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SUPREME COURT OF THE UNITED STATES

No. 02–361

UNITED STATES, ET AL., APPELLANTS *v.* AMERICAN LIBRARY ASSOCIATION, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[June 23, 2003]

CHIEF JUSTICE REHNQUIST announced the judgment of the Court and delivered an opinion, in which JUSTICE O'CONNOR, JUSTICE SCALIA, and JUSTICE THOMAS joined.

To address the problems associated with the availability of Internet pornography in public libraries, Congress enacted the Children's Internet Protection Act (CIPA), 114 Stat. 2763A–335. Under CIPA, a public library may not receive federal assistance to provide Internet access unless it installs software to block images that constitute obscenity or child pornography, and to prevent minors from obtaining access to material that is harmful to them. The District Court held these provisions facially invalid on the ground that they induce public libraries to violate patrons' First Amendment rights. We now reverse.

To help public libraries provide their patrons with Internet access, Congress offers two forms of federal assistance. First, the E-rate program established by the Telecommunications Act of 1996 entitles qualifying libraries to buy Internet access at a discount. 110 Stat. 71, 47 U. S. C. §254(h)(1)(B). In the year ending June 30, 2002, libraries received $58.5 million in such discounts. Redacted Joint Trial Stipulations of All Parties in Nos. 01–CV–1303, etc.

(ED Pa.), ¶128, p. 16 (hereinafter Jt. Tr. Stip.). Second, pursuant to the Library Services and Technology Act (LSTA), 110 Stat. 3009–295, as amended, 20 U. S. C. §9101 *et seq.,* the Institute of Museum and Library Services makes grants to state library administrative agencies to "electronically lin[k] libraries with educational, social, or information services," "assis[t] libraries in accessing information through electronic networks," and "pa[y] costs for libraries to acquire or share computer systems and telecommunications technologies." §§9141(a)(1)(B), (C), (E). In fiscal year 2002, Congress appropriated more than $149 million in LSTA grants. Jt. Tr. Stip. ¶185, p. 26. These programs have succeeded greatly in bringing Internet access to public libraries: By 2000, 95% of the Nation's libraries provided public Internet access. J. Bertot & C. McClure, Public Libraries and the Internet 2000: Summary Findings and Data Tables, p. 3 (Sept. 7, 2000), http://www.nclis.gov/statsuru/2000plo.pdf (all Internet materials as visited Mar. 25, 2003, and available in Clerk of Court's case file).

By connecting to the Internet, public libraries provide patrons with a vast amount of valuable information. But there is also an enormous amount of pornography on the Internet, much of which is easily obtained. 201 F. Supp. 2d 401, 419 (ED Pa. 2002). The accessibility of this material has created serious problems for libraries, which have found that patrons of all ages, including minors, regularly search for online pornography. *Id.,* at 406. Some patrons also expose others to pornographic images by leaving them displayed on Internet terminals or printed at library printers. *Id.,* at 423.

Upon discovering these problems, Congress became concerned that the E-rate and LSTA programs were facilitating access to illegal and harmful pornography. S. Rep. No. 105–226, p. 5 (1998). Congress learned that adults "us[e] library computers to access pornography that

is then exposed to staff, passersby, and children," and that "minors acces[s] child and adult pornography in libraries."[1]

But Congress also learned that filtering software that blocks access to pornographic Web sites could provide a reasonably effective way to prevent such uses of library resources. *Id.,* at 20–26. By 2000, before Congress enacted CIPA, almost 17% of public libraries used such software on at least some of their Internet terminals, and 7% had filters on all of them. Library Research Center of U. Ill., Survey of Internet Access Management in Public Libraries 8, http://alexia.lis.uiuc.edu/gslis/research/internet.pdf. A library can set such software to block categories of material, such as "Pornography" or "Violence." 201 F. Supp. 2d, at 428. When a patron tries to view a site that falls within such a category, a screen appears indicating that the site is blocked. *Id.,* at 429. But a filter set to block pornography may sometimes block other sites that present neither obscene nor pornographic material, but that nevertheless trigger the filter. To minimize this problem, a library can set its software to prevent the blocking of material that falls into categories like "Education," "History," and "Medical." *Id.,* at 428–429. A library may also add or delete specific sites from a blocking category, *id.,* at

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[1]The Children's Internet Protection Act: Hearing on S. 97 before the Senate Committee on Commerce, Science, and Transportation, 106th Cong., 1st Sess., 49 (1999) (prepared statement of Bruce Taylor, President and Chief Counsel, National Law Center for Children and Families). See also Obscene Material Available Via The Internet: Hearing before the Subcommittee on Telecommunications, Trade, and Consumer Protection of the House Committee on Commerce, 106th Cong., 2d Sess. 1, 27 (2000) (citing D. Burt, Dangerous Access, 2000 Edition: Uncovering Internet Pornography in America's Libraries (2000)) (noting more than 2,000 incidents of patrons, both adults and minors, using library computers to view online pornography, including obscenity and child pornography).

429, and anyone can ask companies that furnish filtering software to unblock particular sites, *id.,* at 430.

Responding to this information, Congress enacted CIPA. It provides that a library may not receive E-rate or LSTA assistance unless it has "a policy of Internet safety for minors that includes the operation of a technology protection measure . . . that protects against access" by all persons to "visual depictions" that constitute "obscen[ity]" or "child pornography," and that protects against access by minors to "visual depictions" that are "harmful to minors." 20 U. S. C. §§9134(f)(1)(A)(i) and (B)(i); 47 U. S. C. §§254(h)(6)(B)(i) and (C)(i). The statute defines a "[t]echnology protection measure" as "a specific technology that blocks or filters Internet access to material covered by" CIPA. §254(h)(7)(I). CIPA also permits the library to "disable" the filter "to enable access for bona fide research or other lawful purposes." 20 U. S. C. §9134(f)(3); 47 U. S. C. §254(h)(6)(D). Under the E-rate program, disabling is permitted "during use by an adult." §254(h)(6)(D). Under the LSTA program, disabling is permitted during use by any person. 20 U. S. C. §9134(f)(3).

Appellees are a group of libraries, library associations, library patrons, and Web site publishers, including the American Library Association (ALA) and the Multnomah County Public Library in Portland, Oregon (Multnomah). They sued the United States and the Government agencies and officials responsible for administering the E-rate and LSTA programs in District Court, challenging the constitutionality of CIPA's filtering provisions. A three-judge District Court convened pursuant to §1741(a) of CIPA, 114 Stat. 2763A–351, note following 20 U. S. C. §7001.

After a trial, the District Court ruled that CIPA was facially unconstitutional and enjoined the relevant agencies and officials from withholding federal assistance for failure to comply with CIPA. The District Court held that Congress had exceeded its authority under the Spending

Clause, U. S. Const., Art. I, §8, cl. 1, because, in the court's view, "any public library that complies with CIPA's conditions will necessarily violate the First Amendment." 201 F. Supp. 2d, at 453. The court acknowledged that "generally the First Amendment subjects libraries' content-based decisions about which print materials to acquire for their collections to only rational [basis] review." *Id.,* at 462. But it distinguished libraries' decisions to make certain Internet material inaccessible. "The central difference," the court stated, "is that by providing patrons with even filtered Internet access, the library permits patrons to receive speech on a virtually unlimited number of topics, from a virtually unlimited number of speakers, without attempting to restrict patrons' access to speech that the library, in the exercise of its professional judgment, determines to be particularly valuable." *Ibid.* Reasoning that "the provision of Internet access within a public library . . . is for use by the public . . . for expressive activity," the court analyzed such access as a "designated public forum." *Id.,* at 457 (citation and internal quotation marks omitted). The District Court also likened Internet access in libraries to "traditional public fora . . . such as sidewalks and parks" because it "promotes First Amendment values in an analogous manner." *Id.*, at 466.

Based on both of these grounds, the court held that the filtering software contemplated by CIPA was a content-based restriction on access to a public forum, and was therefore subject to strict scrutiny. *Ibid.* Applying this standard, the District Court held that, although the Government has a compelling interest "in preventing the dissemination of obscenity, child pornography, or, in the case of minors, material harmful to minors," *id.,* at 471, the use of software filters is not narrowly tailored to further those interests, *id.,* at 479. We noted probable jurisdiction, 537 U. S. 1017 (2002), and now reverse.

Congress has wide latitude to attach conditions to the

receipt of federal assistance in order to further its policy objectives. *South Dakota* v. *Dole,* 483 U. S. 203, 206 (1987). But Congress may not "induce" the recipient "to engage in activities that would themselves be unconstitutional." *Id.,* at 210. To determine whether libraries would violate the First Amendment by employing the filtering software that CIPA requires,[2] we must first examine the role of libraries in our society.

Public libraries pursue the worthy missions of facilitating learning and cultural enrichment. Appellee ALA's Library Bill of Rights states that libraries should provide "[b]ooks and other . . . resources . . . for the interest, information, and enlightenment of all people of the community the library serves." 201 F. Supp. 2d, at 420 (internal quotation marks omitted). To fulfill their traditional missions, public libraries must have broad discretion to decide what material to provide to their patrons. Although they seek to provide a wide array of information, their goal has never been to provide "universal coverage." *Id.,* at 421. Instead, public libraries seek to provide materials "that would be of the greatest direct benefit or interest to the community." *Ibid.* To this end, libraries collect

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[2]JUSTICE STEVENS misapprehends the analysis we must perform to determine whether CIPA exceeds Congress' authority under the Spending Clause. He asks and answers whether it is constitutional for Congress to "impose [CIPA's filtering] requirement" on public libraries, instead of "allowing local decisionmakers to tailor their responses to local problems." *Post*, at 1 (dissenting opinion). But under our well-established Spending Clause precedent, that is not the proper inquiry. Rather, as the District Court correctly recognized, 201 F. Supp. 2d 401, 453 (ED Pa. 2002), we must ask whether the condition that Congress requires "would . . . be unconstitutional" if performed by the library itself. *Dole*, 830 U. S., at 210.

CIPA does not directly regulate private conduct; rather, Congress has exercised its Spending Power by specifying conditions on the receipt of federal funds. Therefore, *Dole* provides the appropriate framework for assessing CIPA's constitutionality.

only those materials deemed to have "requisite and appropriate quality." *Ibid.* See W. Katz, Collection Development: The Selection of Materials for Libraries 6 (1980) ("The librarian's responsibility . . . is to separate out the gold from the garbage, not to preserve everything"); F. Drury, Book Selection xi (1930) ("[I]t is the aim of the selector to give the public, not everything it wants, but the best that it will read or use to advantage"); App. 636 (Rebuttal Expert Report of Donald G. Davis, Jr.) ("A hypothetical collection of everything that has been produced is not only of dubious value, but actually detrimental to users trying to find what they want to find and really need").

We have held in two analogous contexts that the government has broad discretion to make content-based judgments in deciding what private speech to make available to the public. In *Arkansas Ed. Television Comm'n* v. *Forbes,* 523 U. S. 666, 672–673 (1998), we held that public forum principles do not generally apply to a public television station's editorial judgments regarding the private speech it presents to its viewers. "[B]road rights of access for outside speakers would be antithetical, as a general rule, to the discretion that stations and their editorial staff must exercise to fulfill their journalistic purpose and statutory obligations." *Id.,* at 673. Recognizing a broad right of public access "would [also] risk implicating the courts in judgments that should be left to the exercise of journalistic discretion." *Id.,* at 674.

Similarly, in *National Endowment for Arts* v. *Finley,* 524 U. S. 569 (1998), we upheld an art funding program that required the National Endowment for the Arts (NEA) to use content-based criteria in making funding decisions. We explained that "[a]ny content-based considerations that may be taken into account in the grant-making process are a consequence of the nature of arts funding." *Id.,* at 585. In particular, "[t]he very assumption of the NEA is

that grants will be awarded according to the 'artistic worth of competing applicants,' and absolute neutrality is simply inconceivable." *Ibid.* (some internal quotation marks omitted). We expressly declined to apply forum analysis, reasoning that it would conflict with "NEA's mandate . . . to make esthetic judgments, and the inherently content-based 'excellence' threshold for NEA support." *Id.,* at 586.

The principles underlying *Forbes* and *Finley* also apply to a public library's exercise of judgment in selecting the material it provides to its patrons. Just as forum analysis and heightened judicial scrutiny are incompatible with the role of public television stations and the role of the NEA, they are also incompatible with the discretion that public libraries must have to fulfill their traditional missions. Public library staffs necessarily consider content in making collection decisions and enjoy broad discretion in making them.

The public forum principles on which the District Court relied, 201 F. Supp. 2d, at 457–470, are out of place in the context of this case. Internet access in public libraries is neither a "traditional" nor a "designated" public forum. See *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.,* 473 U. S. 788, 802 (1985) (describing types of forums). First, this resource—which did not exist until quite recently—has not "immemorially been held in trust for the use of the public and, time out of mind, . . . been used for purposes of assembly, communication of thoughts between citizens, and discussing public questions." *International Soc. for Krishna Consciousness, Inc.* v. *Lee,* 505 U. S. 672, 679 (1992) (internal quotation marks omitted). We have "rejected the view that traditional public forum status extends beyond its historic confines." *Forbes*, *supra,* at 678. The doctrines surrounding traditional public forums may not be extended to situations where such history is lacking.

Nor does Internet access in a public library satisfy our

definition of a "designated public forum." To create such a forum, the government must make an affirmative choice to open up its property for use as a public forum. *Cornelius*, *supra,* at 802–803; *Perry Ed. Assn.* v. *Perry Local Educators' Assn.,* 460 U. S. 37, 45 (1983). "The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." *Cornelius, supra*, at 802. The District Court likened public libraries' Internet terminals to the forum at issue in *Rosenberger* v. *Rector and Visitors of Univ. of Va.,* 515 U. S. 819 (1995). 201 F. Supp. 2d, at 465. In *Rosenberger*, we considered the "Student Activity Fund" established by the University of Virginia that subsidized all manner of student publications except those based on religion. We held that the fund had created a limited public forum by giving public money to student groups who wished to publish, and therefore could not discriminate on the basis of viewpoint.

The situation here is very different. A public library does not acquire Internet terminals in order to create a public forum for Web publishers to express themselves, any more than it collects books in order to provide a public forum for the authors of books to speak. It provides Internet access, not to "encourage a diversity of views from private speakers," *Rosenberger*, *supra,* at 834, but for the same reasons it offers other library resources: to facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality. See *Cornelius*, *supra,* at 805 (noting, in upholding limits on participation in the Combined Federal Campaign (CFC), that "[t]he Government did not create the CFC for purposes of providing a forum for expressive activity"). As Congress recognized, "[t]he Internet is simply another method for making information available in a school or library."

S. Rep. No. 106–141, p. 7 (1999). It is "no more than a technological extension of the book stack." *Ibid.*[3]

The District Court disagreed because, whereas a library reviews and affirmatively chooses to acquire every book in its collection, it does not review every Web site that it makes available. 201 F. Supp. 2d, at 462–463. Based on this distinction, the court reasoned that a public library enjoys less discretion in deciding which Internet materials to make available than in making book selections. *Ibid.* We do not find this distinction constitutionally relevant. A library's failure to make quality-based judgments about all

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[3] Even if appellees had proffered more persuasive evidence that public libraries intended to create a forum for speech by connecting to the Internet, we would hesitate to import "the public forum doctrine . . . wholesale into" the context of the Internet. *Denver Area Ed. Telecommunications Consortium, Inc.* v. *FCC,* 518 U. S. 727, 749 (1996) (opinion of BREYER, J.). "[W]e are wary of the notion that a partial analogy in one context, for which we have developed doctrines, can compel a full range of decisions in such a new and changing area." *Ibid.*

The dissents agree with the District Court that less restrictive alternatives to filtering software would suffice to meet Congress' goals. *Post*, at 4 (opinion of STEVENS, J.) (quoting 201 F. Supp. 2d, at 410); *post*, at 4 (opinion of SOUTER, J.) (quoting 201 F. Supp. 2d, at 422–427). But we require the Government to employ the least restrictive means only when the forum is a public one and strict scrutiny applies. For the reasons stated above, see *supra*, at 8–10, such is not the case here. In deciding not to collect pornographic material from the Internet, a public library need not satisfy a court that it has pursued the least restrictive means of implementing that decision.

In any case, the suggested alternatives have their own drawbacks. Close monitoring of computer users would be far more intrusive than the use of filtering software, and would risk transforming the role of a librarian from a professional to whom patrons turn for assistance into a compliance officer whom many patrons might wish to avoid. Moving terminals to places where their displays cannot easily be seen by other patrons, or installing privacy screens or recessed monitors, would not address a library's interest in preventing patrons from deliberately using its computers to view online pornography. To the contrary, these alternatives would make it *easier* for patrons to do so.

the material it furnishes from the Web does not somehow taint the judgments it does make. A library's need to exercise judgment in making collection decisions depends on its traditional role in identifying suitable and worthwhile material; it is no less entitled to play that role when it collects material from the Internet than when it collects material from any other source. Most libraries already exclude pornography from their print collections because they deem it inappropriate for inclusion. We do not subject these decisions to heightened scrutiny; it would make little sense to treat libraries' judgments to block online pornography any differently, when these judgments are made for just the same reason.

Moreover, because of the vast quantity of material on the Internet and the rapid pace at which it changes, libraries cannot possibly segregate, item by item, all the Internet material that is appropriate for inclusion from all that is not. While a library could limit its Internet collection to just those sites it found worthwhile, it could do so only at the cost of excluding an enormous amount of valuable information that it lacks the capacity to review. Given that tradeoff, it is entirely reasonable for public libraries to reject that approach and instead exclude certain categories of content, without making individualized judgments that everything they do make available has requisite and appropriate quality.

Like the District Court, the dissents fault the tendency of filtering software to "overblock"—that is, to erroneously block access to constitutionally protected speech that falls outside the categories that software users intend to block. See *post*, at 1–3 (opinion of STEVENS, J.); *post*, at 3–4 (opinion of SOUTER, J.). Due to the software's limitations, "[m]any 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 'pornog-

raphy' or 'sex.'" 201 F. Supp. 2d, at 449. Assuming that such erroneous blocking presents constitutional difficulties, any such concerns are dispelled by the ease with which patrons may have the filtering software disabled. When a patron encounters a blocked site, he need only ask a librarian to unblock it or (at least in the case of adults) disable the filter. As the District Court found, libraries have the capacity to permanently unblock any erroneously blocked site, *id.,* at 429, and the Solicitor General stated at oral argument that a "library may . . . eliminate the filtering with respect to specific sites . . . at the request of a patron." Tr. of Oral Arg. 4. With respect to adults, CIPA also expressly authorizes library officials to "disable" a filter altogether "to enable access for bona fide research or other lawful purposes." 20 U. S. C. §9134(f)(3) (disabling permitted for both adults and minors); 47 U. S. C. §254(h)(6)(D) (disabling permitted for adults). The Solicitor General confirmed that a "librarian can, in response to a request from a patron, unblock the filtering mechanism altogether," Tr. of Oral Arg. 11, and further explained that a patron would not "have to explain . . . why he was asking a site to be unblocked or the filtering to be disabled," *id.*, at 4. The District Court viewed unblocking and disabling as inadequate because some patrons may be too embarrassed to request them. 201 F. Supp. 2d, at 411. But the Constitution does not guarantee the right to acquire information at a public library without any risk of embarrassment.[4]

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[4] The dissents argue that overblocking will "'reduce the adult population . . . to reading only what is fit for children.'" *Post*, at 3, n. 2 (opinion of STEVENS, J.) (quoting *Butler* v. *Michigan,* 352 U. S. 380, 383 (1957)). See also *post*, at 3, and n. 2 (citing *Ashcroft* v. *Free Speech Coalition,* 535 U. S. 234, 252 (2002); *United States* v. *Playboy Entertainment Group, Inc.,* 529 U. S. 803, 814 (2000); and *Reno* v. *American Civil Liberties Union,* 521 U. S. 844, 875 (1997)); see *post*, at 7–8 (opinion of

Appellees urge us to affirm the District Court's judgment on the alternative ground that CIPA imposes an unconstitutional condition on the receipt of federal assistance. Under this doctrine, "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." *Board of Comm'rs, Wabaunsee Cty.* v. *Umbehr,* 518 U. S. 668, 674 (1996) (quoting *Perry* v. *Sindermann,* 408 U. S. 593, 597 (1972)). Appellees argue that CIPA imposes an unconstitutional condition on libraries that receive E-rate and LSTA subsidies by requiring them, as a condition on their receipt of federal funds, to surrender their First Amendment right to provide the public with access to constitutionally protected speech. The Government counters that this claim fails because Government entities do not have First Amendment

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SOUTER, J.). But these cases are inapposite because they addressed Congress' direct regulation of private conduct, not exercises of its Spending Power.

The dissents also argue that because some library patrons would not make specific unblocking requests, the interest of authors of blocked Internet material "in reaching the widest possible audience would be abridged." *Post*, at 6 (opinion of STEVENS, J.); see *post*, at 13, n. 8 (opinion of SOUTER, J.). But this mistakes a public library's purpose for acquiring Internet terminals: A library does so to provide its patrons with materials of requisite and appropriate quality, not to create a public forum for Web publishers to express themselves. See *supra*, at 9–10.

JUSTICE STEVENS further argues that, because some libraries' procedures will make it difficult for patrons to have blocked material unblocked, CIPA "will create a significant prior restraint on adult access to protected speech." *Post*, at 6. But this argument, which the District Court did not address, mistakenly extends prior restraint doctrine to the context of public libraries' collection decisions. A library's decision to use filtering software is a collection decision, not a restraint on private speech. Contrary to JUSTICE STEVENS' belief, a public library does not have an obligation to add material to its collection simply because the material is constitutionally protected.

rights. See *Columbia Broadcasting System, Inc.* v. *Democratic National Committee,* 412 U. S. 94, 139 (1973) (Stewart, J., concurring) ("The First Amendment protects the press *from* governmental interference; it confers no analogous protection *on* the government"); *id.,* at 139, n. 7 ("'The purpose of the First Amendment is to protect private expression'" (quoting T. Emerson, The System of Freedom of Expression 700 (1970))). See also *Warner Cable Communications, Inc.*, v. *Niceville*, 911 F. 2d 634, 638 (CA11 1990); *Student Govt. Assn.* v. *Board of Trustees of the Univ. of Mass.*, 868 F. 2d 473, 481 (CA1 1989); *Estiverne* v. *Louisiana State Bar Assn.*, 863 F. 2d 371, 379 (CA5 1989).

We need not decide this question because, even assuming that appellees may assert an "unconstitutional conditions" claim, this claim would fail on the merits. Within broad limits, "when the Government appropriates public funds to establish a program it is entitled to define the limits of that program." *Rust* v. *Sullivan,* 500 U. S. 173, 194 (1991). In *Rust*, Congress had appropriated federal funding for family planning services and forbidden the use of such funds in programs that provided abortion counseling. *Id.,* at 178. Recipients of these funds challenged this restriction, arguing that it impermissibly conditioned the receipt of a benefit on the relinquishment of their constitutional right to engage in abortion counseling. *Id.,* at 196. We rejected that claim, recognizing that "the Government [was] not denying a benefit to anyone, but [was] instead simply insisting that public funds be spent for the purposes for which they were authorized." *Ibid.*

The same is true here. The E-rate and LSTA programs were intended to help public libraries fulfill their traditional role of obtaining material of requisite and appropriate quality for educational and informational purposes.[5]

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[5] See 20 U. S. C. §9121 ("It is the purpose of [LSTA] (2) to stimulate

Congress may certainly insist that these "public funds be spent for the purposes for which they were authorized." *Ibid.* Especially because public libraries have traditionally excluded pornographic material from their other collections, Congress could reasonably impose a parallel limitation on its Internet assistance programs. As the use of filtering software helps to carry out these programs, it is a permissible condition under *Rust*.

JUSTICE STEVENS asserts the premise that "[a] federal statute penalizing a library for failing to install filtering software on every one of its Internet-accessible computers would unquestionably violate [the First] Amendment." *Post*, at 8. See also *post*, at 12. But—assuming again that public libraries have First Amendment rights—CIPA does not "penalize" libraries that choose not to install such software, or deny them the right to provide their patrons with unfiltered Internet access. Rather, CIPA simply reflects Congress' decision not to subsidize their doing so. To the extent that libraries wish to offer unfiltered access, they are free to do so without federal assistance. "'A refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty' on that activity.'" *Rust*, *supra*, at 193 (quoting *Harris* v. *McRae*, 448 U. S. 297, 317, n. 19 (1980)). "'[A] legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right.'"

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excellence and promote access to learning and information resources in all types of libraries for individuals of all ages"); S. Conf. Rep. No. 104–230, p. 132 (1996) (The E-rate program "will help open new worlds of knowledge, learning and education to all Americans . . . . [It is] intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of an illness, to Americans everywhere via . . . libraries").

Rust, *supra*, at 193 (quoting *Regan* v. *Taxation With Representation of Wash.,* 461 U. S. 540, 549 (1983)).[6]

Appellees mistakenly contend, in reliance on *Legal Services Corporation* v. *Velazquez,* 531 U. S. 533 (2001), that CIPA's filtering conditions "[d]istor[t] the [u]sual [f]unctioning of [p]ublic [l]ibraries." Brief for Appellees ALA et al. 40 (citing *Velazquez*, *supra,* at 543); Brief for Appellees Multnomah et al. 47–48 (same). In *Velazquez*, the Court concluded that a Government program of furnishing legal aid to the indigent differed from the program in *Rust* "[i]n th[e] vital respect" that the role of lawyers who represent clients in welfare disputes is to advocate *against* the Government, and there was thus an assumption that counsel would be free of state control. 531 U. S., at 542–543. The Court concluded that the restriction on advocacy in such welfare disputes would distort the usual functioning of the legal profession and the federal and state courts before which the lawyers appeared. Public libraries, by contrast, have no comparable role that pits them against the Government, and there is no comparable assumption that they must be free of any conditions that their benefactors might attach to the use of donated funds or other assistance.[7]

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[6] These holdings, which JUSTICE STEVENS ignores, also make clear that his reliance on *Rutan* v. *Republican Party of Ill.,* 497 U. S. 62 (1990), *Elrod* v. *Burns,* 427 U. S. 347 (1976), and *Wieman* v. *Updegraff,* 344 U. S. 183 (1952), is misplaced. See *post*, at 8. The invalidated state action in those cases involved true penalties, such as denial of a promotion or outright discharge from employment, not nonsubsidies.

[7] Relying on *Velazquez*, JUSTICE STEVENS argues mistakenly that *Rust* is inapposite because that case "only involved and only applies to . . . situations in which the government seeks to communicate a specific message," *post*, at 9, and unlike the Title X program in *Rust*, the E-rate and LSTA programs "are not designed to foster or transmit any particular governmental message." *Post*, at 10. But he misreads our cases discussing *Rust*, and again misapprehends the purpose of providing

Because public libraries' use of Internet filtering software does not violate their patrons' First Amendment rights, CIPA does not induce libraries to violate the Constitution, and is a valid exercise of Congress' spending power. Nor does CIPA impose an unconstitutional condition on public libraries. Therefore, the judgment of the District Court for the Eastern District of Pennsylvania is

Reversed.

Internet terminals in public libraries. *Velazquez* held only that viewpoint-based restrictions are improper "'when the [government] does not itself speak or subsidize transmittal of a message it favors *but instead expends funds to encourage a diversity of views from private speakers*.'" 531 U. S., at 542 (quoting *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 834 (1995) (emphasis added)). See also 531 U. S., at 542 ("[T]he salient point is that, like the program in *Rosenberger*, the LSC [Legal Services Corporation] program was designed *to facilitate private speech* . . ." (emphasis added)); *Board of Regents of Univ. of Wis. System* v. *Southworth,* 529 U. S. 217, 229 (2000) ("The University of Wisconsin exacts the fee at issue for the sole purpose of facilitating the free and open exchange of ideas"); *Rosenberger*, *supra*, at 830, 834 ("The [Student Activities Fund] is a forum"; "[T]he University . . . expends funds to encourage a diversity of views from private speakers"). Indeed, this very distinction led us to state in *Southworth* that that case did not implicate our unconstitutional conditions jurisprudence. 529 U. S., at 229 ("The case we decide here . . . does not raise the issue of the government's right . . . to use its own funds to advance a particular message"). As we have stated above, *supra*, at 9–10, public libraries do not install Internet terminals to provide a forum for Web publishers to express themselves, but rather to provide patrons with online material of requisite and appropriate quality.