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United States v. Am. Library Ass'n 539 U.S. 194 (2003)

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UNITED STATES V. AM. LIBRARY ASS'N

539 U.S. 194 (2003)

I. INTRODUCTION

Appellant, the United States, appealed the final judgment of a three-judge panel of the District Court for the Eastern District of Pennsylvania, which held that the Children's Internet Protection Act ("CIPA") was facially unconstitutional. Appellees, American Library Association ("ALA"), several regional library associations, Web publishers and library patrons sued the United States challenging the constitutionality of CIPA's filtering provisions.[1] Appellees brought this challenge based on two claims. First, they alleged that CIPA's filtering provisions violated the First Amendment.[2] Second, Appellees alleged that CIPA placed "unconstitutional conditions" on the receipt of federal funds.[3]

II. BACKGROUND

Public libraries receive federal financial assistance to help them provide Internet access to their patrons.[4] The Telecommunications Act of 1996 established the E-Rate program, which enables public libraries to purchase Internet access at rates below the competitive price. [5] Libraries also receive federal financial assistance pursuant to the Library Services Technology Act ("LSTA"), which enables the Institute of Museum and Library Services to provide grants to libraries to "assis[t] libraries in accessing information through electronic networks."[6] Using these programs, libraries have

1. United States v. Am. Library Ass'n, 539 U.S. 194 (2003).
2. *Id.*
3. *Id.*
4. *Id.* at 199.
5. *Id.*
6. *Id.* (citing Library Services and Technology Act, 20 U.S.C. § 9141(a)(1)(C) (2003)).

succeeded in providing Internet access to their patrons.[7] In 2000, 95 percent of the country's libraries supplied Internet access to the public.[8]

While the Internet access provided by public libraries allows library patrons access to a wealth of educational, cultural, and creative material, it also provides easy access to online pornography.[9] Once Congress realized that library patrons, including children, used library computers to access online pornography, sometimes viewed nonconsensually by other patrons who saw the images left on the computer screen or at library printers, Congress contemplated a remedy to the situation. Believing that the E-rate program and LSTA grants were facilitating access to the pornography, Congress enacted CIPA. CIPA amended the Telecommunications Act of 1996 and the Library Services and Technology Act to require that public libraries have "a policy of Internet safety for minors that includes the operation of a technology protection measure . . . that protects against access" by children and adults to "visual depictions" that are "harmful to minors."[10] The Act defines a "technology protection measure" as "a specific technology that blocks or filters Internet access to material covered by [CIPA]".[11] CIPA allows libraries to disable the filters allowing patrons to access pornographic material for legitimate research or other lawful purposes.[12] However, the E-rate and LSTA programs provide different guidelines for when the library is allowed to disable the filter.[13] The E-rate program allows disabling "during use by any

7. *Am. Library Ass'n*, 539 U.S. at 199.

8. *Id.* (citing J. Bertot & C. McClure, *Public Libraries and the Internet 2000: Summary Findings and Data Tables*, 3 (Sept. 7, 2000) *available at* http://nclis.gov/statusru/2000plo.pdf (last visited November 4, 2004).

9. *Id.* (citing Am. Library Ass'n v. United States, 201 F. Supp. 2d 401, 419 (E.D. Pa. 2002)).

10. *Id.* (citing Library Services Technology Act, 20 U.S.C. §§ 9134(f)(1)(A)(i) and (B)(i) (2003); Telecommunications Act, 47 U.S.C. §§ 254(h)(6)(B)(i) and (C)(i) (2002)).

11. *Id.* (citing 47 U.S.C. § 254(h)(7)(I)).

12. *Id.* (citing 20 U.S.C. § 9134(f)(3); 47 U.S.C. § 254(h)(6)(D)).

13. *Am. Library Ass'n,* 539 U.S. at 201.

adult," whereas the LSTA program permits disabling during use by any person.[14]

III. LEGAL ANALYSIS

In *United States v. American Library Ass'n, Inc.* the United States Supreme Court considered whether a statute that makes the receipt of public funds contingent on the requirement that public libraries install filters that block pornographic images or other images harmful to minors is facially unconstitutional.[15] Following a complete trial, the district court held that CIPA was unconstitutional on its face and enjoined the relevant agencies from enforcing it.[16] Specifically, the district court held that the filtering mechanism constituted a content-based restriction on access to a public forum, which required strict scrutiny.[17] The district court found that libraries made the affirmative decision to provide patrons with Internet access, and it necessarily made accessible a limitless array of topics, speakers, and viewpoints.[18] It reasoned that libraries provided Internet access for the public to be used in "expressive activity."[19] The court subsequently held that the filter is not sufficiently narrowly tailored to survive strict scrutiny and is therefore unconstitutional.[20] Reviewing the district court's decision *de novo*, the Supreme Court found, contrary to the district court, that the Internet access provided by public libraries does not constitute a public forum, allowing the Court to employ a rational basis review.[21] Based on this review, the Court concluded that the filters' content-based restrictions established by CIPA are constitutional, since the government has broad discretion in

14. *Id.* (citing 47 U.S.C. § 254(h)(6)(D) (2002); 20 U.S.C. § 9134(f)(3) (2003)).
15. *Id.*
16. *Id.* at 202.
17. *Id.*
18. *Id.*
19. *Am. Library Ass'n,* 539 U.S. at 202.
20. *Id.* at 203.
21. *Id.* at 205.

deciding what private speech to make available to the public.[22]

A. CIPA is a valid use of Congress' spending power because it does not induce libraries to violate the First Amendment

The Court began its analysis of the constitutionality of the Internet filter provisions of the E-rate and LSTA programs by recognizing that Congress has significant freedom to attach conditions to the receipt of federal assistance in its effort to promote its goals.[23] The Court also pointed out that Congress may not use conditions to induce the recipient of the funds to carry out acts that would be unconstitutional if the recipient were to behave in the same manner itself, independent of the Congressional action.[24] In order to determine if the condition on which Congress places the receipt of funds violates the First Amendment, the Court looked at the role of libraries in our society.[25]

The Court examined the role of libraries as a method for determining the broader and more significant question: whether a public library rises to the level of a public forum and, as such, would require that strict scrutiny be used to review any of its content-based judgments.[26] The Court praised the libraries' valuable mission of "facilitating learning and cultural enrichment," however it disagreed with the district court's conclusion that this important mission creates a public forum.[27] The district court offered, in support of its public forum finding, ALA's "Library Bill of Rights," also known as its "Freedom to Read Statement."[28] The Library Bill of Rights states that libraries shall provide "[b]ooks and other . . . resources for the interest, information, and

22. *Id.* at 204.
23. *Id.* at 203.
24. *Id.*
25. *Am. Library Ass'n,* 539 U.S. at 203.
26. *Id.* at 202-03.
27. *Id.* at 203.
28. Am. Library Ass'n v. United States, 201 F. Supp. 2d 401, 419 (E.D. Pa. 2002).

enlightenment of all people of the community the library serves."[29] However, the Court emphasized that the library's goal of collecting and providing materials that best suit the needs and interests of the community necessitates that the library use discretion and make content-based decisions in its selection process.[30] This broad discretion to make the necessary content-based judgments regarding the material that libraries provide their patrons is not congruous with the notion of a public forum, which does not allow for such content-based distinctions.[31]

Based on its examination of the general role of libraries, the Court refused to extend the public forum principles to Internet access in public libraries.[32] The Court explained that the Internet access at issue here is neither a "traditional" nor "designated" public forum.[33] The Court previously has refused to extend the status of a traditional public forum "beyond its historical confines."[34] The Court also declined to give libraries the status of "designated" public forum because the Internet has not "immemorially been held in trust for the use of the public...for purposes of assembly, communication of thoughts between citizens, and discussing public questions."[35] In order for Internet access provided by a public library to constitute a "designated" public forum, the government must affirmatively offer its property as a forum for public discourse.[36] The Court concluded that the government had not offered its property, in the context of Internet access at public libraries, for the purpose of public discourse.[37]

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29. *Am. Library Ass'n*, 539 U.S. at 204 (citing *Am. Library Ass'n.*, 201 F. Supp. 2d at 420).

30. *Id.* at 204-05.

31. *Id.* at 205.

32. *Id.* at 206.

33. *Id.* at 205 (citing Cornelius v. NAACP Legal Defense & Ed Fund, Inc., 473 U.S. 788, 802 (1985) (describing the different types of forums)).

34. *Id.* at 205 (quoting Arkansas Educ. Television Com'n v. Forbes, 523 U.S. 666, 678 (1998)).

35. *Am. Library Ass'n,* 539 U.S. at 205 (quoting Int'l Soc. for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 679 (1992)).

36. *Id.* at 206 (citing *Cornelius*, 473 U.S. at 802-803).

37. *Id.* at 206.

The Court distinguished the instant case from *Rosenberger v. Rector and Visitors of Univ. of Va.*, which the district court viewed as analogous to the current facts.[38] In *Rosenberger*, the University of Virginia excluded a student religious publication from using resources from the "Student Activity Fund" which was intended to subsidize student publications.[39] There, the Court held that the Fund created a limited public forum because it provided financial resources to student groups wishing to express their views and ideas via student publications, and could therefore not discriminate based on the viewpoint of the publication.[40] The Court distinguished the instant case from *Rosenberger* by asserting that public libraries do not provide Internet access for the purpose of providing a public forum for Web site authors and publishers to express themselves, but rather to simply make information available to its patrons.[41] The Court further explained that a public libraries' Internet access does not exist to "encourage a diversity of views from private speakers," as did the "Student Activity Fund" in *Rosenberger*.[42] Instead, the Internet access serves the same purpose as libraries' books, namely, enabling research, learning and recreation by making the appropriate materials available.[43] The Internet is simply a newer technological medium for accessing the same type of information.[44]

Appellees argued, and the district court agreed, that although public libraries have broad discretion in their selection of print material and they affirmatively choose to acquire every book, the same does not and cannot apply to the Internet because of the vastness of the material on the Web.[45] The Court, however, did not find the technological distinction between books and the Internet

38. *Id.* (citing Rosenberger v. Rector and Visitors of the Univ. of Va., 515 U.S. 819 (1995)).
39. *Id.*
40. *Id.*
41. *Am. Library Ass'n,* 539 U.S. at 206-07.
42. *Id.* at 206 (quoting *Rosenberger*, 515 U.S. at 834).
43. *Id.* (citing *Cornelius*, 473 U.S. at 805).
44. *Id.* at 207.
45. *Id.* at 207-08.

to be constitutionally significant.[46] The Court reiterated that a library's discretion and ability to make content-based collection decisions depends on its original role and purpose: to identify quality material appropriate to the interests and needs of the community.[47] The library's discretion does not, as the Appellees and the district court suggest, turn on the medium of the material made available.[48] The Court pointed out that most public libraries already exclude print pornography as part of their broad discretion.[49] Therefore, it would not be rational to provide different standards for a library's ability to exclude online pornography, since whatever the medium of the pornography, a library's decision to exclude is for the same reason.[50]

Based on the Court's conclusion that Internet access provided by a public library does not constitute a public forum, it was also able to dispose of the district court's critique that the filtering software significantly overblocks content.[51] Both the district court and the dissent noted that because of the limits of the software, it necessarily blocks significantly more than the type of speech that is intended to be blocked as prescribed by the statute.[52] Specifically, the software relies on text and not images to block Web sites and because of that technological limitation, "many erroneously blocked [Web] pages contain content that is completely innocuous for both adults and minors, and that no rational person could conclude matches the filtering companies' category definitions, such as 'pornography' or 'sex'."[53] This is a significant critique of the filtering mechanism behind CIPA because it provides the basis for the district court's conclusion that CIPA is not narrowly tailored. Both the district court and the

46. *Id.* at 208
47. *Am. Library Ass'n,* 539 U.S. at 208.
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.* at 208-09.
52. *Id.* at 221.
53. *Am. Library Ass'n,* 539 U.S. at 208-209 (quoting *Am. Library Ass'n*, 201 F. Supp. 2d at 449).

dissent reason that since the software through which CIPA is carried out cannot limit its content-based judgments to the appropriate content, it is not sufficiently narrowly tailored.[54]

The Court attacked the dissent's critique on two fronts. First, the Court called attention to the fact libraries can unblock specific Web sites or even disable the filter at the request of a patron.[55] The Court noted that a patron need only ask the librarian for the filtering to be disabled to "enable access for bona fide research or other lawful purposes."[56] The Government explained at trial that the patron would not have to indicate to the librarian why he wished the site to be unblocked.[57] The dissent argued that requiring a patron to ask the librarian to unblock the Web site may cause embarrassment such that patrons will not actually utilize the unblocking, and constitutionally protected speech will remain blocked.[58] However, the Court dismissed this argument because the Constitution does not guarantee citizens will be free from embarrassment in the pursuit of constitutionally protected speech.[59] More importantly, the Court's analysis was not based on strict scrutiny and therefore did not require that the content-based restriction be narrowly tailored to meet a compelling government objective.[60] Therefore, some overblocking of constitutionally protected speech is permissible, especially given that patrons can ask the librarian to unblock the relevant Web sites.[61]

B. CIPA does not unconstitutionally condition receipt of funds on

54. *Id.*
55. *Id.* at 209.
56. *Id.* at 209 (quoting 20 U.S.C. § 9134(f)(3) (disabling allowed for both minors and adults); 47 U.S.C. § 254(h)(6)(D) (disabling allowed only for adults)).
57. *Id.*
58. *Id.* at 209
59. *Am. Library Ass'n,* 539 U.S. at 209.
60. *Id.* at 195.
61. *Id.* at 209.

the installation of filters that limit access to constitutionally protected speech

Appellees also argued that CIPA imposes an unconstitutional condition on the receipt of the E-rate and LSTA subsidies.[62] Specifically, Appellees asserted that CIPA requires libraries to forego their right to provide their patrons access to constitutionally protected speech, as protected by the First Amendment, in order to receive the federal assistance at issue.[63] The Court acknowledged that "the government may not deny a benefit to a person on a basis that infringes his constitutionally protected...freedom of speech even if he has no entitlement to that benefit."[64] The Government asserted that because the libraries are themselves public entities, they do not possess First Amendment rights and therefore this claim necessarily fails.[65] The Court avoided addressing whether public libraries in fact have First Amendment rights, because the Court concluded that even if the libraries can bring an "unconstitutional conditions" claim, it would fail on the merits.[66]

The Court rejected the Appellees' "unconstitutional conditions" claim because it concluded that Congress' enactment of CIPA does not deny the libraries a benefit.[67] CIPA's amendments to the E-rate and LSTA programs merely require that the federal assistance doled out be used for the purposes for which it is intended.[68] The Court reasoned that the E-rate and LSTA programs were originally intended to provide the financial resources to assist libraries in acquiring quality material that is of interest to and appropriate for their communities.[69] While the subsidies were designed to add to the libraries' collections via the Internet, they did not alter the

62. *Id.* at 210.
63. *Id.*
64. *Id.* (citing Board of Comm'rs, Wabansee City. v. Umbehr, 518 U.S. 668, 674 (1996), quoting Perry v. Snidermann, 408 U.S. 593, 597 (1972)).
65. *Am. Library Ass'n*, 539 U.S. at 210.
66. *Id.*
67. *Id.* at 211.
68. *Id.*
69. *Id.*

underlying intent of the programs in fitting with the libraries' traditional role within the community.[70] Emphasizing the broad power Congress possesses to place conditions on the receipt of federal funds, the Court found support in *Rust v. Sullivan*, providing that "when the Government appropriates public funds to establish a program it is entitled to define the limits of that program."[71] In *Rust*, Congress appropriated funds for family planning but excluded programs that provided abortion counseling from receiving those funds.[72] The Court held that Congress did not place an unconstitutional condition on the funds because it merely defined the limits of the program for which it appropriated funds and did not deny a benefit to anyone.[73] Therefore, the Court concluded that, as in *Rust*, the funds appropriated in the instant case did not unconstitutionally condition public libraries to forego their First Amendment right to provide constitutionally protected speech in order to receive federal assistance.[74]

IV. CONCLUSION

Ultimately, the United States Supreme Court reversed the District Court for the Eastern District of Pennsylvania's final judgment that held CIPA to be facially unconstitutional. While the Supreme Court addressed the libraries' claims that CIPA violated the First Amendment's protection of free speech and that it placed an unconstitutional condition on public libraries, the Court placed the majority of its attention and analysis on the former claim. In its review of whether CIPA violated the First Amendment, the Court focused on the role of libraries within our society, and in the end, held that public libraries' traditional role necessitates that they have broad discretion to make content-based judgments regarding the selection of material available, both in the stacks and on the

70. *Id.*

71. *Am. Library Ass'n.*, 539 U.S. at 211 (quoting Rust v. Sullivan, 500 U.S. 173, 194 (1991)).

72. *Id.* (citing *Rust*, 500 U.S. at 178).

73. *Id.*

74. *Id.*

Internet. The Court ultimately concluded that Internet access provided by public libraries did not rise to the level of a public forum. Therefore, the content-based restrictions imposed by CIPA are in harmony with libraries' traditional role and do not violate the First Amendment. Similarly, the Court based Appellees' "unconstitutional conditions" claim on the role of the library within society, holding that Congress was within its authority to define the limits of the programs to which it appropriates funds. Thus, Appellees' victory in the Eastern District of Pennsylvania turned to defeat in front of the United States Supreme Court and CIPA still stands.

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