

***VIDEO SOFTWARE DEALERS ASS'N V. MALENG***

*325 F. Supp. 2d 1180 (W.D. Wash. 2004)*

The district court invalidated a Washington state law curbing the distribution of violent video games to minors on the grounds that the law violated the First Amendment.

In 2003, the Washington legislature enacted Wash. Rev. Code § 9.91.180, which imposed penalties for the sale or rental of violent video or computer games to minors. The new law defined “violent” games as those containing realistic depictions of “aggressive violence” by the player towards a character identifiable as a law enforcement officer. A number of industry associations representing video game creators, distributors, and retailers sued for an injunction against enforcement of the new law, contending that it violated the First Amendment by controlling the distribution of video games to minors based solely on their content and viewpoint.

The district court granted plaintiffs’ motion for summary judgment. The court applied strict scrutiny to analyze Washington’s new law. First, the court noted that the evolution of video games towards increasingly complex narratives, graphics, and musical scores supplied the expressive element required for First Amendment protection of the games. The court refused defendants’ request that the court expand the definition of “obscene material” not subject to First Amendment protection to include graphic portrayals of violence.

Under strict scrutiny, the court reasoned that the law failed to serve a compelling state interest. The legislature’s stated intent was to curb hostile youth behavior, including violence toward law enforcement officers. However, the court found that the legislature’s reliance on studies that correlated exposure to violent video games with “various forms of hostile and antisocial behavior” was insufficient to establish a causal relationship between video games and violent acts against officers. The court also found that the law’s language was not narrowly tailored to further the state’s alleged interest. The law would, for example, proscribe games portraying “laudable struggles against evil authority figures” or containing “disincentives for violence against law enforcement officers.”