Constitutional Law Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
*Brown v. Entertainment Merchants Association:* Argued: November 2, 2001/Decided: June 27, 2011Mr. Faulhaber

Directions: Read and highlight the following background information on this page regarding Elonis v. United States.

**Background:** The First Amendment protects all forms of communication from government censorship. Free speech is one of the most essential rights in our society because the discussion of ideas is essential to a democracy. Generally, the government cannot punish or censor speech. The right to free speech is not absolute, however. There are some situations where the government can restrict speech. Some laws regulate the content of speech—what the speaker is allowed to say or not to say—but these situations are rare. The government may restrict speech that contains obscenities, “fighting words”, defamation, child pornography, or advocates immediate lawless behavior. The government is allowed to regulate these categories of speech because such speech is generally considered harmful, has little social value, and the content does not play a role in sharing ideas.

Courts look at restrictions of speech outside those areas very closely. In order to justify a rule that restricts content not in one of those categories, the government must:

1. Show that it has a compelling (very important) interest in regulating the speech

2. Show that the law is necessary to meet this aim and the narrowest way to do so—that it impacts peoples’ rights as little as possible.

3. Leave other ways to communicate the content that is being regulated.

This case is about a California law that tried to restrict children’s access to one particular type of speech –violent video games.

**Facts:** Parents and other adults often worry about exposing children to the violent content that may appear in video games, movies, and music. Some people think that exposure to violent content causes psychological damage and behavioral issues in children. Some states have passed laws to prevent children from buying violent media or to help guide parents on their children’s media consumption. California passed one such law—a ban on the sale or rental of violent video games to people under age 18.

The law prohibits the sale or rental of a violent video game to minors (people under age 18) if:

1. a reasonable person, considering the game as a whole, would find that it appeals to a deviant or morbid interest of minors;

2. it is patently offensive to prevailing standards in the community as to what is suitable for minors; and

3. the game, as a whole, lacks serious literary, artistic, political, or scientific value for minors.

Businesses or even certain employees could be fined up to $1,000 per violation of the law. Minors’ parents, grandparents, aunts, uncles, or legal guardians can, however, buy or rent a violent video game for their minor.

After the law was passed, the Entertainment Merchants Association (a group of companies that create, publish, distribute, sell, and rent video games) sued the State of California in federal court, asking that the law be declared in violation of the First Amendment. The federal district court agreed with the companies and barred California from enforcing the law. California appealed this decision to the U.S. Court of Appeals for the Ninth Circuit. The court of appeals agreed with the district court, ruling that the law violated the First Amendment. California appealed and the U.S. Supreme Court agreed to hear the case.

**Issue:** Does the First Amendment prohibit a state from regulating the sale of violent video games to minors?

 **Constitutional Amendment:** **First Amendment** “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech….”

**Precedents**

***Ginsberg v. New York* (1968)**

A New York law prohibited selling obscene materials that were “harmful to minors” to anyone under 17 years old. Ginsberg was convicted under this law for selling “girlie magazines” to a 16-year-old. Ginsberg argued that the New York law violated the First Amendment. The U.S. Supreme Court ruled that the law did not violate the First Amendment. The justices said that the law only targeted purchases by minors and that the State has the authority to regulate the well-being of children. The Court said a state could prohibit sale of obscene materials to minors as long as it was rational for the legislature to decide that these materials were harmful to minors. New York, the Court decided, had acted rationally because: a. parents are entitled to have the support of the laws to ensure their children’s well-being, and b. the state had its own interest in the well-being of young people.

 ***United States v. Stevens* (2010)**

Stevens was convicted for selling and distributing dogfight videos in violation of a federal law that made it a crime to “make, sell, or possess any depiction of killing or abusing a live animal, if that abuse was illegal in the state at the time the depiction was made, sold, or possessed.” The Supreme Court determined that the federal ban on depictions of animal cruelty violated the First Amendment. In the majority opinion, the Court remarked that the existing categories of unprotected speech (like obscenity, fighting words, and incitements to violence) are long-standing and quite limited. It also noted that because the law was a direct ban on the content of speech, it was assumed to be unconstitutional unless otherwise justified. To justify regulations on the content of speech, the state must show it has a compelling interest in regulating the speech and that the law is designed as narrowly as possible to achieve that interest. In this case, the Court determined that the law would ban too much speech and was thus unconstitutional.

Classifying Arguments: The following is a list of arguments in the Elonis v. United States case. Read through each argument and decide whether it is an Arguments for Brown (B) or it supports the position of the Entertainment Merchants Association (EMA). Place the appropriate mark in the blank provided AND circle the appropriate E or US.

\_\_\_\_1. (B/EMA): Video games are different from books and movies because they allow young, impressionable people to take on first-person roles in perpetrating the violence. Players act as killers in these games, shooting, maiming, dismembering, and otherwise assaulting other characters. Books and movies do not put children in such first-person roles.

\_\_\_\_2. ((B/EMA): The First Amendment protects some of Americans’ most valuable and fundamental rights. Government laws that interfere with the First Amendment should only rarely be allowed.

\_\_\_\_3. (B/EMA): Restricting minors’ access to offensively violent, harmful material that has no redeeming value for children is no different than prohibiting the sale of obscene materials to minors, which was upheld in *Ginsberg*.

\_\_\_\_4. ((B/EMA): In its opinion in *Stevens,* the Court stressed that the categories of unprotected speech are long-standing and quite limited. There is no tradition in the United States of regulating or banning “violent” speech. For centuries, people have been reading violent books or watching violent movies.

\_\_\_\_5. (B/EMA): The First Amendment rights of minors are not as broad as the rights of adults. What is appropriate for adults is not always appropriate for minors, and like the regulation in *Ginsberg*, California’s law only limits the access of minors to a particular type of expression.

\_\_\_\_6. ((B/EMA): *Ginsberg* is not applicable here because that case concerned only sexual obscenity. It did not decide whether other kinds of expression could be restricted for minors.

\_\_\_\_7. (B/EMA): This law regulates the video games based on their violent content. Laws that prohibit speech based on content must be examined with “strict” scrutiny – the government must have a compelling interest in passing the law, and the law must be designed as narrowly as possible. Here, California does not have a compelling interest, and the law is too broad.

\_\_\_\_8. (B/EMA): Parents, not the government, have the right to determine what types of expression their children are exposed to. The government should not be in the business of deciding what does or does not have redeeming social value. There is no evidence that parents actually have trouble monitoring the games their children play and need the government to step in, and therefore no “compelling” interest for the state.

\_\_\_\_9. (B/EMA): The law does not ban other violent media for minors—therefore, it is not really designed to address the state’s stated interest.

\_\_\_\_10. (B/EMA): California has a compelling interest in regulating minors’ access to violent video games. Parents need the opportunity to decide which video games are suitable for their children, and this law ensures that a parent or other adult is involved in the minor’s decision to purchase such a game. The government has an important interest in helping parents protect the well-being of children in those instances when parents cannot be present.

\_\_\_\_11. (B/EMA): Another compelling interest is California’s need to ensure the well-being of its youth, given the evidence of negative psychological consequences associated with violent video games.

\_\_\_\_12. (B/EMA): Because the voluntary rating system in place on games does not consistently protect minors from exposure to violent video games and the games that the law regulates are described in detail, the California law is narrowly tailored. There is still an avenue for the games to be sold or rented, because minors can still get the games with an adult’s permission.

I found the argument above stated in #\_\_\_\_ most compelling for Elonis because…
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I found the argument above stated in #\_\_\_\_ most compelling for the United States because…
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What rights Supreme Court Must Balance? Explain. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

What would you tell a friend of yours that is not in this class why this case is important? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

How Should This Case Be Decided by The Supreme Court? Explain
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