

Testimony of

Representative Jeff Johnson

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Testimony of Rep. Jeff Johnson before the United States Senate
Subcommittee on the Constitution, Civil Rights and Property Rights

Thank you, Mr. Chairman and Committee members, for allowing me to talk with you today. My name is Jeff Johnson. I'm a third-term Republican serving as Assistant Majority Leader in the Minnesota House of Representatives and Chairman of the House Civil Law Committee. More importantly, I'm the father of two little boys who would play video games 12 hours a day if my wife and I didn't limit them to three hours a week.

I am the House author of a bill in Minnesota that takes a rather modest step towards restricting access by our kids to extremely violent or sexually explicit video games. Sen. Sandy Pappas, a Democrat from St. Paul, has already passed this bill off the Senate floor. I hope to do the same in the Minnesota House in the next few weeks.

The bill is very simple and narrowly tailored. It provides that children under 17 cannot rent or buy video games that are rated "M" (for Mature) or "AO" (for Adults Only). If they attempt to do so, they are subject to a \$25 fine. Our bill also requires each retailer of these games in Minnesota to post a clearly visible sign regarding this restriction.

My intent with this legislation is not to make criminals out of kids or to make money for the state \$25 at a time. I suspect there will be little or none of that. I am hopeful, however, that the new law will catch the attention of at least a few of the painfully oblivious parents in our state who are paying absolutely no attention to some of the garbage their little kids are playing on their video game machines.

As I mentioned, I have two little boys at home. Our oldest is in second grade and I'm amazed at how many of his friends play "M" rated video games on a regular basis. I would like to believe that at least some of their parents would put a stop to that if only we could get their attention.

I have been working on other ways to get their attention with Dr. David Walsh and the Minneapolis-based National Institute on Media and the Family, which is probably the most respected organization in the country addressing the impact of the media on children and families. But I believe we also have to do something legislatively.

I assume you all know that we're not talking about the equivalent of an R-rated slasher movie. Many of these games are absolutely horrific. They allow kids to learn firsthand how to kill, torture, mutilate and rape in graphic detail and vivid reality. They don't watch someone else do it, they get to do it themselves, and in many of these games, the more violent, merciless and gruesome you are, the more points you score.

I could not leave here today without being certain that you all comprehend the nature of the violence in these games, so I brought with me brief descriptions of four popular M-rated games that are all readily available at any large retailer or video rental store in Minnesota.

Grand Theft Auto - This was the most popular video game in America last year. The player is a young man who is trying to gain the respect of street gangsters and other criminals. The more creative and brutal you are in killing innocent people, the more respect you gain and the more points you score. One example of a creative kill would be to beat someone to death with a bat until he drowns in his own blood and then when the ambulance arrives, you can kill the driver and use the ambulance to kill more people on the street. Another way to score points is to have sex with a prostitute, then if you beat her to death afterward and take your money back you score some bonus points.

Clock Tower 3 - This is a survival horror game about a young girl who is being chased by murderers who are attempting to kill her and her family. In one scene, a little girl with pigtails is caught by her attacker who repeatedly smashes her head against a wall with a sledgehammer. Later you see her ghost covered in blood playing a piano while her father is impaled onto a fence. Another scene shows the killer gouging out a man's eyeballs then lowering the man's elderly mother into a vat of acid as she begs for mercy.

Manhunt - In this game, the player is a mass murderer who sometimes wears a clown mask to disguise himself. You score points by, of course, killing people in creative and gruesome ways. For example, you can use piano wire to grab a man from behind and saw at his neck, pushing your foot up against his back until his head falls off. You can suffocate someone with a clear plastic bag. You can twist large shards of glass into someone's eyeballs or you can use a sickle to split open someone's stomach or stab a crowbar into the back of someone's head and pry it apart.

Postal 2 - In this serial killer game, the player earns points by killing as many innocent people as possible. You can beat people to death or chop their heads off with a shovel (and play soccer with their severed heads). You can kill them with a sledgehammer, a sickle or any other number of weapons. You pile up the bloody bodies on the screen to score more points. You get extra points if you are able to urinate in a victim's mouth before you kill him or her. And you can even open fire on a gay pride march, a minority community celebration and a parade of police officers.

I don't enjoy reading these descriptions. They literally make me sick to my stomach, especially knowing that little kids all over the state of Minnesota are playing these games. We need to do something about it.

In our Minnesota bill, we have crafted very narrow language in order to address the constitutional concerns that exist about content-based restrictions of speech. We are not restricting adults or parents in any way. If a parent is comfortable with their child playing adult video games, we don't interfere with that. We don't restrict the ability of kids to play these games. If they have them, they can play them. We are simply seeking to stop children under 17 from themselves renting or buying adult video games.

Despite dire warnings from the Entertainment Software Association, I believe that our bill would survive a constitutional challenge. Let me tell you why.

There is only one court decision that has any precedential value in Minnesota on this issue. That is the case of Interactive Digital Software Association v. St. Louis County, 329 F.3d 954 (8th Cir. 2003). In that case, the Eighth Circuit Court of Appeals ruled in favor of the video game industry and struck down a St. Louis County ordinance that made it unlawful to sell, rent or make available violent video games, or to permit minors to play such games without a parent or guardian's consent.

First of all, the St. Louis ordinance in question was a great deal broader than our very narrowly tailored bill in Minnesota, an important distinction as the Eighth Circuit in this case, along with courts in the handful of other cases on this issue, made a point that any restriction of speech must be narrowly tailored to serve a compelling state interest. We have a very narrowly tailored bill; St. Louis County did not.

Much more important, however, is the fact that the St. Louis County case was argued more than three years ago and the court determined at that time that there was no compelling state interest to support the ordinance because no credible evidence was presented at trial showing a link between excessively violent video games and the psychological health of children.

With respect to evidence of this link, the court found that nothing more than the "vague generalities" of one psychologist and "conclusory comments" from county council members and a high school principal were presented at trial. Stating that the Government had the burden to present more than just "anecdote and supposition", the Court held that the St. Louis County ordinance was not constitutional.

Much has changed in the three to four years since the St. Louis County case was argued. I think I could spend an hour on the Internet this afternoon and present the Eighth Circuit with better evidence of a compelling state interest than was presented in 2002 when this case was argued. In fact, we've probably heard more compelling testimony in a

matter of a few minutes here today than was heard at that entire trial. The scientific evidence has advanced dramatically in the past few years and, I suspect, will continue to do so.

A court in Minnesota will only need to look at the very defined scope of this bill, the nature of these games as they exist today as opposed to 2002 (as we know they get exceedingly violent and brazen each year as one game tries to top the last) and the recent and voluminous studies showing the effects of these games on our children, and I am very confident that this modest bill will survive any constitutional challenge that comes along.

Maybe I have a misplaced faith in our court system, but I just can't believe otherwise. Our little Minnesota bill puts some very minor restrictions on young children buying video games that teach them how to kill cops, beat prostitutes to death, and torture and murder as many innocent people as they can find. If that small measure violates our Constitution, I'm not sure I recognize my own country anymore.

Thank you for allowing me to speak to you today and for taking time to look into this very important issue.

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