

HB 4023 –Unconstitutional Ban on “Violent” Video Games

HB 4023 (Chapa LaVia-Froelich-Davis): Criminally sanctions (Class A misdemeanor) the selling or renting of video games considered “violent” to anyone 18 or younger and allows imposition of fines up to \$5000 for each offense. “Violent” video games include any game that includes a realistic depiction of serious physical harm.

Material depicting violence does not fall within the legal definition of obscenity for either minors or adults and is given the highest degree of First Amendment protection.¹

In American Amusement Machine Association v. Kendrick, at issue was an Indianapolis ordinance that banned minors’ access to video game machines that depict violence, absent parental attendance. Judge Posner, speaking for the Seventh Circuit Court ruled that:

- “The issue in this case is not violence as such, or directly; it is violent images; and here the symmetry with obscenity breaks down. Classic literature and art, and not merely today’s popular culture, are saturated with graphic scenes of violence, whether narrated or pictorial. **The notion of forbidding not violence itself, but pictures of violence, is a novelty, whereas concern with pictures of graphic sexual conduct is of the essence of traditional concern with obscenity.**”
- “The basis of the ordinance...is a belief that violent video games cause temporal harm by engendering aggressive attitudes and behavior, which might lead to violence.”
- “Children have First Amendment rights... The murderous fanaticism displayed by young German soldiers in World War II, alumni of the Hitler Jugend, illustrates the danger of allowing government to control the access of children to information and opinion. 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 before they turn eighteen, so that their minds are not a blank when they first exercise the franchise....People are unlikely to become well-functioning, independent-minded adults and responsible citizens if they are raised in an intellectual bubble.”
- **“No doubt the City would concede this point if the question were whether to forbid children to read without the presence of an adult the Odyssey, with its graphic descriptions of Odysseus’s grinding out the eye of Polyphemus with a heated, sharpened stake, killing the suitors, and hanging the treacherous maidservants; or The Divine Comedy with its graphic descriptions of the tortures of the damned; or War and Peace with its graphic descriptions of execution by firing squad, or the famous horror movies made from the classic novels of Mary Wollstonecraft Shelly (Frankenstein) and Bram Stoker (Dracula).”**
- “Violence has always been and remains a central interest of humankind and a recurrent, even obsessive theme of culture both high and low. It engages the interest of children from an early age, as anyone familiar with the classic fairy tales collected by Grimm, Andersen, and Perrault are aware. **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.**”
- “These games with their cartoon characters and stylized mayhem are continuous with an age-old children’s literature on violent themes....The City (of Indianapolis) appeals to social science to establish that games...are dangerous to public safety...Those studies do not support the ordinance....The studies do not find that video games have ever caused anyone to commit a violent act, as opposed to feeling aggressive, or have caused the average level of violence to increase anywhere...The studies thus are not evidence that violent video games are any more harmful to the consumer or to the public safety than violent movies or other violent, but passive, entertainments. When Dirty Harry or some other avenging hero kills off a string of villains, the audience is expected to identify with him, to revel in his success, to feel their own finger on the trigger. It is conceivable that pushing a button or manipulating a toggle stick engenders an even deeper surge of aggressive joy, but of that there is no evidence at all.”
- **“Common sense says that the City’s claim of harm to its citizens from these games is implausible, at best wildly speculative...The ordinance curtails freedom of expression significantly and, on this record, without any offsetting justification “compelling” or otherwise.”**

HB 4023, like the Indianapolis ordinance curtails freedom of expression, violating the First Amendment.

¹ American Amusement Machine Association v. Kendrick, 2001 U.S. app. LEXIS 4371 (7th Circuit); American Booksellers Association v. Hudnut, 771 F.2d 323, 330 (7th Cir. 1985).