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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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BROWN, GOVERNOR OF CALIFORNIA, ET AL. *v.* ENTERTAINMENT MERCHANTS ASSOCIATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 08–1448. Argued November 2, 2010—Decided June 27, 2011

Respondents, representing the video-game and software industries, filed a preenforcement challenge to a California law that restricts the sale or rental of violent video games to minors. The Federal District Court concluded that the Act violated the First Amendment and permanently enjoined its enforcement. The Ninth Circuit affirmed.

Held: The Act does not comport with the First Amendment. Pp. 2–18.

(a) Video games qualify for First Amendment protection. Like protected books, plays, and movies, they communicate ideas through familiar literary devices and features distinctive to the medium. And "the basic principles of freedom of speech . . . do not vary" with a new and different communication medium. *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, 503. The most basic principle—that government lacks the power to restrict expression because of its message, ideas, subject matter, or content, *Ashcroft* v. *American Civil Liberties Union*, 535 U. S. 564, 573—is subject to a few limited exceptions for historically unprotected speech, such as obscenity, incitement, and fighting words. But a legislature cannot create new categories of unprotected speech simply by weighing the value of a particular category against its social costs and then punishing it if it fails the test. See *United States* v. *Stevens*, 559 U. S. ___, ___. Unlike the New York law upheld in *Ginsberg* v. *New York*, 390 U. S. 629, California's Act does not adjust the boundaries of an existing category of unprotected speech to ensure that a definition designed for adults is not uncritically applied to children. Instead, the State wishes to create a wholly new category of content-based regulation that is permissible only for speech directed at children. That is unprecedented and

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mistaken. This country has no tradition of specially restricting children's access to depictions of violence. And California's claim that "interactive" video games present special problems, in that the player participates in the violent action on screen and determines its outcome, is unpersuasive. Pp. 2–11.

(b) Because the Act imposes a restriction on the content of protected speech, it is invalid unless California can demonstrate that it passes strict scrutiny, *i.e.,* it is justified by a compelling government interest and is narrowly drawn to serve that interest. *R. A. V.* v. *St. Paul*, 505 U. S. 377, 395. California cannot meet that standard. Psychological studies purporting to show a connection between exposure to violent video games and harmful effects on children do not prove that such exposure causes minors to act aggressively. Any demonstrated effects are both small and indistinguishable from effects produced by other media. Since California has declined to restrict those other media, *e.g.,* Saturday morning cartoons, its video-game regulation is wildly underinclusive, raising serious doubts about whether the State is pursuing the interest it invokes or is instead disfavoring a particular speaker or viewpoint. California also cannot show that the Act's restrictions meet the alleged substantial need of parents who wish to restrict their children's access to violent videos. The video-game industry's voluntary rating system already accomplishes that to a large extent. Moreover, as a means of assisting parents the Act is greatly overinclusive, since not all of the children who are prohibited from purchasing violent video games have parents who disapprove of their doing so. The Act cannot satisfy strict scrutiny. Pp. 11–18.

556 F. 3d 950, affirmed.

SCALIA, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, in which ROBERTS, C. J., joined. THOMAS, J., and BREYER, J., filed dissenting opinions.