo. 2002) (concerning plaintiffs not only attempted to hold accountable video-game companies, but several other forms of media as well).
22 U.S. CONST. AMEND. I.
children from things which they feel are harmful. However, if that protection secludes children from the reality of the world, is not it in effect harmful as well? The following arguments simply discuss violent video-game regulatory legislation, but imagine if such legislation was applied to all forms of media a child is exposed to. If that were to happen, the question becomes which is more harmful, the violent video-games possible affect on the child, or raising a child under the belief that violence does not exist in the world?

I. Hitler Youth Argument

A child can not be expected to grow into a well reasoned adult if he is kept in the dark till the age of 18. In American Amusement Machine Association v. Kendrick, the court reviewed a case in which video-game manufacturers challenged a city ordinance requiring parents to be present while children played their violent arcade video-games. In Kendrick, the court came to the conclusion that it would be dangerous for our government to control access of children to information and opinion. The court gave a vivid description of why legislative regulation would be dangerous to children by comparing it to the blind fanaticism present in young German soldiers during World War II. “The murderous fanaticism displayed by young Germans soldiers in World War II, alumni of the Hitler Jugend[27], illustrates the dangers of allowing the government to control the access of children to information and opinion.” In essence, this argument states that the regulating of material a child has available to access elicits a danger that


24 Am. Amusement Machine Ass’n v. Kendrick, 244 F.3d 572, 573 (7th Cir. 2001).

25 Id. at 577 (discussing the possible harms which may come about from denying children their constitutionally protected First Amendment rights).

26 Id. (providing a descriptive example of the repercussions of government controlling media).

27 Hitlerjugend translates to the Hitler Youth

28 Kendrick, 244 F.3d at 577.
the child may grow to become a one-minded adult who makes important decisions based on
damaging half truths.29

In the early part of the twentieth century, the Hitlerjugend was a children’s group which
was financed by the German government during the time that Adolf Hitler’s Nazi party was in
power.30 This children’s organization was used for the purposes of systematically brainwashing
young children into becoming unquestioning members of the Nazi party.31 Although the
Kendrick court’s comparison of the regulation of violent video-games to the fanaticism created
through the Nazi-Germany propaganda machine may appear to be extreme, it does make a
strikingly valid point.32 If our children are only provided with such expression that is deemed to
be acceptable by a regulating body, then those children will only be able to think and speak in
that regulated manner.

Although violent video-game regulatory legislation would only tell children what they
cannot take into consideration on a seemingly small scale,33 this, in effect, is still narrowing a
child’s intake of information to things the legislature deems as acceptable. This would appear to
be a small price to pay now, but if the courts today say that violent video-games are unfit for
children to use, what is to stop this from expanding to other mediums tomorrow? A slippery
slope may come into existence which would eventually lead to a much broader regulation on
acceptable forms of expression.

29 Hereinafter referred to as the “Hitler Youth Argument”
31 Id. at 16.
32 Kendrick, 244 F.3d at 576-77 (comparing violent video-game regulation to Nazi fanaticism during World War II).
33 See CAL. CIV. CODE § 1746.1(a) (2006) (exampleing a subsection of an Act that will restrict the sale and rental of
certain violent video games to minors).
In several prominent violent video-game civil cases, other forms of media, such as movies and music, have also been accused of causing violent outbursts from young children.\textsuperscript{34} This illustrates how violent video-games are not considered the only potentially dangerous form of media accessible to children. If the courts allow violent video-games to be regulated for children, it is safe to assume that all the other forms of media deemed potentially dangerous would soon follow in stride. Eventually, through an abundance of regulations put upon forms of expression a child is allowed to access, he or she would only be able to take in a small portion of the knowledge which our world has to offer.

With further analysis, it is clear that the Kendrick court was not the only one to take this into consideration.\textsuperscript{35} The court in Video Software Dealers Association v. Schwarzenegger seemingly agreed with the Kendrick\textsuperscript{36} court.\textsuperscript{37} In Schwarzenegger, two associates of the video-game industry challenged a civil code preventing video-game retailers from selling or renting violent video-games to children.\textsuperscript{38} Both the Kendrick and Schwarzenegger courts believed that shielding a child up until the age of 18 from exposure to violence would leave him or her unequipped to cope with the real world.\textsuperscript{39} If a child raised on selected media has only seen one side of what the world is like, then his later choices will only reflect the one side of the world he has seen. This would only result in creating a country full of ill-informed adults who would therefore make ill-informed decisions throughout their lifetime.

\textsuperscript{34} See generally James v. Meow Media, Inc., 300 F.3d 683, 683 (6th Cir. 2002) (concerning claims made by plaintiffs accusing video-game companies, movie companies, and internet companies of causing a child to shoot other children); Sanders v. Acclaim Entm’t, Inc., 188 F. Supp. 2d 1264, 1264 (D. Colo. 2002) (concerning plaintiffs claiming video-game companies and movie companies caused two teenagers to kill their classmates).


\textsuperscript{36} Kendrick, 244 F.3d at 579-80 (holding that video-game regulatory legislation was unenforceable due to conflicts with First Amendment freedom of speech).

\textsuperscript{37} Schwarzenegger, 401 F. Supp. 2d at 1043 (applying Judge Posner’s holding in Kendrick to the case at bar).

\textsuperscript{38} Id. at 1037.

\textsuperscript{39} See generally Kendrick, 244 F.3d at 576-77 (stating that to censor a child from this type of expression would be “deforming”); Schwarzenegger, 401 F. Supp. 2d at 1046 (quoting Judge Posner’s assertion in Kendrick that censoring a child from expression would be “deforming”).
The reasoning of courts such as *Kendrick* are extremely informative as to why First Amendment protection is so important. Without a fully open forum on what is allowed to be discussed, information or ideas which are opposed to what is deemed acceptable would never be able to be presented. This would do no more than create a society full of unimaginative automatons whose decisions would be based on nothing other than what their government has allowed them to consider. In essence, the deprivation of a child’s intake of information would seem to ultimately lead to the suppression of his or her free will. This is obviously not the result that we would wish to have ushered onto our society.

Advocates of regulatory legislation for violent video-games believe that their legislation will be implemented for the purpose of protecting a child’s blossoming and impressionable mind.\(^4\) However, it should be evident that during the time a child is growing into who he or she will become, he or she should have the opportunity to see all the facets of what the world really has to offer. It simply would not be fair to raise a child in a world where he learns and knows nothing about violence. With the amount of violence present in today’s world, the child would be lost upon entering the real world at the age of 18.\(^4\) This argument is not only limited to a child’s future societal life, but expands into several other important facets which would be of concern to us. The next argument to be discussed is somewhat an extension of the Hitler Youth Argument, but one that is important and distinct enough to deserve its own analysis.

\(^{40}\) *See generally* Interactive Digital Software Ass’n v. St. Louis County, 329 F.3d 954, 958-59 (8th Cir. 2003) (argument put forth by the County is that violent video-games must be regulated to “protect the psychological well-being of minors”); Entm’t Software Ass’n v. Granholm, 426 F. Supp. 2d 646, 648-49 (E.D. Mich. 2006) (argument put forth by State is that “ultra-violent explicit video games are harmful to minors because minors who play them are more likely to exhibit violent, asocial, or aggressive behavior”).

II. Informed Voter Argument

Closely related to the Hitler Youth Argument is the question of whether a child subject to regulated forms of expression is later capable as an adult to make an informed political decision. The Kendrick court once again sets the standard to which later courts partially base their opinion.\textsuperscript{42} Kendrick puts forth the idea that violence in video-games is rightfully protected by the First Amendment, in terms of free speech\textsuperscript{43} for children, due to the fact that it helps them to become informed voters upon reaching the age of 18.\textsuperscript{44} “Now that eighteen-year-olds have the right to vote, it is obvious that they must be allowed the freedom to form their political views on the basis of uncensored speech \textit{before}\textsuperscript{45} they turn eighteen, so that their minds are not a blank when they first exercise the franchise.”\textsuperscript{46} To summarize, this expands upon the Hitler Youth Argument in that children who are brought up in censored environments will not be prepared for their adult life in the facet of being an intelligent voter.\textsuperscript{47}

Although this contention seems to be no more than an extension of the Hitler Youth Argument, there is one very important difference which sets it apart and makes it into a very unique argument. When comparing the Hitler Youth Argument to the Informed Voter Argument, it becomes evident that one argument is concerned with the future societal value of the child,\textsuperscript{48} whereas the other argument is concerned with the future political value of the child.\textsuperscript{49} In Kendrick, the Hitler Youth Argument is obviously used to emphasize how important it is for a child to have access to all forms of expression in order for him to live a well-informed functional

\textsuperscript{42} Kendrick, 244 F.3d at 577 (discussing the social and political reasons for why it would be dangerous to deny a child their constitutionally protected First Amendment rights).
\textsuperscript{43} U.S. CONST. AMEND. I.
\textsuperscript{44} Kendrick, 244 F.3d at 577 (stating that the ability to have various forms of expression available to a child is necessary to develop political views).
\textsuperscript{45} Italicized for emphasis as in the original written opinion.
\textsuperscript{46} Kendrick, 244 F.3d at 577.
\textsuperscript{47} Hereinafter referred to as the “Informed Voter Argument”.
\textsuperscript{48} Referring to the Hitler Youth Argument
\textsuperscript{49} Referring to the Informed Voter Argument
life in society.\textsuperscript{50} Within that same paragraph, Kendrick then expands this argument to include the fact that a child needs to have access to multiple forms of expression in order to make well informed political decisions.\textsuperscript{51} This distinction emphasizes two unique sides of the same coin. Although both arguments means are extremely similar, their distinct end results emphasize the importance of keeping them separate.

In Sanders v. Acclaim Entertainment, Inc., a civil case arising from the Columbine High School shooting,\textsuperscript{52} plaintiffs alleged that violent video-games, movies and other forms of media negligently caused two high-school students to go on a shooting spree.\textsuperscript{53} The court held in favor of the media companies based on First Amendment and Causation considerations.\textsuperscript{54} Within the opinion, a specific reference is made to how it is significant for children to have exposure to media such as movies, music and video-games in order to shape their future political and social lives.\textsuperscript{55} By the court referencing both the political and social aspect, this helps to emphasize the point that these are two separate but equally important facets that a child will require in his adult life. With this, the courts are clarifying that it is not only important for a child to become a well-informed adult for their own societal well-being, but also for the purposes of fostering a healthy democratic government.

When a child becomes an adult in any government, he has a duty to wisely exercise his or her delegated political rights. In our country’s form of government, we have multiple candidates

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\item Kendrick, 244 F.3d at 576-77 (stating the need for children to be exposed to multiple forms of media).
\item Id. at 577 (stating within the same paragraph, Judge Posner combines both the societal and political importance of a child’s freedom to view multiple forms of expression).
\item On April 20, 1999 at approximately 11:20 a.m., students Dylan Klebold and Eric Harris approached their high school with multiple guns and other weapons. Once their, they began a killing spree which resulted in the death of thirteen people. Police later learned that both Dylan Klebold and Eric Harris where excessive consumers of violent forms of media. Sanders v. Acclaim Entm’t, Inc., 188 F. Supp. 2d 1264, 1268 (D. Colo. 2002).
\item Id at 1264.
\item Id. at 1281-82.
\item Id. at 1274.
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that run for multiple offices. Each of these candidates belongs to a specific political party which each has its own beliefs, standards, and policies. By giving United States citizens the right to vote on which of these candidates will fill a vacant office, it is logical to assume that each voter has a very important duty to vote wisely. It is apparent that, in our government especially, a well-informed citizen is required to make decisions from which the entire country will either benefit or suffer. Therefore, to censor a growing child from certain forms of information would poorly equip him or her to make decisions which would be in the best interest of the country.

Courts such as Sanders are simply recognizing the repercussions which could possibly result from regulating the forms of expression that children are allowed to access. Could a child raised to believe that the world is filled exclusively with hard working, honest people make a well informed decision as to if our country should go to war with a violent terrorist organization? It would seem that the only type of person that would be qualified to make such a decision would be a person who has an understanding of both the negative and positive aspects of our world.

As mentioned in the Hitler Youth Argument, although it may seem like allowing legislation that censors violent video-games is not a large price to pay, the real problem arises from the precedence such legislation would set forth. As can be derived from Sanders, video-

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56 Democracy is a form of government for a nation state, or for an organization in which all the citizens have an equal vote or voice in shaping policy. Today democracy is often assumed to be liberal democracy,[7][8] but there are many other varieties and the methods used to govern differ. While the term democracy is often used in the context of a political state, the principles are also applicable to other bodies, such as universities, labor unions, public companies, or civic organizations.


57 Sanders. 188 F. Supp. 2d at 1281-82 (holding finds various forms of media fall under First Amendment protection).
games are not the only form of media that legislators may attempt to censor.\textsuperscript{58} To permit regulatory legislation to censor just one type of media for children may initiate a domino effect\textsuperscript{59} eventually censoring them from multiple forms of expression. Put into context with the domino effect, it becomes clear as to how a child’s political value could easily become tainted. Although advocates of violent video-game legislation contend that they are simply attempting to protect children from the influence such games may impose,\textsuperscript{60} in reality, that same exact influence is required to mold a child into the well-informed voter which our government needs.

Both the Hitler Youth Argument and the Informed Voter Argument have relatively the same defense against regulatory legislation on violent video-games. As Kendrick puts forth, censoring violent video-games would simply result in having a generation of children who would be ill-prepared for the duties adulthood ushers in.\textsuperscript{61} “To shield children right up to the age of 18 from exposure to violent descriptions and images would not only be quixotic, but deforming; it would leave them unequipped to cope with the world as we know it.”\textsuperscript{62} This seemingly contradicts the argument most advocates of violent video-game regulatory legislation rely upon.\textsuperscript{63} A large part of regulatory legislation on violent video-games state the reason for the

\textsuperscript{58} Id. at 1268 (concerning plaintiffs not only attempting to hold accountable video-game companies, but several other forms of media as well).
\textsuperscript{59} “A cumulative effect produce when one sets off a chain of similar events.” \textsc{The American Heritage}\textsuperscript{®} Dictionary of the English Language (4th ed. 2004) available at \url{http://dictionary.reference.com/browse/domino effect}.
\textsuperscript{60} See generally Interactive Digital Software Ass’n v. St. Louis County, 329 F.3d 954, 958-59 (8th Cir. 2003) (hearing arguments put forth by the County that violent video-games must be regulated to “protect the psychological well-being of minors”); Entm’t Software Ass’n v. Granholm, 426 F. Supp. 2d 646, 648-49 (E.D. Mich. 2006) (hearing arguments put forth by State that “ultra-violent explicit video games are harmful to minors because minors who play them are more likely to exhibit violent, asocial, or aggressive behavior”).
\textsuperscript{61} Am. Amusement Machine Ass’n v. Kendrick, 244 F.3d 572, 577 (7th Cir. 2001). (asserting that children’s freedom to view multiple forms of expression is integral to a child’s development).
\textsuperscript{62}Id.
\textsuperscript{63} See generally Interactive Digital Software Ass’n, 329 F.3d at 958-59 (hearing arguments put forth by the County that violent video-games must be regulated to “protect the psychological well-being of minors”); Granholm, 426 F. Supp. 2d at 648-49 (hearing arguments put forth by State that “ultra-violent explicit video games are harmful to minors because minors who play them are more likely to exhibit violent, asocial, or aggressive behavior”).
regulation is generally because it induces violent tendencies within the child. With one side arguing that it is harmful to expose our children to violence and the other saying that it is harmful not to, how are we to determine which side to give greater weight? This lead’s into the next argument for discussion which tends to discredit the advocates position on the effect of the violent video-game’s on a child’s psyche.

III. Reverse Research Argument

In nearly every single case involving violent video-game regulatory legislation, a main point of contention is always whether violent video-games have a diminutive effect on a child’s behavior. Those advocating violent video-game regulatory legislation always rely upon research data which seemingly shows a correlation between playing violent video-games and acting out violent tendencies. Regardless, the courts have generally given very little weight to such research studies. In both Entertainment Software Association v. Blagovech and Entertainment Software Association v. Granholm, associates of the video-game industry challenged State law requiring retailers to censor violent video-games. Throughout both trials, several separate noted professors had their research pertaining to the behavioral relationship

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64 See generally Interactive Digital Software Ass’n, 329 F.3d at 958-59 (hearing arguments put forth by the County that violent video-games must be regulated); Granholm, 426 F. Supp. 2d at 648-49 (hearing argument put forth by State that violent video-games are harmful toward a child’s psyche); Video Software Dealers Ass’n v. Schwarzenegger, 401 F. Supp. 2d 1034, 1038-39 (N.D. Cal. 2005) (hearing arguments put forth by the State that children must be protected from harmful expression).

65 See generally Interactive Digital Software Ass’n, 329 F.3d at 958-59 (hearing arguments put forth by the County that violent video-games must be regulated because they are harmful to children); Granholm, 426 F. Supp. 2d at 648-49 (hearing argument put forth by State that ultra violent video games are diminutive to a child’s mind); Schwarzenegger, 401 F. Supp. 2d at 1038-39 (hearing arguments put forth by the State that children must be protected from harmful forms of violent video-game expression).

66 See generally Kendrick, 244 F.3d at 572 (hearing city’s argument relying on psychological studies which showed a tendency for increased aggressive behavior after playing violent video games); Schwarzenegger, 401 F. Supp. 2d at 1043 (hearing testimony of psychologist claiming that “playing violent video games increased aggressive thoughts and behavior”); Entm’t Software Ass’n v. Blagoevich, 404 F. Supp. 2d 1051, 1051-53 (E.D. Ill. 2005) (haring State evidence on multiple research studies showing a correlation between playing violent video games and violent behavior).

67 See generally Schwarzenegger, 401 F. Supp. 2d at 1048 (finding in favor of the video game manufacturer); Blagoevich, 404 F. Supp. 2d at 1082-83 (finding in favor of the video game manufacturer).

68 Blagoevich, 404 F. Supp. 2d at 1055-56; Granholm, 426 F. Supp. 2d at 648-49.
between violence and video-games taken into consideration. Based on these studies, the courts came to the conclusion that even if a correlation between violent tendencies and playing violent video games does exist, and there is no substantial evidence showing that it does exist, no research has been provided to prove which way that correlation flows.

At most, researchers have been able to show a correlation between playing violent video games and a slightly increased level of aggressive thoughts and behavior. With these limited findings, it is impossible to know which way the causal relationship runs: it may be that aggressive children may also be attracted to violent video games.

In essence, the courts have concluded that even though a slight correlation may possibly exist between aggressive tendencies and playing violent video-games, it is not a very substantial correlation and it is unclear which way the correlation may flow.

There have been several different standards the courts have applied in determining how substantial a negative effect has to be on a child in order to curtail their First Amendment rights. Some courts use a two prong test derived from Sable Communications of California, Inc. v. FCC in which the state must prove that (1) legislation restricting expression based on content must be a compelling interest of the state and (2) such legislation must be the least restrictive means to further the articulated interest. Other courts have applied a test derived from Brandenburg v. Ohio allowing free speech to be restricted if the medium of expression is specifically directed to incite an imminent lawless action and is also likely to incite such an

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69 Blagojevich, 404 F. Supp. 2d at 1059-68. (hearing evidence from Dr. Nusbaum, Dr. Kronenberger, Dr. Anderson, Dr. Goldstein and others); Granholm, 426 F. Supp. 2d at 653 (hearing evidence from Dr. Kronenberg and Dr. Anderson).
70 Blagojevich, 404 F. Supp. 2d at 1063 (finding that the research brought to the attention of the court did not conclude which way the correlation flowed between violent tendencies and violent video games); Granholm, 426 F. Supp. 2d at 653-54 (stating that although violent behavior and violent video games did seem to have a correlation, it was unclear which way that correlation flowed).
71 Granholm, 426 F. Supp. 2d at 653.
72 Hereinafter refered to as the “Reverse Research Argument”.
73 Sable Comm’n of Cal., Inc. v. FCC, 492 U.S. 115 (1989).
action. Still, other courts have applied other similar tests. Most importantly, as all courts have noted, all of these tests place a substantial burden upon advocates for violent video-game regulatory legislation in proving that the violent video-games have a diminutive effect on the child. Generally, in order for video-game regulatory legislation to hinder a child’s freedom of speech, not only must a substantial amount of evidence prove that a diminutive effect on a child is present, but it also must prove the child is severely affected by the diminutive effect.

In order to determine whether this substantial effect is present or not, the courts have taken into account testimony from several prominent psychological researchers. The most notable and oft mentioned of these researchers is a Dr. Craig Anderson. Dr. Anderson, at the time his testimony was provided, was a professor at Iowa State University and primarily focused his studies on the effect of violent media on aggressive behavior. “Dr. Anderson found that exposure to violent video-games was associated with aggressive thinking and behavior.” However, numerous other researchers have pointed out several deficiencies in Dr. Anderson’s research. For example, although Dr. Anderson’s research does indicate an increase in violent tendencies while playing violent video-games, the increase is generally very slight and does not

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76 Granholm, 426 F. Supp. 2d at 652 (applying the test derived from Brandenburg, 395 U.S. 444).
77 See generally id. (placing a “strict scrutiny” test upon the State in proving by “substantial evidence” that the harm is not only real, but also that the proposed remedy is the best way to address the harm); Schwarzenegger, 401 F. Supp. 2d at 1045-46 (placing a high standard upon the State in requiring them to show a “compelling interest” by the State and also requiring them to “choose the least restrictive means to further the articulated interest”).
78 See generally Am. Amusement Machine Ass’n v. Kendrick, 244 F.3d 572, 578-79 (7th Cir. 2001) (placing a high burden upon the State); Granholm, 426 F. Supp. 2d at 652 (placing a high burden upon the State); Schwarzenegger, 401 F.Supp.2d at 1045-46 (placing a high burden upon the State); Sanders v. Acclaim Entm’t, Inc., 188 F. Supp. 2d 1264, 1279-82 (D. Colo. 2002) (placing a high burden upon the Plaintiff’s).
79 Entm’t Software Ass’n v. Blagojevich, 404 F. Supp. 2d 1051, 1059-65 (E.D. Ill. 2005) (taking into account research from Dr. Craig Anderson, Dr. Jeffrey Goldstein, Dr. Dmitri Williams, Dr William Kronenberger, among others).
80 Id. (taking into deep consideration the testimony of Dr. Craig Anderson).
81 Granholm, 426 F. Supp. 2d at 653.
82 Blagojevich, 404 F. Supp. 2d at 1062.
83 Id. at 1062-63 (hearing Dr. Goldstein and Dr. Williams both express several concerns with Dr. Anderson’s research findings).
have a long term effect on the subject. Most importantly, it was shown that Dr. Anderson’s research is not determinative on which way the correlation flows. It is just as likely that aggressive children are attracted to violent video-games as it is likely that violent video-games instill violent behaviors in children.

With the research unable to prove that violent video-games have a substantial diminutive effect upon the children who play them, the courts will continuously find violent video-game regulatory legislation unconstitutional. The courts are making it apparent that the First Amendment will not simply be brushed aside by the mere opinion that a form of expression is harmful. Instead, there must be a substantial reasoning supporting an extremely persuasive assertion which shows that a harmful effect is not only imminent, but would severely affect society. By doing so, the court is effectively filtering out ill-informed entities from depriving United States citizens of important constitutional rights. In essence, the court will not just give away constitutionally guaranteed rights. Instead, they will require an extremely good reason to be presented and substantiated before they will even contemplate hindering such a right.

Not only have all courts decided that the research on violent video-games is insufficient to prove if a substantial effect on children exists, but some courts even indicate that the research may in fact show positive reasons for allowing violent video-games to be accessible to children. “[I]t could just as easily be said that the interactive element in video games acts as an outlet for minors to vent their violent or aggressive behavior, thereby diminishing the chances

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84 Id. at 1062.
85 Id. at 1063 (hearing Dr. Williams and Dr. Goldstein point out that “aggressive individuals may themselves be attracted to violent video games”).
86 Id. (hearing Dr. Williams and Dr. Goldstein point out that “aggressive individuals may themselves be attracted to violent video games”).
87 Entm’t Software Ass’n v. Granholm, 426 F. Supp. 2d 646, 654 (E.D. Mich. 2006) (stating that violent video-games may be an outlet for children to exhaust their aggressive behavior).
that they would actually perform such acts in reality."\textsuperscript{88} If true, this would be in direct controversy to the arguments put forth by most advocates of violent video-game regulatory legislation.\textsuperscript{89} Unfortunately, no courts have ever been presented with research evidence which would necessarily indicate the above assertion by the \textit{Granholm} court. However, even more persuasive is the possibility that the correlation between violent tendencies and violent video-games may in fact be used as an indicator to determine which children have violent tendencies.\textsuperscript{90}

By the courts taking into consideration the idea that the correlation may in fact be the reverse of what most advocates of violent video-game regulatory legislation claim it to be, they indicate that violent video-games may actually be helpful in determining which children have a predisposition to violent tendencies. In \textit{Sanders}, the plaintiffs assert that video-game companies, along with other media companies, were responsible for the actions that two particular students took at Columbine High School on April 20, 1999.\textsuperscript{91} The plaintiffs retrospectively looked at the facts in that case and determined that violent video-games, along with several other forms of media, must have been what caused those two students to kill several of their classmates.\textsuperscript{92} What if instead, before the incident had even occurred, someone had noticed those two students exclusively focused their attention on violent media? If the correlation is that violent people are attracted to violent video-games, as the courts suggest it may be,\textsuperscript{93} then an indicator would have been present sending up a red flag warning of the possible danger. Although this assertion is not

\begin{flushleft}
\textsuperscript{88} \textit{Id.} \\
\textsuperscript{89} \textit{See generally} Interactive Digital Software Ass’n v. St. Louis County, 329 F.3d 954, 958-59 (8th Cir. 2003) (hearing argument put forth by the County that violent video-games must be regulated to “protect the psychological well-being of minors”); \textit{Granholm}, 426 F. Supp. 2d at 648-49 (hearing argument put forth by State that “ultra-violent explicit video games are harmful to minors because minors who play them are more likely to exhibit violent, asocial, or aggressive behavior”); Video Software Dealers Ass’n v. Schwarzenegger, 401 F. Supp. 2d 1034, 1038-39 (N.D. Cal. 2005) (hearing argument put forth by State that children must be protected from harmful forms of expression). \\
\textsuperscript{90} \textit{Blagojevich}, 404 F. Supp. 2d at 1074 (stating that “aggressive children may be attracted to violent video games”). \\
\textsuperscript{91} Sanders v. Acclaim Entm’t, Inc., 188 F. Supp. 2d 1264, 1264-65 (D. Colo. 2002) (concerning students Dylan Klebold and Eric Harris who entered their high school on April 20, 1999 and killed thirteen people). \\
\textsuperscript{92} \textit{Id.} \\
\textsuperscript{93} \textit{See Granholm}, 426 F. Supp. 2d at 654 (stating that violent children may be attracted to violent video games).
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substantially proven, realize it is supported by the same exact research that advocates of violent video-game regulatory legislation use to assert their argument. In doing so, it may help to understand the poor foundation upon which advocates of violent video-games regulatory legislation is based.

Most advocates of violent video-game regulatory legislation base their bills upon the idea that violence in the games will be instilled into a child’s behavior. What the courts have continuously pointed out is that there is no research whatsoever substantially proving this. In fact, the courts are reasonably under the impression that the research used in making these assertions is equally indicative of spotting children with violent tendencies. It is for these reasons that the foundation for most proposed legislation regulating violent video-games for children should be considered unstable at best. If the foundation is unstable, then the effects it may cause on the industry would be severely unfair. This leads directly to the next argument exploring the severe negative effects such regulatory legislation may have upon developers in the video-game industry.

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94 Blagojevich, 404 F. Supp. 2d at 1073-75 (research that supports violent video games causing violent behavior also supports a finding that children with violent tendencies are attracted to violent video games).
95 See generally Interactive Digital Software Ass’n v. St. Louis County, 329 F.3d 954, 958-59 (8th Cir. 2003) (hearing argument put forth by the County that violent video-games must be regulated to “protect the psychological well-being of minors”); Granholm, 426 F. Supp. 2d at 648-49 (hearing argument put forth by State that “ultra-violent explicit video games are harmful to minors because minors who play them are more likely to exhibit violent, asocial, or aggressive behavior”); Video Software Dealers Ass’n v. Schwarzenegger, 401 F. Supp. 2d 1034, 1038-39 (N.D. Cal. 2005) (hearing argument put forth by State that children must be protected from harmful expression).
96 See generally Schwarzenegger, 401 F. Supp. 2d at 1048 (finding in favor of the video game manufacturer); Blagojevich, 404 F. Supp. 2d at 1083 (finding in favor of the video game manufacturer).
97 Blagojevich, 404 F. Supp. 2d at 1063 (finding that the research brought to the attention of the court did not conclude which way the correlation flowed between violent tendencies and violent video games); Granholm, 426 F. Supp. 2d at 653 (stating that although violent behavior and violent video games did seem to have a correlation, it was unclear which way that correlation flowed).
IV. Chilling Effect Argument

A danger that must be addressed whenever a form of expression is regulated is whether that regulation will have a larger regulatory effect than was intended. As discussed in the Reverse Research Argument, the theory many advocates of violent video-game regulatory legislation use as the foundation for their argument is not very strongly supported. As such, any court decision in favor of advocates of regulatory legislation would be severely unfair in regards to the developer of the particular form of media. Several courts have not only taken this into consideration, but have also considered the extended consequences of such a decision. "[T]he Movie and Video Game Defendants cannot possibly control who gains access to their games and movies, they could avoid liability only by ceasing production and distribution of their creative works. Such a sweeping theory of liability and chilling of free expression cannot be considered narrowly tailored." Statements such as these express a fear that if courts were to hinder free speech in any way, it would likely have a larger effect than they would intend to implement. Such effects have been labeled as “chilling effects.” Coupled with the fact that the main assertion of advocates of violent video-game legislation is inconclusive at best, courts are simply unwilling to be responsible for the consequences that result when “chilling” a form of expression.

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98 See supra Part III.
99 See generally Granholm, 426 F. Supp. 2d at 654-55 (stating that the legislation would result in video-game companies wanting to “steer clear of any game with the potential of such violence in order to avoid civil and criminal liability); Blagojevich, 404 F. Supp. 2d at 1067-70 (taking into consideration the broader implications of what allowing the legislation would cause) Sanders v. Acclaim Entm’t, Inc., 188 F. Supp. 2d 1264, 1281 (D. Colo. 2002) (stating that a finding in favor of the plaintiff’s would result in not only prohibiting children from the form of expression, but would also restrict adults as well).
100 Sanders, 188 F. Supp. 2d at 1281.
101 Id.
102 Hereinafter referred to as the “Chilling Effect Argument”.

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If a court decided in favor of violent video-game regulatory legislation, the most predictable chilling effect would be upon manufacturers. With fear that they may be held liable for violent video-games, manufacturers would have more of a tendency to shy away from the development of such games. Such an action would not only deprive children from being exposed to the particular form of expression, but it would also deprive adults as well. To do such a thing would no longer have the intended result of preventing children from exposure to violent media, but would instead prevent all of society from having the ability to consider such forms of expression.

Although children’s freedom of speech rights may be curtailed in certain circumstances, adults are still entitled to a much broader form of First Amendment protection. Furthermore, no recent courts have found that violence in video-games should be regulated for children. Therefore, how could violent video-game regulation for adults possibly be constitutional? Would it be in the better interest of society if no person would be allowed to have access to this form of expression? In James v. Meow Media, Inc., plaintiffs brought suit against several media companies alleging that they were responsible for inciting a 14 year old boy to systematically kill their children. Within the courts opinion, they reference to why it was so important to find for the media companies and to continue to protect freedom of

103 Granholm, 426 F. Supp. 2d at 654-55 (stating that the legislation would result in video-game companies wanting to “steer clear of any game with the potential of such violence in order to avoid civil and criminal liability). 104 Id. 105 Id. (stating that if manufacturers decide to stop producing violent media, adult’s would be barred from that form of expression as well). 106 Ginsberg v. State of New York, 390 U.S. 629, 643-45 (1969) (holding that sexually explicit forms of expression may be censored from children). 107 Brandenburg v. Ohio, 395 U.S. 444, 446-47 (1969) (stating a test to be applied in determining if expression may be able to be censored). 108 See generally Am. Amusement Machine Ass’n v. Kendrick, 244 F.3d 572, 579-80 (7th Cir. 2001) (holding that violent video-game regulatory legislation was not enforceable); Video Software Dealers Ass’n v. Schwarzenegger, 401 F. Supp. 2d 1034, 1048 (N.D. Cal. 2005) (holding that violent vide-game regulatory legislation was not enforceable). 109 James v. Meow Media, Inc., 90 F. Supp. 2d 798, 798-99 (W. Dist. Ken. 2000).
expression. “[I]deas expressed in one work which may drive some people to violence or ruin, may inspire others to feats of excellence or greatness.”\footnote{Id. at 819 quoting from Watters v. TSR, Inc., 715 F. Supp. 819, 822 (W.D. Ken. 1989).} Because expression has this ability to positively inspire a person to do great things, the courts can not simply favor a decision which could ultimately terminate an entire form of expression. By preventing the possibility of a chilling effect to take place in the video-game industry, the courts are simply protecting this ideal.

Not only would a decision in favor of violent video-game regulatory legislation have a chilling effect within the video-game industry, but it would also likely affect multiple other forms of expression. As previously discussed, violent video-games are not isolated in the fact that they are the only form of expression accused as being negatively influential on a child’s developing mind.\footnote{See generally James v. Meow Media, Inc., 300 F.3d 683, 683 (6th Cir. 2002) (reviewing plaintiff’s claim that video-game companies, movie companies, and internet companies caused a child to shoot other children); Sanders v. Acclaim Entm’t, Inc., 188 F. Supp. 2d 1264, 1264 (D. Colo. 2002) (hearing plaintiff’s claim that video-game companies and movie companies caused two teenagers to kill their classmates).} The feared result would be the precedence set forth by allowing such regulatory legislation to be passed on violent video-games. “The theories of liability sought to be imposed upon the manufacturer of a role-playing fantasy game would have a devastatingly broad chilling effect on expressions of all forms.”\footnote{James, 90 F. Supp. 2d at 819 quoting from Watters 715 F. Supp. at 822.} If violent video-games are censored today, then the possibility exists that other forms of media will be censored tomorrow. Effectively, if a court held that violent video-game regulatory legislation is constitutional, it would create a tool with the ability to chisel away at the First Amendment. If the courts are too liberal with their decisions on what is not protected by freedom of speech, they may inadvertently erode the first amendment into oblivion.
As can be evidenced in both the Hitler Youth Argument and the Informed Voter Argument, a broad form of censorship upon children would likely have a diminutive affect.\textsuperscript{113} As the Chilling Effect Argument establishes, simply allowing one piece of the bridge that is expression to be removed may inadvertently cause the entire structure to collapse. If precedence is set forth that allows multiple forms of media to be extinguished from the lives of children, then the outcomes described within the Hitler Youth Argument and the Informed Voter Argument may in fact become realities. In preventing a chilling effect from occurring, the courts are attempting to avoid having the type of problems the two aforementioned arguments would produce.

With taking into account the above four arguments, plenty of reasons seem to exist in favor of free speech.\textsuperscript{114} The above arguments tend to show societies interests in upholding freedom of speech in regards to children. Should not the courts still take into consideration the concerns of the advocates of violent video-game regulatory legislation? Within the following two arguments, the courts put forth the methods through which these concerns are either already addressed, or through which it should be addressed. In respect to the following argument, several courts seemingly have the impression that exposure to violent forms of media should be a concern of the parents, not the legislative branch.

\textbf{V. The Parents Duty Argument}

For good reason, the courts have continuously ruled against regulatory legislation of violent video-games.\textsuperscript{115} However, as noted throughout most video-game regulatory legislation, these laws are being made for the purpose of protecting children.\textsuperscript{116} What is it that helps ease a

\begin{flushleft}
\textsuperscript{113} See supra Parts I-II.  \\
\textsuperscript{114} U.S. CONST. AMEND. I.  \\
\textsuperscript{115} See supra Parts I-IV.  \\
\end{flushleft}
judge into deciding that a child should not be legislatively prevented from playing a violent video-game? Although it is never directly mentioned, it is implied by several courts that although the government can not prevent the child from playing these violent video-games, a parent still has full rights to determine what forms of expression they can expose their child too. 117 “Nowhere . . . does the Supreme Court suggest that the government’s role in helping parents to be guardians of their children’s well-being is an unbridled license to governments to regulate what minors read and view.” 118 Although the government may have a role in helping to support parents and guardians with certain laws pertaining to child rearing, it is solely the parent’s duty to monitor and regulate the forms of expression their child is exposed to. 119

If the advocates of regulatory legislation for violent video-games can not enforce laws to restrict these forms of expression, then it would seem that children would be able to view any violent form of expression that comes their way. This is not necessarily the case. What most of these advocates of regulatory video-game legislation generally fail to mention is that as long as the child is still a minor, the parent or guardian may regulate what the child is exposed to. In Troxel v. Granville, a Supreme Court case involving a parents rights to raise a child, the Court held that a state may not infringe on the fundamental right of parents to make child rearing decisions. 120 “[W]e have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” 121 Because of this, the courts are able to ease their conscience by entrusting the burden of controlling what a child is exposed to.

117 See generally Interactive Digital Software Ass’n v. St. Louis County, 329 F.3d 954, 959-60 (8th Cir. 2003) (stating that parents have a duty to look over their children’s well-being); Entm’t Software Ass’n v. Granholm, 426 F. Supp. 2d 646, 654-55 (E.D. Mich. 2006) (making reference to better informing parents so that they can make better choices in which games they purchase for their children); Video Software Dealers Ass’n v. Schwarzenegger, 401 F. Supp. 2d 1034, 1047 (N.D. Cal. 2005) (making reference to parents being better able to “act” on what to allow their children to play).
118 Interactive Digital Software Ass’n, 329 F.3d at 959-60.
119 Hereinafter referred to as the “Parents Duty Argument.”
121 Id. at 66.
upon the parent. In essence, something that should be common sense is impliedly clarified by
the courts. The parent’s are directly responsible for raising and influencing their child into the
person he or she will become, not the government.

To simplify this argument, the courts have ruled that the government does have a small
role in supporting parental authority, but that role does not have such great weight as to crush
constitutionally protected rights.122 “We merely hold that the government cannot silence
protected speech by wrapping itself in the cloak of parental authority.”123 It is through
statements such as this that the courts faith in a child’s parent is made evident. Historically,
parents have been considered the primary caregivers of their own offspring. The government
simply supports this responsibility given to the parents by enforcing the parent’s right to raise
their child. Generally, the parent’s are in the best position to determine what is appropriate for
their child to be exposed to. Because of this, the court’s are satisfied with leaving the
responsibility of determining what a child can and can not be exposed to up to the parents or
guardians.

Furthermore, the courts are seemingly giving notice to parent’s that raising a child is
primarily the parent’s responsibility. In Wilson v. Midway Games Inc., a mother brought suit
against a video-game company alleging that her son was killed by a boy who was addicted to the
video-game company’s game.124 The court in this case ruled that the video-game company was
not liable for the death of the mother’s son.125 However, had the mother brought suit against the
parent’s of the child who murdered her son, she likely would have received compensation.126

122 Interactive Digital Software Ass’n, 329 F.3d at 960 (conceding that the government does support parents in
raising children, but asserting that this support is very limited).
123 Id.
125 Id.
126 B.C. Ricketts, Annotation, Validity and Construction of Statutes Making Parents Liable for Torts Committed by
To date, no courts have held a video-game manufacturer liable for violent behavior in a child.\(^{127}\) Conversely, in finding that a child caused legally recoverable damages, almost every court would hold that child’s parents or guardians liable for such damages.\(^{128}\) With this being the case, the courts reinforce the principle that parents are the one’s responsible for their children. The courts simply do not believe that the government should bear the meticulous duty of raising a child. In essence, the court’s are impliedly sending a wake up call to parent’s around the country saying that it is the parent’s responsibility to properly raise a child, not anyone else’s.

Unknown as to whether this is the intention of the court or not, this might actually have the benefit of creating a stronger family unit. By forcing the parent to take an interest in the child, the parent and the child may in actuality develop a stronger relationship. Of course the big problem with this expectation tends to be that parents are generally not interested in video-games. If a parent is not interested in video-games, how are they to determine if it is a piece of expression that they would be willing to expose their child to? It would likely not be realistic for the courts to believe that a parent would have the time to determine whether a particular video game was acceptable for their child to view. Luckily, video-game companies have taken it upon themselves to create a rating system that informs parents of the type of content present within a game.\(^{129}\) This is an alternative method to regulatory legislation which the courts have supported on several occasions.\(^{130}\) In the final argument, such alternative methods will be discussed to

\(^{127}\) Cross, supra note 6.


\(^{130}\) Video Software Dealers Ass’n v. Schwarzenegger, 401 F. Supp. 2d 1034, 1047 (N.D. Cal. 2005) (making reference to the video-game industries voluntary rating system being sufficient); Entm’t Software Ass’n v. Granholm, 426 F. Supp. 2d 646, 654-55 (E.D. Mich. 2006) (stating that the video-game industries ESRB voluntary rating system combined with other alternative methods may help to better establish what advocates of video-game regulatory legislation are trying to establish).
show yet another reason of why the courts are comfortable with ruling against violent video-game regulatory legislation.

VI. Alternative Methods Argument

Although the courts seemingly feel comfortable placing the responsibility of shielding a child from unwanted forms of expression upon the parents, there is a second factor taken into account that adds to this comfort. The reasoning behind most advocates of violent video-game regulatory legislation is that violent forms of expression need to be kept away from a child’s impressionable mind. A point that is readily addressed by several courts is the fact that less constitutionally restrictive alternative methods are available to achieve the end results which regulatory legislation is attempting to attain. “[T]here are reasonable alternatives using the existing ESRB system, such as undertaking an advertising campaign to inform parents of the rating system and what to watch out for when purchasing games for their children, much like the theatre industry did when ratings were first introduced.” This argument exposes how the courts are not in favor of curtailing First Amendment rights, especially when there appears to be less restrictive alternatives available.

An alternative to curtailing a constitutional right would simply be to find an alternative method that obtains the same wanted results. As can obviously be deduced from this article, the largest roadblock in existence for violent video-game regulatory legislation is that it infringes on constitutionally protected rights. By the legislation going to the extreme of attempting to entirely

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131 See generally Interactive Digital Software Ass’n v. St. Louis County, 329 F.3d 954, 958-59 (8th Cir. 2003) (hearing arguments put forth by the County that violent video-games must be regulated to “protect the psychological well-being of minors”); Granholm, 426 F. Supp. 2d at 648-49 (hearing arguments put forth by State that “ultra-violent explicit video games are harmful to minors because minors who play them are more likely to exhibit violent, asocial, or aggressive behavior”).

132 See generally Granholm, 426 F. Supp. 2d at 654-55 (stating that reasonable alternatives to the legislation would be a better route); Schwarzenegger, 401 F. Supp. 2d at 1047 (implying that if a less restrictive alternative that is less infringing upon the video-game companies rights is available, it should be used).

133 Granholm, 426 F. Supp. 2d at 654-55.

134 Hereinafter referred to as the “Alternative Methods Argument.”
prevent children from having access to violent video-games,\textsuperscript{135} they are trying to achieve their goal with unconstitutional means. If advocates of regulatory legislation simply want to protect children from being negatively influenced, then they should take into consideration alternative methods which are less intrusive on both the child’s and the video-game manufacturer’s rights. The courts have expressly made reference to the alternative method of working with the ESRB to achieve their goal of insulating children from violent expression.\textsuperscript{136} Therefore, if such alternative methods are already available, it would be more beneficial for advocates of violent video-game regulatory legislation to work with such constitutionally copasetic means to achieve their goals.

The ESRB is a voluntary rating system through which the video-game companies have the content of their games reviewed by an independent researcher.\textsuperscript{137} A rating is then applied to the box of the game so that parents are able to make an intelligent decision when purchasing the game from a retailer.\textsuperscript{138} As an example of alternative methods, the ESRB is generally the poster example provided by the courts.\textsuperscript{139} In Granholm, the court gives the example of embarking upon an advertising campaign to help inform parents of its existence and importance.\textsuperscript{140} Oddly enough, in the last year the ESRB has embarked on a new advertisement campaign targeted toward better informing parents on how to use the system.\textsuperscript{141} The overall point of the courts is that if a method that is less intrusive on constitutional rights is available, then by all means that

\begin{footnotesize}
\textsuperscript{135} CAL. CIV. CODE § 1746.1 (2006) (attempting to regulate retailers from renting or selling video-games to minors).
\textsuperscript{136} See generally Granholm, 426 F. Supp. 2d at 654-55 (discussing the voluntary rating system used by video-game companies); Schwarzenegger, 401 F. Supp. 2d at 1047 (discussing the value of the ESRB and the possibility that it may be expanded upon).
\textsuperscript{138} Id.
\textsuperscript{139} See generally Granholm, 426 F. Supp. 2d at 654-55 (discussing voluntary rating system); Schwarzenegger, 401 F. Supp. 2d at 1047 (discussing the ESRB).
\textsuperscript{140} Granholm, 426 F. Supp. 2d at 654-55
\end{footnotesize}
method should be preferred. The ESRB is therefore one method which gives a prime example of how to achieve results without running afoul of the Constitution.

With this argument, the courts have established yet another means to which they can in good conscience leave untouched the constitutionally protected First Amendment rights of children. The question may arise as to whether these alternative methods may have the same adverse effects as regulatory legislation would confer upon children. Could the Hitler Youth Argument be applied to these alternative methods? This would seem to be a legitimate concern, but one that is easily remedied. The overall arch of what these alternative methods seek to achieve is a happy medium between regulatory legislation and having a free market on whatever children would like to expose themselves to.142 Nowhere in case law does it say that an alternative method would consist of completely preventing a child from purchasing or playing a violent video-game, but it would make it easier on a parent to distinguish which games to allow their child to be exposed to. The child in this situation at least has an opportunity to be exposed to the form of expression, but the hope is that it is done under the watchful eye of a concerned parent. With this, the courts have been able to conscientiously perform their duty of safeguarding the Constitution and to protect the rights which it has guaranteed to all people, child or adult.

Conclusion

Within the previous six arguments, it has meticulously been explained how and why the courts continuously need to rule in favor of free speech.143 Within the Hitler Youth and the Informed Voter Arguments, it was explained why it is drastically important to allow a child the

142 See generally Granholm, 426 F. Supp. 2d at 654-55 (discussing a voluntary rating system as opposed to a legislative ban on violent video games); Schwarzenegger, 401 F. Supp. 2d at 1047 (discussing the value of the ESRB and how it could better be implemented instead of using regulatory legislation).
143 See supra Parts I-VI.
opportunity to hear all forms of expression. The ability for a child to make informed decisions based on multiple aspects prevents them from simply becoming a mindless cog in the political and social machine that is life. Furthermore, the Reverse Research Argument exposed the fact that the presumption most violent video-game regulatory legislation is based upon has scientifically never been proven. Not only does such research not conclusively show that violent video-games cause violent behavior, but the research may indicate that children with violent behavior are drawn toward violent forms of expression. This advances the possibility that exposing children to violent video-games may be a simple way to detect children that have heightened aggression levels. Regardless, the research presented is inconclusive toward either direction. Without a solid basis to make an intelligible decision upon, the courts are further persuaded to not subject children to a censorship of expression. Furthermore, if the censorship is pointless, the chilling effect that would arise from it would only act to irritate any wound that would be inflicted upon the First Amendment. The Chilling Effect Argument moves toward this conclusion by showing the extended impact that would occur from censoring just one small portion of First Amendment freedom of Speech. Not only would manufacturers be encouraged to slow production of violent video games due to fear of possible litigation, but it would also set precedence in the system slowly allowing First Amendment rights to be eroded.

144 See supra Parts I-II.
145 See Am. Amusement Machine Ass’n v. Kendrick, 244 F.3d 572, 576-78 (7th Cir. 2001) (asserting that regulating a child’s intake of expression can lead to unintended results).
146 See supra Part III.
147 Entm’t Software Ass’n v. Blagojevich, 404 F. Supp. 2d 1051, 1063 (E.D. Ill. 2005) (finding the research brought to the attention of the court was inconclusive as to which way the correlation flowed); Granholm, 426 F. Supp. 2d at 653-54 (stating that although violent behavior and violent video games did seem to have a correlation, it was unclear which way that correlation flowed).
148 See supra Part IV.
149 See generally Granholm, 426 F. Supp. 2d at 653-54 (finding that research is inconclusive as to which was correlation flows).
150 See supra Part IV.
This would obviously not only hinder the rights of children to view violent video-games, but the rest of society would suffer as well. Furthermore, the domino effect so oft spoken about throughout this article is shown to be another form of the chilling effect which would broaden the censorship beyond the target of just violent video-games. Regulating violent video-games would lead to the regulation of other forms of media. With all the above in place, it is easily concluded that the two primary concerns with regulating violent video-games for children are as follows; children must be allotted First Amendment protection in order for them to grow into intelligent well-rounded capable adults, and to chisel away a corner of the First Amendment is to cause a crack from which all of society will eventually suffer.

To further alleviate the concerns that may arise from the courts not interfering with a child’s right to freedom of speech, two factors were taken into consideration to ease worried consciences. In the Parents Duty Argument, it is expressed how a parent should be encouraged to take part in their child’s life and be responsible for safeguarding him or her. In full, it is not the government’s responsibility to raise a child, instead that responsibility lies with the parent. In embracing this ideal, the hope is that by forcing parent’s to take a larger role in their child’s life, the child will benefit through closer ties with their family. The Alternative Method Argument sets out the concept that regulatory legislation need not be the only path through which a child can be properly restricted. The ESRB is the primary regulatory method focused on by the courts, and together with a responsible parent it could help to guide them through the difficult avenues of child rearing. For example, by a parent using the rating system set up by

2002) (stating that a finding in favor of the plaintiff’s would result in not only prohibiting children from the form of expression, but would also restrict adults as well).

151 See supra Part V.
152 See supra Part VI.
153 See Granholm, 426 F. Supp. 2d at 654-55 (inferring that the video-game industries ESRB voluntary rating system can help a parent to make proper decisions regarding their child).
the ESRB, they may decide to not let there four year old child play a mature rated game until he or she is a little bit older. Such concepts as these have been the extra cushioning that such courts have needed to fall back upon when making such tough decisions involving children. Although the courts would still have to make the same decision if they did not exist, it helps to ease any worries that arise from allowing violent video-games to go unregulated.

In conclusion, the courts have a duty to protect First Amendment rights. A child’s rights in this matter are no less important than that of an adult’s. By protecting these rights, the courts have essentially protected the future of our country in two aspects. First, they guarantee that our nation’s children will grow up having been impressed upon by all forms of expression. Secondly, they insure that the First Amendment will not slowly be eroded into nothingness resulting in a detriment to society. Although these decisions come at the prima facie appearance that it hinders our nations children, the truth is that a deeper look leads you to the real conclusion. In protecting a child’s First Amendment rights to play violent video-games, you in fact benefit both society and the child.