

LEGAL



SPRING 2012

First Amendment Protects Violent Video Games as Free Speech

by Phyllis Raybin Emert

The First Amendment to the U.S. Constitution states, "Congress shall make no law abridging the freedom of speech." Does that protection extend to violent video games? That was the question before the U.S. Supreme Court in *Brown v. Entertainment Merchants Association*.

The case, originally called *Schwarzenegger v. Entertainment Merchants Association* (it was changed to *Brown v. EMA* when the former governor left office), involved a California **statute** prohibiting the sale or rental of violent video games to anyone under **CONTINUED ON PAGE 5**



Are Corporations the Same as People and Entitled to Free Speech?

by Cheryl Baisden

More than a century ago, before the invention of the Internet, television or radio, campaigning for political office was all about personal appearances. For state, national or presidential political hopefuls, hitting the campaign trail meant months of trekking from the Atlantic to the Pacific coast and back again for countless appearances at state and county fairs to judge everything from pie-baking contests to beauty pageants; a seemingly endless sea of babies to kiss and hands **CONTINUED ON PAGE 2**

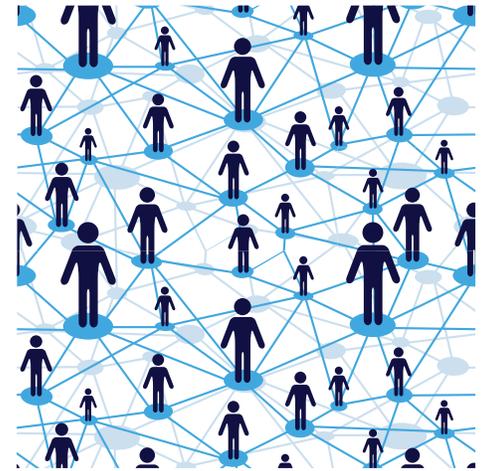


Can Your School Control What You Post on the Internet?

by Barbara Sheehan

While at school, students are expected to show a certain degree of respect for others, or else face possible detention or worse. What about behavior outside of school? Can a student be punished for making offensive remarks about a school official on the Internet, from the privacy of his or her home?

This was the subject of two groundbreaking court cases that were decided last summer by the Third Circuit Court of Appeals, which reviews decisions of district courts in New Jersey, Delaware, Pennsylvania and



the Virgin Islands. These cases posed new questions about how far students can push their free speech rights and involved students who were disciplined at school for posting bogus MySpace profiles of their principals. In both cases, the students sued their school districts, claiming that the punishment violated their First Amendment rights to free speech.

The specifics

The first case, *Layshock v. Hermitage School District*, involved a student named Justin Layshock, a 17-year-old Pennsylvania high school student, who used his grandmother's computer to create a fake profile about his principal.

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Are Corporations People? CONTINUED FROM PAGE 1

to shake; and attending one social event after another to mingle with the local elite.

That all began to change toward the end of the 19th century, as the Industrial Revolution moved into full swing, giving rise to the nation's first corporate giants. As those corporations and their owners and stockholders gained wealth and power, some turned their attention to politics and began funding campaigns in order to gain a foothold in government.

"This was an opportunity for large corporations like Standard Oil, and the millionaires and billionaires behind them, to influence politicians by essentially buying their way in through campaign contributions," says Hackensack litigation attorney Michael Stein, who has a particular interest in election law matters. "Remember, even before we had advertising costs for ads on TV and other media campaigns, candidates still needed money to finance their election activities."

Mark Hanna, a late 19th century industrial leader whose fortune and major fundraising efforts among his wealthy friends resulted in the most expensive campaign ever seen at the time, won William McKinley the presidency, making the power of corporate campaign contributions crystal clear. "There are two things that are important in politics. The first thing is money, and I can't remember what the second one is," Hanna, who was virtually handed a seat on the U.S. Senate as a result of a cabinet appointment by President McKinley, once said.

Need for reform

"By the turn of the 20th century, Congress recognized that corporate campaign contributions needed to be regulated," Stein notes. "Corporate wealth was being used to contribute directly to candidates, and if a big company wrote a big, fat check, it seemed obvious the candidate would feel beholden to that company. It

could influence the way an elected official voted or the issues a candidate or elected official championed or opposed."

Campaign finance legislation was first passed in 1907, and over time was fine-tuned through additional regulations and a handful of U.S. Supreme Court decisions. Federal law prohibited direct political contributions from corporations but permitted corporate "expenditures" to certain organizations, within certain limits, which in turn could support or oppose a given candidate. That all changed in January 2010 with the U.S. Supreme Court's decision in *Citizens United v. Federal Elections Commission*.

Citizens United

The Court's 5-4 decision in *Citizens United* completely turned the tables on corporate campaign contribution law, granting corporations the right to use money directly from their general accounts to support or oppose individual candidates through advertising. The Court, explains Stein, decided that corporations are just like individuals, and are entitled to the same First Amendment rights of free speech as a private person, even though the goals of large corporations are generally very different from the average person's goals.

"Just consider the special privileges these corporations get, like tax breaks and incentives," Stein says. "They are focused on their own interests, which may or may not reflect what is best for the average person. And, in some cases, these corporations can be owned by foreigners, who may have an entirely different focus than an American citizen might have."

The Court's ruling was "a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans," President Barack Obama said in a written statement following the ruling.

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The Supreme Court's divided decision came as somewhat of a surprise, notes Stein, since *Citizens United* simply focused on a controversial 90-minute film about Hillary Clinton that was produced by a conservative group that opposed her 2008 presidential run. A lower court had ruled that federal law forbade corporations and other special interest groups from using money from their general accounts for "broadcast, cable or satellite communications" about a candidate for federal office 30 days before a primary election and 60 days before a general election. When the case reached the Supreme Court, the justices chose to broaden the case's focus.

"When government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought," Justice Anthony Kennedy wrote for the majority. "This is unlawful. The First Amendment confirms the freedom to think for ourselves."

But Justice John Paul Stevens, in his dissent, wrote that his conservative colleagues' "agenda" turned a simple case into a constitutional debate. "Essentially, five justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law."

The Court did rule, however, in a separate 8-1 decision, that corporations must disclose their involvement in political ads.

The McComish decision

In June 2011, the U.S. Supreme Court dealt a second blow to longstanding campaign financing legislation with another 5-4 ruling. In *McComish v. Bennett* the justices ruled a public financing system adopted by Arizona and several other states violated the First Amendment on the same grounds as *Citizens United*. The Arizona law, which was the one in

question in this case, provided extra matching money to candidates who chose not to accept private funding and were outspent by their opponents. Initially, these candidates received \$50,000 in taxpayer money. They could receive up to three times that amount if an opponent accepting private funding reached certain spending limits within a certain timeframe.

This system, the Court's majority declared, stifled the free speech of privately funded candidates and their supporters by establishing what could be considered financial penalties for spending over certain amounts of money.

"Today...it is more critical than ever that we change the way we pay for our elections by moving to a small donor system that gives the public a voice back in our government," Bob Edgar, a spokesman for the group Common Cause, a nonpartisan, non-profit advocacy organization, said in a statement after the ruling. "Nothing short of our democracy is at stake."

Citizens United—take two

In December 2011, the Montana Supreme Court defied the U.S. Supreme Court's ruling in *Citizens United*, when it restored the state's Corrupt Practices Act, a law that dated back to 1912. The Act states, "a corporation may not make... an expenditure in connection with a candidate or a political party that supports or opposes a candidate or a political party." Montana's highest court reasoned that the *Citizens United*

decision dealt with federal laws and did not apply to elections on state and local levels. Those who opposed the Montana law asked the U.S. Supreme Court to issue a stay of the Montana Supreme Court's decision. In February 2012, Justice Ruth Bader Ginsburg issued that stay, which put a temporary hold on Montana's ruling.

In a statement attached to the court order, however, Justice Ginsburg, along with Justice Stephen Breyer, both of whom dissented in the *Citizens United* case, wrote, "Montana's experience, and experience elsewhere since this court's decision in *Citizens United v. FEC* makes it exceedingly difficult to maintain that independent expenditures by corporations 'do not give rise to corruption or the appearance of corruption.'" The reference to corruption came directly from the Court's majority opinion in *Citizens United*. Justice Ginsburg went on to write that a petition review of the Montana case "will give the court an opportunity to consider whether, in light of the huge sums currently deployed to buy candidate's allegiance, *Citizens United* should continue to hold sway."

Montana Attorney General Steve Bullock submitted a brief to the U.S. Supreme Court in March 2012, urging them to uphold his state's ban on corporate political spending. There is no guarantee, however, that the Court will take the case and hear oral arguments.

"If the court takes this case, it will create the opportunity on the highest

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Court Protects Free Speech But Also Cruelty to Animals

by Cheryl Baisden

When authorities raided National Football League superstar Michael Vick's Virginia farm in 2007 and uncovered a dog-fighting operation, the criminal charges against him were clear. After pleading guilty to financing the business and participating in abusing pit bulls on the property, Vick was sentenced to 19 months in federal prison. Had he received the maximum penalty under Virginia's animal cruelty laws, the quarterback would have faced five years in jail.

Interestingly, under a federal law enacted in 1999, if Vick had simply been an observer capturing the cruelty on video or in a photo rather than one of the ringleaders of the operation, his sentence could have been just as severe. In fact, three years before Vick's transgressions came to light a Virginia man, Robert Stevens, was sentenced to nearly twice the quarterback's prison term—three years—under the federal law for filming and selling videos of pit bull fights.

The federal **statute** made it a crime to create, sell or possess “any visual or auditory depiction...of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed,” except if the depictions have “serious religious, political, scientific, educational, journalistic, historical, or artistic value.” A federal court in Pennsylvania found Stevens guilty of the crime in 2004. A district court **upheld** his conviction, but the U.S. Court of Appeals for the 3rd Circuit **overturned** his conviction, ruling that the statute was unconstitutional. With *U.S. v. Stevens*, the government **appealed** that ruling to the U.S. Supreme Court. Stevens' attorney argued that the law violated his client's First Amendment right to freedom of expression. The Court agreed with him, voting 8-1 in April 2010 to overturn the law and dismiss the case.

“Generally, the First Amendment allows us to speak and express ourselves freely without any government intrusion,” said Kathleen Hirce, a Florham Park attorney who practices constitutional law. “This means we can express our opinions and speak out against things without being punished for it. In many countries this freedom is not guaranteed; in fact, you can be imprisoned for expressing yourself if what you say is not what the government wants you to say. So the right to free expression, whether it's something we say, write, film, or create in some other way, is something this country is committed to protecting.”

The courts are continually asked to define what this freedom really means, Hirce explained, and occasionally rule that certain types of speech are not protected by the U.S. Constitution. Types of speech that are not protected by the First Amendment involve defamation (intentionally making false statements against someone); obscenity; incitement (making statements that would

cause someone to resort to violence or riot); and speech linked to criminal conduct. The government, in the U.S. Supreme Court case against Stevens, was hoping to have depictions of animal cruelty added to the unprotected list under this last category, in the same way child pornography was added in 1982.

What the Court decided

In his written decision in the *Stevens* case, Chief Justice John Roberts called child pornography “a special case” because the market for it was “intrinsically related to the underlying abuse.” Justice Samuel Alito Jr., the only justice to side with the government in the case, argued that depictions of animal abuse met the same requirements.

Justice Roberts, joined by the remaining seven justices, felt the federal law as it was written covered too broad an area to qualify as unprotected speech. In fact, explained Hirce, under the law someone taking a photo of their pet dog after it was seriously injured in a fight and emailing it to a friend or posting it on Facebook could be in violation of the law, punishable by up to five years in jail. Publishers of hunting magazines and documentary film makers could also be prosecuted under the 1999 law.

In its argument in support of the law, the federal government stated that the legislation's focus was really designed to stop the production and sale of “crush videos,” which generally show women crushing to death small animals, and that the law would be imposed **prudently** in order to try to stop production of the violent films since the participants usually can't be identified, but the makers or distributors can be.

Chief Justice Roberts was skeptical about the argument, writing: “We would not uphold an unconstitutional statute merely because the government promised to use it responsibly.”

According to his attorney, Stevens' case is a prime example of the government using the law irresponsibly. As the first person actually prosecuted under the federal law Stevens had never been involved in crush videos. Stevens ran a business and website that sold videos of pit bull fights, which he did not stage himself. While dog fighting and other forms of animal cruelty are illegal in every state in this country, at least some of Stevens' videos were filmed in Japan, where the activity is legal. Stevens could be charged under the federal law because the legislation didn't just focus on when and where the act occurred, but also on where it was being sold or advertised for sale.

In his **dissenting opinion**, Justice Alito wrote that the Court's ruling would have the “practical effect” of protecting “depraved entertainment.” He claimed that the 1999 law was not enacted “to suppress speech, but to prevent horrific acts of animal cruelty.”

Violent Video Games **CONTINUED FROM PAGE 1**

the age of 18. Any owner or manager (not sales clerk) violating this law would be liable for a fine of \$1,000 for each sale. According to the statute, a video game is defined as violent if actions available to players include “killing, maiming, dismembering, or sexually assaulting an image of a human being...in a manner that...appeals to a deviant or morbid interest...[or] enables the player to virtually inflict serious injury upon images of human beings or characters... which is especially **heinous**, cruel, [and] depraved etc...”

The video game industry, which generates approximately \$10 billion a year, currently has a voluntary rating system in place to aid parents and stores in restricting a minor’s access to violent games. The ratings are EC (Early Childhood), E (Everyone), E10+ (Everyone 10 and older), T (Teens), M (17 and older), and AO (Adults Only—18 or older). Parents can still purchase violent games for their minor children, but stores are encouraged to avoid selling M or AO rated games to minors alone.

Despite being signed into law in 2005 by then Governor Arnold Schwarzenegger, the statute never went into effect because of legal challenges by the video game industry. A federal district court and the U.S. Court of Appeals both ruled the law unconstitutional; however the state of California appealed to the U.S. Supreme Court, which heard oral arguments in November 2010.

Holding of the Court

The U.S. Supreme Court decided the case in June 2011, striking down the California law on the grounds that video games are protected speech under the First Amendment just like books, plays, movies and art. The majority ruled that it is not up to the government to restrict free expression and the law was declared unconstitutional, **affirming** the decision of the lower courts.

In the Court’s **majority opinion**, Justice Antonin Scalia wrote, “The basic principles of freedom of speech and the press, like the First Amendment commands, do not vary when a new and different medium for communication appears. Government has no power to restrict expression because of its message, its ideas, its subject matter or its content.”

According to Justice Scalia, none of the historically recognized exceptions to protected speech, such as obscenity or incitement, applied in this case and the California law attempted to add an additional “violent” category of unprotected speech. Justice Scalia referred to the *U.S. v. Stevens* case from the Court’s last term, where it refused to create a new category of unprotected speech (See *Court Protects Free Speech But Also Cruelty to Animals* article on pg. 4 for an explanation of the *Stevens* case and

what is considered unprotected speech). He explained that the regulation of violence in *Brown* and the regulation of animal cruelty videos in *Stevens* is not obscenity; “violence is not part of the obscenity that the Constitution permits to be regulated,” Justice Scalia wrote.

Always something...

The Court also rejected a link between violent video games and harm to minors, calling the evidence presented by the state “not compelling.” Justice Scalia wrote, “These studies...do not prove that violent video games cause minors to act aggressively...They show at best some correlation between exposure to violent entertainment and minuscule, real-world effects, such as children feeling more aggressive or making louder noises in the few minutes after playing a violent game than after playing a nonviolent game.”

Justice Scalia maintained that California would have had a better argument if there were a tradition of restricting access to violence, but he noted that *Grimm’s Fairy Tales* described the Evil Queen as “trying to poison Snow White... Cinderella’s evil stepsisters have their eyes pecked out by doves...and Hansel and Gretel kill their captor by baking her in an oven.” He also cited the violent examples of Piggy being brutally murdered by other children in William Golding’s *Lord of the Flies* and the cartoon violence of Bugs Bunny, Elmer Fudd and Roadrunner.

Going as far back as the 1800s when dime novels dealing with criminals and Old West villains were blamed for juvenile delinquency, Justice Scalia stated there has always been some form—radio shows, comic books, movies, television, music lyrics—blamed for “fostering a preoccupation with violence and horror among the young, and leading to a rising juvenile crime rate.” Now, according to Justice Scalia, “California claims that video games present special problems because they are ‘interactive’ in that the player participates in the violent action on screen and determines its outcome.” While admitting that the violence can be “astounding” in video games, Justice Scalia wrote, “but disgust is not a valid basis for restricting expression... The Act is invalid unless California can demonstrate that it passes strict scrutiny—that is, unless it is justified by a compelling government interest and is narrowly drawn to serve that interest.”

Agreement with some doubts

While Justice Samuel Alito and Chief Justice John Roberts stood with the majority in the 7 to 2 decision striking down the law, they

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EC

E

E10+

T

M

AO

expressed concern over protecting children from violence. In his **concurring opinion** Justice Alito disagreed “with the approach taken in the Court’s opinion. In considering the application of unchanging constitutional principles to new and rapidly evolving technology, this Court should proceed with caution.”

Citing the worst of the violent games, Justice Alito wrote, “There are games in which a player can take on the identity and reenact the killings carried out by the perpetrators of the murders at Columbine High School and Virginia Tech. There is a game in which players engage in ‘ethnic cleansing’ and can choose to gun down African Americans, Latinos or Jews. In still another game, players attempt to fire a rifle shot into the head of President Kennedy as his motorcade passes by the Texas School Book Depository.”

Unlike the majority, Justice Alito believes playing violent interactive video games is very different from reading a book or watching a movie with excessive violence. “Today’s most advanced video games create realistic alternative worlds in which millions of players immerse themselves for hours on end.” According to Justice Alito, “These games feature visual imagery and sounds that are strikingly realistic, and in the near future video game graphics may be virtually indistinguishable from actual video footage.”

Justice Alito also stated that the Court should be aware that reading a violent scene in literature, such as Dostoyevsky’s *Crime and Punishment*, in which the main character kills an old pawnbroker with an axe, is not comparable to a video game. “Compare that reader,” Justice Alito wrote, “with a video game player who creates an avatar that bears his own image; who sees a realistic image of the victim and the scene of the killing in high definition and three dimensions; who is forced to decide whether or not to kill the victim and decides to do so; who then pretends to grasp an axe, to raise it above the head of the victim, and then to bring it down; who hears the thud of the axe hitting her skull and her cry of pain; who sees her split skull and the sensation of blood on his face and hands. For most people,” he concluded, “the two experiences will not be the same.”

The dissenters

Justice Stephen Breyer would have upheld the California statute as constitutional and believed, unlike the majority, that it was not vague. “All that is required for vagueness purposes,” wrote Justice Breyer, “is that the terms ‘kill,’ ‘maim,’ and ‘dismember’ give fair notice as to what they cover, which they do.” He continued, “California’s law imposes no more than a modest restriction on expression. The statute prevents no one from playing a video game, it prevents no adult from buying a video game, and it prevents no child or adolescent from obtaining a game provided a parent is willing to help. All it prevents,” wrote Justice Breyer, “is a child or adolescent from buying without a parent’s assistance, a gruesomely violent video game of a kind that the industry itself tells us it wants to keep out of the hands of those under the age of 17.”

Justice Breyer also disagreed with the majority about the scientific evidence of violent video games harming minors and quoted a 2009 American Academy of Pediatrics paper that stated “studies...have revealed that in as little as three months, high exposure to violent video games increased physical aggression.”

In arguing the case before the Court, a deputy state attorney general for California referred to the 1968 case of *Ginsberg v. New York* in which the Court prohibited the sale of sexual material to minors, but Justice Scalia dismissed that argument, claiming the two cases are not comparable. Justice Breyer, however, cited *Ginsberg* in his dissent, pointing out the hypocrisy of prohibiting depictions of nudity to minors but not violence.

“The Court makes clear [with the *Brown* decision] that a State cannot prohibit the sale to minors of the most violent interactive video games. But what sense,” Justice Breyer asks, “does it make to forbid selling to a 13-year-old boy a magazine with an image of a nude woman, while protecting a sale to that 13-year-old of an interactive video game in which he actively, but virtually, binds and gags the woman, then tortures and kills her? What kind of First Amendment would permit the government to protect children by restricting sales of that extremely violent video game only when the woman—bound, gagged, tortured and killed—is also topless?”

Justice Clarence Thomas also dissented on the grounds that, in his opinion, minors have limited First Amendment rights. “‘The freedom of speech,’ as originally understood,” wrote Justice Thomas, “does not include a right to speak to minors (or a right of minors to access speech) without going through the minors parents or guardians.”



In the profile, he made up answers to questions like, “Are you a health freak?” with responses such as, “big steroid freak.” When the school learned about the profile, he was given a punishment that included, among other things, a 10-day, out-of-school suspension; and he was told he could not participate in his graduation ceremony.

The other case, *J.S. v. Blue Mountain School District*, involved an eighth grade student in Pennsylvania, who, along with a friend, created a MySpace profile about her principal. (The friend, known as K.L. in court documents, did not sue the school and is therefore not part of the lawsuit.) The profile was notably more vulgar than the one Layshock created, making “shameful personal attacks aimed at the principal and his family,” according to court documents. When the principal learned about the MySpace profile from another student, he threatened to pursue legal action and gave J.S. a 10-day, out-of-school suspension.

And the court’s decision is ...

Two separate panels of the Third Circuit Court originally decided the cases, rendering opposing decisions. Given the similarity of the two cases, the Third Circuit Court decided it should address the inconsistencies and issued final opinions for both cases in June 2011. The Court ruled in favor of the students in both cases, finding that their offensive speech did not rise to the level where action by the school needed to be taken.

In reaching its decision the court relied heavily on the landmark case of *Tinker v. Des Moines Independent Community School District*. Decided in 1969 by the U.S. Supreme Court, *Tinker* concerned several students who wore black armbands to school to protest the Vietnam War. In *Tinker*, the Court outlined situations where a school could limit student speech, including speech that materially and substantially disrupts the school environment, and speech that violates the rights of others.

In the *Layshock* and *J.S.* cases the Third Circuit Court found that the students’ actions were not sufficient to warrant school action under *Tinker*. Also, the court noted that the profiles created by *Layshock* and *J.S.* were intended as a joke—even if a bad one—and that a reasonable person would not take them seriously.

Expressing the court’s **majority opinion** in the *Layshock* case, Judge Theodore A. McKee wrote, “It would be an unseemly and dangerous precedent to allow the state, in the guise of school authorities, to reach into a child’s home and control his/her actions there to the same extent that it can control that child when he/she participates in school-sponsored activities.”

On the other hand, Judge D. Michael Fisher, who dissented in the *J.S.* case, had this to say: “The majority

embraces a notion that student hostile and offensive online speech directed at school officials will not reach the school. But with near-constant student access to social networking sites on and off campus, when offensive and malicious speech is directed at school officials and disseminated online to the student body, it is reasonable to anticipate an impact on the classroom environment.”

What does this mean for students?

At first glance, the court’s findings in the *Layshock* and *J.S.* cases may appear like a green light for students to say and do what they want from the privacy of their home computers.

But hold on. Not so fast. First, these cases are being appealed to the U.S. Supreme Court, which gets the final say and could potentially disagree with the decision of the Third Circuit Court (if it decides to hear the cases).

Also, while *Layshock* and *J.S.* won their Third Circuit cases, there’s no guarantee that another student who engages in similar activity will have the same outcome. Even if the circumstances seem the same, you can’t forecast what kind of disruption will result in any given school, noted Jordan Rubin, a third-year law student at Rutgers Law School–Newark, who recently participated in a National Moot Court Competition involving a case related to this topic.

Also, it is important to note that the Internet postings in both cases were aimed at school officials. Rubin suggests that the courts may perhaps be less tolerant of negative speech directed at other students. It is unclear what the U.S. Supreme Court meant in *Tinker* when it limited speech that violates the rights of others, Rubin points out.

In the area of student speech, the *J.S.* and *Layshock* cases “are forging new ground,” says Jordan’s father, David Rubin, a New Jersey attorney who represents public school districts throughout New Jersey.

Looking ahead, David Rubin predicts that the courts will likely narrow their focus on what constitutes a “substantial disruption” that is significant enough to require school action. For example, if a school official or administrator is made a laughingstock and can no longer perform his or her job effectively, would schools then have the legal authority to intervene?

In the meantime, students will have to use their best judgment when it comes to posting things online. It’s a good idea to think twice before you put yourself out there, says Jordan Rubin, noting that the Internet is “written in pen, not pencil.” If you’re worried about the legal consequences of what you do, just be a nice person, he suggests, and you’ll be okay. 



Potential impact of decision

Assistant Professor Sarah Staszak of the Political Science Department of The City College of New York doesn't believe the current Court would ever add the "category of violent speech to forms of speech that it has determined not to be protected by the First Amendment." Staszak explained, "from their point of view, to do so would be to break markedly from **precedent** in such a way that those following a more conservative judicial **ideology** are largely unwilling to do and also this is not a Court that has been supportive of increasing the power of Congress to regulate new areas of political and social life." Staszak believes that precedent and continuity

in the law are valued highly by this Court, and, except under "extraordinary circumstances," free speech is a "fundamental right" that is strongly protected.

When it relates to extreme violence, which is protected speech, and obscenity, which is unprotected speech, Professor Staszak felt that simply referring to historical precedent and "maintaining continuity of the law" is not enough. "In my view," she stated, "the Court is not adequately adjusting to the new forms and forums of speech that have developed over time... clearly the Founders did not anticipate the challenges that free speech in video games would present, violent or otherwise." Staszak continued, "The Court's current

position really illustrates a core predicament for judges: how to best balance the value of legal precedent with the need to adjust to the unique problems that arise in our ever-changing society." 

**VIDEO
VIOLENCE**

Are Corporations People? **CONTINUED FROM PAGE 3**

legal stage to present a compelling case to the Supreme Court that it was dead wrong in the *Citizens United* decision," Fred Wertheimer told ABC News after the stay was issued. President of Democracy 21, a non-profit, nonpartisan organization dedicated to making democracy work for all Americans, Wertheimer went on to say, "That may not convince the five justices who decided the case to change their opinion, but it will be part of building the case that will ultimately prevail that *Citizens United* was wrongly decided and must be reversed."

Amending the Constitution

There are those who believe the only way to settle the issue of political campaign spending and the rights of corporations is to amend the U.S. Constitution—a very lengthy process. Vermont Senator Bernie Sanders has proposed such an amendment.

While Senator Sanders said he does not take amending the U.S. Constitution lightly, in an op-ed for *The Huffington Post*, he wrote, "We have got to send a constitutional amendment to the states that says simply and straightforwardly what everyone—except five members of the U.S. Supreme Court—understands: Corporations are not people with equal constitutional rights. Corporations are subject to regulation by the people. Corporations may not make campaign contributions—the law of the land for the last century. And Congress and states have the power to regulate campaign finances." 



affirm — to uphold, approve or confirm.

appealed — when a decision from a lower court is reviewed by a higher court.

concurring opinion — a separate opinion delivered by one or more justices or judges that agrees with the decision of the court but not for the same reasons.

dissenting opinion — a statement written by a judge or justice that disagrees with the opinion reached by the majority of his or her colleagues.

heinous — atrocious or hateful.

ideology — a way of thinking that is characteristic of one political theory.

majority opinion — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues.

overturned — in the law, to void a prior legal precedent.

precedent — a legal case that will serve as a model for any future case dealing with the same issues.

prudent — exercising sound or wise judgment.

statute — legislation that has been signed into law.

upheld — supported; kept the same.