IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN LIBRARY ASSOCIATION, INC.
50 East Huron Street, Chicago, IL 60611,

FREEDOM TO READ FOUNDATION
50 East Huron Street, Chicago, IL 60611,

ALASKA LIBRARY ASSOCIATION
Fairbanks, AK 99701,

CALIFORNIA LIBRARY ASSOCIATION
717 K Street, Sacramento, Suite 300, CA 95814,

NEW ENGLAND LIBRARY ASSOCIATION
Countryside Offices, 707 Turnpike Street,
North Andover, MA 01845,

NEW YORK LIBRARY ASSOCIATION
252 Hudson Avenue, Albany, NY 12210,

ASSOCIATION OF COMMUNITY
ORGANIZATIONS FOR REFORM NOW,1024
Elysian Fields Avenue, New Orleans, LA 70117,

FRIENDS OF THE PHILADELPHIA CITY
INSTITUTE LIBRARY,1905 Locust Street,
Philadelphia, PA 19103,

PENNSYLVANIA ALLIANCE FOR
DEMOCRACY, 300 N. Second Street, Suite 906,
Harrisburg, PA 17108,

ELIZABETH HRENDA
Harrisburg, PA 17109,

C. DONALD WEINBERG
Philadelphia, PA 19103,

Plaintiffs,

CIVIL ACTION NO. ________________

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

vs.)
)
UNITED STATES,)
)
MICHAEL POWELL, in his official capacity as)
CHAIRMAN OF THE FEDERAL)
COMMUNICATIONS COMMISSION)
445 12th Street, S.W., Washington, D.C. 20554,)
)
FEDERAL COMMUNICATIONS COMMISSION)
445 12th Street S.W., Washington, D.C. 20554,)
)
BEVERLY SHEPPARD, in her official capacity as)
ACTING DIRECTOR OF THE INSTITUTE OF)
MUSEUM AND LIBRARY SERVICES,)
1100 Pennsylvania Ave., N.W., Washington, D.C.)
20506,)
)
INSTITUTE OF MUSEUM AND LIBRARY)
SERVICES, 1100 Pennsylvania Ave., N.W.)
Washington, D.C. 20506,)
)
Defendants.)
)

PRELIMINARY STATEMENT

1. The Children's Internet Protection Act (to be codified at 47 U.S.C. § 254(h) and 20 U.S.C. § 9134) (the "Act" or "CHIPA") imposes unprecedented, sweeping federal speech restrictions on public libraries nationwide. For centuries, public libraries have served as invaluable resources for the communication and receipt of information and the free exchange of ideas. Consistent with that mission, the overwhelming majority of public libraries across the country now offer free public access to the Internet, a unique medium of expression "as diverse as human thought." Reno v. ACLU, 521 U.S. 844, 870 (1997). Through the Act, Congress has

attempted to censor this expansive medium, invading and distorting the traditional functions of public libraries by requiring them to violate patrons' constitutional right to receive information.

2. The Act conditions funding to public libraries on the mandatory installation and use of content blocking software on all library Internet terminals, for both adults and minors. Specifically, the Act prohibits a public library from obtaining certain funds for Internet service from the Federal Communications Commission or the Institute of Museum and Library Services unless the library certifies that it uses computer technology on all computers to block Internet access to visual depictions of "obscenity" and "child pornography," and, during minors' use, "harmful to minors" materials. Act §§ 1712 and 1721 (to be codified at 20 U.S.C. § 9134(f)(1) and 47 U.S.C. § 254(h)(6)(B)-(C), respectively). Given the dynamic nature of Internet speech and the inherent limitations of available filtering technology, it is both practically and legally impossible to comply with this mandate. Any attempt to meet the Act's requirements inevitably will lead to the suppression of vast amounts of protected Internet speech that would otherwise be available to public library patrons.

3. Plaintiffs in this action represent a broad range of organizations, entities, and individuals who are harmed by the Act, including national and state library associations, public libraries, library patron groups, and individual patrons. The Act violates the constitutional rights of plaintiffs, their members, and patrons to communicate and receive protected expression.

4. Through the Act, Congress has used its spending power to conscript public libraries into its censorship program. The federal filtering mandate requires that libraries do what Congress plainly could not: directly restrict access to information in a traditional sphere of free expression. The two funding schemes at issue in this case – "universal service" (or "e-rate")

discounts and Library Services and Technology Act (LSTA) grants – have subsidized Internet access in public libraries for nearly five years, without any limitation on the content of recipient libraries' Internet services. Both funding programs play a crucial role in the provision of public Internet access, particularly in rural and low-income communities. The Act conditions funding from those programs in a manner completely inconsistent with their original purpose, the historical role of public libraries as places "designed for freewheeling inquiry," Board of Education v. Pico, 457 U.S. 853, 915 (1982) (Rehnquist, J., dissenting), the democratizing nature of Internet expression, and the First Amendment.

5. As Congress was well aware, no technology exists that can effectively block the precise categories of speech enumerated in the Act. All currently available filtering software is created and maintained by private parties, whose content- and viewpoint-based filtering decisions are seldom made public, do not incorporate individualized determinations of contemporary community standards, and are never subjected to the requisite exacting judicial scrutiny. In addition, all available filtering technology blocks access to a tremendous amount of constitutionally protected expression. The Act therefore presents public libraries with an impossible choice: either install mechanical, imprecise, and incredibly broad speech restrictions on Internet resources, or forgo vital federal funds to which the libraries are otherwise entitled.

6. In addition, the Act's unconstitutional mandate extends beyond the funding programs specifically identified in the statute. Pursuant to the Act, a public library receiving federal funds for the provision of Internet service must certify that blocking software operates on "any of its computers with Internet access" during "any use of such computers," Act §§ 1712 and 1721 (to be codified at 20 U.S.C. § 9134(f)(1)(B) and 47 U.S.C. § 254(h)(6)(C), respectively)

(emphasis added). Thus, even if a library funds the majority of its public Internet service with money from sources other than federal funds, the library must install and use filters on all of its computers with Internet access. This limitation on non-federal funding imposes yet another unlawful restriction on speech in public libraries.

7. Among the Act's other constitutional infirmities are the statute's disabling provisions, which grant library employees unbridled discretion in deciding whether to disable the blocking software "for bona fide research or other lawful purposes." Act §§1712 and 1721 (to be codified at 20 U.S.C. § 9134(f)(3) and 47 U.S.C. § 254(h)(3), respectively). The Act does not constrain this disabling discretion in any way, nor does it define the hopelessly vague phrase "bona fide research or other lawful purposes." Without any guiding standards or criteria, the disabling provisions invite abuse and widespread discrimination on the basis of the patron's identity, the particular information to which the patron wishes to gain access, or other legally impermissible criteria. The disabling provisions also will have a dangerous chilling effect on the exercise of patrons' right to receive information anonymously by attaching a threat of stigma to the receipt of fully protected expressive materials.

8. For these and other reasons explained more fully below, plaintiffs seek declaratory and injunctive relief from enforcement of this unconstitutional statute.

JURISDICTION AND VENUE

9. This case arises under the Constitution and the laws of the United States and presents a federal question within this Court's jurisdiction under 28 U.S.C. § 1331.

10. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.

11. Under Section 1741 of the Act, this action is required to be heard by a three-judge district court convened pursuant to 28 U.S.C. § 2284.

12. Venue is proper in this judicial district under 28 U.S.C. § 1391(e).

PARTIES

13. Plaintiff AMERICAN LIBRARY ASSOCIATION, INC. (ALA), founded in 1876, is a non-profit, educational organization committed to the preservation of the American library as a resource indispensable to the intellectual, cultural, and educational welfare of the Nation. The ALA's direct membership includes over 61,000 members with over 3,000 libraries. Many of the ALA's members are located or reside in the Eastern District of Pennsylvania. Plaintiff ALA sues on behalf of itself, its members, who are libraries and librarians across the country, and its members' patrons. The individual interests of the ALA's members in this case are germane to the purpose of the ALA, and neither the claims asserted nor the relief requested herein requires the participation of the ALA's members in order to vindicate their individual rights.

14. Plaintiff FREEDOM TO READ FOUNDATION (FTRF) is a non-profit membership organization established in 1969 by the ALA to promote and defend First Amendment rights; to foster libraries as institutions fulfilling the promise of the First Amendment for every citizen; to support the rights of libraries to include in their collections and make available to the public any work they may legally acquire; and to set legal precedent for the freedom to read on behalf of all citizens. Plaintiff FTRF sues on behalf of itself, its members, who are libraries and librarians across the country, and its members' patrons. The individual interests of FTRF's members in this case are germane to the purpose of FTRF, and neither the

claims asserted nor the relief requested herein requires the participation of FTRF's members in order to vindicate their individual rights.

15. Plaintiff ALASKA LIBRARY ASSOCIATION (AkLA) is a non-profit organization of libraries, library professionals, paraprofessionals, library aides, trustees, volunteers, and others committed to fostering cooperation among libraries, safeguarding intellectual freedom, and promoting access to information for all Alaskans. A substantial majority of AkLA's public library members receive either e-rate or LSTA funds for the provision of public Internet access. Most of AkLA's public library members have Internet use policies that were developed locally and do not require the use of content blocking software on all public Internet terminals. Plaintiff AkLA sues on behalf of itself, its members, and its members' patrons. The individual interests of AkLA's members in this case are germane to the purpose of AkLA, and neither the claims asserted nor the relief requested herein requires the participation of AkLA's members in order to vindicate their individual rights.

16. Plaintiff CALIFORNIA LIBRARY ASSOCIATION (CLA) is a non-profit organization with over fifteen hundred members, including libraries, librarians, library employees, library students, friends, trustees and citizens. CLA promotes the basic goals of intellectual freedom and public access to information, and provides leadership for the development, promotion, and improvement of library services, librarianship, and the library community in the state of California. A substantial majority of CLA's public library members receive either e-rate or LSTA funds for the provision of public Internet access. Most of CLA's public library members have Internet use policies that were developed locally and do not require the use of content blocking software on all public Internet terminals. Plaintiff CLA sues on

behalf of itself, its members, and its members' patrons. The individual interests of CLA's members in this case are germane to the purpose of CLA, and neither the claims asserted nor the relief requested herein requires the participation of CLA's members in order to vindicate their individual rights.

17. Plaintiff NEW ENGLAND LIBRARY ASSOCIATION (NELA) is a non-profit organization serving states in the New England region. NELA has over one thousand members, including libraries, librarians, and library trustees or friends of the libraries. The mission of NELA is to promote intellectual freedom, public access to information, and excellence in library services for the people of New England. A substantial majority of its public library members receive either e-rate or LSTA funds for the provision of public Internet access. Most of NELA's public library members have Internet use policies that were developed locally and do not require the use of content blocking software on all public Internet terminals. Plaintiff NELA sues on behalf of itself, its members, and its members' patrons. The individual interests of NELA's members in this case are germane to the purpose of NELA, and neither the claims asserted nor the relief requested herein requires the participation of NELA's members in order to vindicate their individual rights.

18. Plaintiff NEW YORK LIBRARY ASSOCIATION (NYLA) is a non-profit organization founded in 1890. NYLA has several thousand members, including libraries, librarians, library trustees, and friends of libraries. The mission of the organization is to lead in the development, promotion and improvement of library and information services and the profession of librarianship in order to enhance learning, quality of life, and equal opportunity for all New Yorkers. One of NYLA's primary goals is to protect and promote intellectual freedom

and the First Amendment right of free expression, and to ensure equitable access to information. A substantial majority of NYLA's public library members receive either e-rate or LSTA funds for the provision of public Internet access. Most of NYLA's public library members have Internet use policies that were developed locally and do not require the use of content blocking software on all public Internet terminals. Plaintiff NYLA sues on behalf of itself, its members, and its members' patrons. The individual interests of NYLA's members in this case are germane to the purpose of NYLA, and neither the claims asserted nor the relief requested herein requires the participation of NYLA's members in order to vindicate their individual rights.

19. Plaintiff ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN) is a national membership-based, non-profit corporation organized under the laws of Arkansas with over 100,000 member families across the country. The purpose of ACORN is to advance the interests of its low and moderate income membership in every area of its interests and concerns, including the rights of its members to obtain access to valuable public information for free at public libraries including information available on the Internet. ACORN is registered to do business in the Commonwealth of Pennsylvania and its chapter Pennsylvania ACORN has over 5,000 member families, many of whom are located in Philadelphia. ACORN sues on its own behalf and on behalf of its member families who use the Internet at public libraries that are covered by the Act's restrictions, many of whom cannot afford Internet access at their homes. The individual interests of ACORN member families in this case are germane to the purpose of ACORN and neither the claims asserted nor the relief requested herein requires the participation of ACORN members in order to vindicate their individual rights.

20. Plaintiff FRIENDS OF THE PHILADELPHIA CITY INSTITUTE LIBRARY (PCI Friends) is a voluntary non-profit membership organization based in Philadelphia dedicated to supporting and promoting the ability of the Philadelphia City Institute Library and the Free Library system to provide a wide and diverse range of free information and resources to serve the entire community and its residents' quest for knowledge, inspiration, enjoyment and excellence. The Philadelphia City Institute was founded in 1852 as a non-profit organization, free and open to the public, and in 1944 entered into a partnership with the Free Library of Philadelphia to offer broader public service. PCI Friends' members include community leaders, educators, students, parents and grandparents of minors, and other individuals. Friends of the PCI Library sues on its own behalf and on behalf of its members and their families who use the free Internet services available at the PCI Library or other branches of the Free Library for personal or professional purposes. The individual interests of PCI Friends' members in this case are germane to the purpose of PCI Friends, and neither the claims asserted nor the relief requested herein requires the participation of PCI Friends' members in order to vindicate their individual rights.

21. Plaintiff PENNSYLVANIA ALLIANCE FOR DEMOCRACY (PAD) is a statewide non-profit organization whose purpose is to create and sustain a community of groups and individuals in order to promote and defend democratic values, including respect for a diverse society, intellectual freedom, and other constitutional and civil rights. PAD's Board of Directors and Advisory Board comprise leaders of civic and religious groups in Pennsylvania, and PAD serves as an umbrella organization for creating and coordinating public policy positions and educational activities on various issues by these groups, their members, and other individuals. PAD also manages several statewide Internet listserves comprising hundreds of Pennsylvania

residents through which PAD distributes its position papers, news, announcements, and other information. PAD sues on its behalf, on behalf of its board and advisory members, and the organizational members and individuals PAD serves who use and depend on the Internet at public libraries that are covered by the Act's restrictions. The individual interests of PAD's members in this case are germane to the purpose of PAD, and neither the claims asserted nor the relief requested herein requires the participation of PAD's members in order to vindicate their individual rights.

22. Plaintiff ELIZABETH HRENDA is a resident of Susquehanna Township outside Harrisburg, Pennsylvania, where she has lived for over ten years. She is employed as the executive director of the Pennsylvania Alliance for Democracy and lives with her two sons, ages 14 and 17. Ms. Hrenda and her sons use Internet terminals provided by the Dauphin County public library system, which receives assistance under the federal e-rate program, for research, professional, school work, and other purposes. Ms. Hrenda and her sons utilize the free and wide range of Internet information currently available through the public library system. Ms. Hrenda would like to be able to decide for herself and her children what Internet materials to read in a public library. Ms. Hrenda sues on her own behalf and on behalf of her children.

23. Plaintiff C. DONALD WEINBERG has lived in Philadelphia for over eleven years and is a professor in the English department at Community College of Philadelphia. Professor Weinberg regularly uses Internet terminals at the Central Library branch of the Free Library in Philadelphia for his own research and writing, particularly when he is doing Internet research or course development in conjunction with rare books or reference books that cannot be removed from the library. Professor Weinberg regularly teaches a research-based literature and

humanities course in which he works with and teaches community college students at the Central Library. As an integral part of that course, Professor Weinberg uses and requires his students to use the Internet in conjunction with non-Internet sources at the library. Professor Weinberg and his students depend on the free and wide range of Internet information and resources currently available at the Central Library to complete the course work and perform responsible research. The Free Library receives both e-rate and LSTA funding for the provision of public Internet service. Consistent with its mission of providing broad access to information and safeguarding intellectual freedom, the Free Library has in place an Internet use policy that encourages responsible Internet access through training and education, but that specifically does not require the use of content blocking software during patron Internet use. Professor Weinberg sues on his own behalf.

24. Defendant UNITED STATES is the sovereign entity that enacted CHIPA and is responsible for the Act's enforcement.

25. Defendant MICHAEL POWELL is the Chairman of defendant FEDERAL COMMUNICATIONS COMMISSION (FCC), the federal executive agency authorize to oversee and enforce the Communications Act of 1934, as amended by the Telecommunications Act of 1996, including the universal service discount mechanism, 47 U.S.C. § 254. Defendants Powell and FCC have responsibility for enforcing Section 1721 of CHIPA, to be codified at 47 U.S.C. § 254(h). Defendant Powell is sued in his official capacity.

26. Defendant BEVERLY SHEPPARD, is the Acting Director of defendant INSTITUTE OF MUSEUM AND LIBRARY SERVICES (IMLS), the federal executive agency authorized to oversee and enforce the Museum and Library Services Act, 20 U.S.C. §§ 9101 et

seq., including the Library Services and Technology Act, 20 U.S.C. §§ 9121 et seq. (“LSTA”). Defendants Sheppard and IMLS have responsibility for enforcing Section 1712 of CHIPA, to be codified at 20 U.S.C. § 9134. Defendant Sheppard is sued in her official capacity.

FACTUAL ALLEGATIONS

The Internet

27. The Internet is a unique, expansive medium for worldwide communication. As the Supreme Court recognized in Reno v. ACLU, 521 U.S. 844, 870 (1997), expression on the Internet is “as diverse as human thought.” With its unprecedented breadth and scope, the Internet facilitates “vast democratic forums.” Id. at 868.

28. The World Wide Web (the “Web”) is the best known category of communication over the Internet. The Web “allows users to search for and retrieve information stored in remote computers." Id. at 852. “[T]he Web consists of a vast number of documents stored in different computers all over the world.” Id. Currently, it is estimated that the Web comprises well over one billion Web “pages” or websites, with several million new websites created each day. “The Web is thus comparable, from the readers’ viewpoint, to . . . a vast library including millions of readily available and indexed publications.” Id. at 853.

29. Currently, an estimated 400 million people use the Internet. Users search the Web through browsers or search engines. Using a browser, an individual types in the address, or “URL” (Uniform Resource Locator), of a particular Web page to retrieve that page. Users may also find information on the Web using engines that search for requested keywords. In response to a keyword request, a search engine will display a list of websites that may contain responsive information and provide links to those sites.

30. There is a vast array of information available on the Internet, including art, literature, medical and scientific information, humor, news, religion, political commentary, music, and government information. Although sexually oriented material is also available on the Internet, such material constitutes only a small fraction of available content. Indeed, by some estimates, less than 2% of Web pages contain sexually explicit material. Moreover, "communications over the Internet do not 'invade' an individual's home or appear on one's computer screen unbidden. Users seldom encounter content 'by accident.'" Reno v. ACLU, 521 U.S. at 868.

31. Given the virtually boundless potential of expression on the Internet, "[t]his dynamic, multifaceted category of communication" is entitled to the highest level of First Amendment protection. Id. at 870, 872.

Content Blocking Software

32. The Act conditions funding to libraries on the mandatory installation and use of a "technology protection measure" – computer software that purports to block or filter Internet access to certain categories of visual depictions.

33. Because most filtering software operates on undisclosed, secret criteria, filtering companies are free to implement their own subjective judgments in their blocking programs.

34. The most popular forms of content filters – server-based and stand-alone proprietary blocking software – generally block access to Internet content in two ways. One method blocks lists of unacceptable sites. The second method blocks sites that contain specific keywords. Most of the currently available filtering software vendors use a combination of these

methods to block access to websites that are deemed unacceptable. Filtering software thus is designed solely to block access to information and specific content and viewpoints.

35. Nearly all filtering software vendors that use site-based blocking treat their blocking criteria as a trade secret. Filtering software that uses site-based blocking must be updated regularly to keep up with the rapidly changing content on the Internet.

36. Filtering software that uses site-based blocking regularly blocks websites that contain important medical and political information, but which the software vendor has determined fall within the scope of blocked sites. Popular filtering software has been shown to have blocked access to university safe-sex information pages, the Journal of the American Medical Association's HIV/AIDS information page, and the websites of Planned Parenthood, National Organization for Women, and Operation Rescue.

37. Keyword-based blocking software uses text searches to classify "objectionable" sites. Such software cannot evaluate the context in which those words are used.

38. Keyword-based filtering software regularly blocks many sites solely because they contain the "objectionable" keywords. Filtering programs that use keywords to block sites have been shown to have blocked sites merely because they contained the words "witch," "pussycat," and "button"; these programs have also blocked a government physics website with an address that began with "XXX," a website for Super Bowl XXX, the websites of Congressman Dick Armey and Beaver College in Pennsylvania, sections of Edward Gibbon's Decline and Fall of the Roman Empire, and passages of Saint Augustine's Confessions.

39. Keyword-based filtering software can block access to electronic mail (e-mail) using the same text searching techniques described above. However, because currently available

filtering technology cannot reasonably evaluate visual images on the Internet, the only way to block access to images that may be attached to e-mail is to block all e-mail.

40. No existing filtering software can successfully block only the categories of visual depictions on the Internet enumerated in the Act without significant overblocking and underblocking.

41. Indeed, in its report to Congress, the Commission on Child Online Protection (COPA) pointedly concluded that "no single technology or method will effectively protect children from harmful material online." COPA Commission Report, Oct. 20, 2000, at 9.

42. In addition, Consumer Reports recently tested the most widely used filtering software and concluded that "most of the products we tested failed to block one objectionable site in five." Consumer Reports, March 2001, at 22.

43. Filtering software blocks access to Internet content in advance of any judicial test of the legal status of the blocked information and without any assessment by a court or jury as to local community standards. It would be impossible as a legal matter for nongovernmental private filtering companies to determine which websites or visual depictions on the Internet fall within the narrow legal definitions of "obscenity," "child pornography," and "harmful to minors."

44. Because of the inherent imprecision of blocking technology, most popular filtering software typically blocks access to constitutionally protected speech of significant social, literary, artistic, political, or scientific value. Filtering software blocks substantial amounts of fully protected expression on the Internet based solely on the content and viewpoint of that expression.

45. According to one study, the filtering software that best prevents access to "objectionable content" will "likely curb access to web sites addressing political and social issues." Consumer Reports, March 2001, at 22.

Internet Access in Public Libraries

46. Public libraries occupy a unique place in our democratic society. The public library is an invaluable forum for the communication and receipt of information, providing books and other media "for the interest, information, and enlightenment of all people of the community the library serves." ALA Library Bill of Rights, art. I.

47. Public libraries historically have provided a wide and diverse range of information to the public and have prohibited exclusion of materials based on disfavored content or viewpoints. According to the ALA Library Bill of Rights, originally ratified in 1948, "Materials should not be excluded because of the origin, background, or views of those contributing to their creation. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval." Id. arts. I-II.

48. Public libraries are "designed for freewheeling inquiry." Board of Education v. Pico, 457 U.S. 853, 915 (1982) (Rehnquist, J., dissenting).

49. A public library is "the quintessential locus of the receipt of information." Kreimer v. Bureau of Police, 958 F.2d 1242, 1255 (3d Cir. 1992). As such, it is a "mighty resource in the free marketplace of ideas." Minarcini v. Strongsville City School Dist., 541 F.2d 577, 582 (6th Cir. 1976).

50. Public libraries are traditional spheres of free expression, the operation of which are fundamental to the functioning of our society.

51. Public libraries are limited public fora dedicated to the communication and receipt of information.

52. The establishment, maintenance, and funding of public libraries encourages the dissemination and receipt of the broadest and most diverse forms of private speech.

53. Today, public Internet access is available in the overwhelming majority of public libraries across the country. According to a recent report by the U.S. National Commission on Libraries and Information Science, approximately 95% off all public libraries provide public access to the Internet. Bertot & McClure, Public Libraries and the Internet 2000: Summary Findings and Data Tables, Report to National Commission on Libraries and Information Science, at 3 (September 7, 2000).

54. The widespread availability of Internet access in public libraries is due, in large part, to the availability of public funding, including the funding programs regulated by the Act.

55. Unfettered Internet access in public libraries is particularly important for libraries that serve low-income communities. In fact, for many public library Internet users, the library is the only place to gain access to the Internet.

56. The vast majority of libraries offering public Internet access have opted not to impose content blocking software on patron Internet use. Although approximately 95% of libraries with public Internet access have some form of "acceptable use policy" governing patron use of the Internet, less than 17% use filtering software in some capacity on some of their public access computer terminals. Library Research Center, GSLIS, Univ. of Ill., Survey of Internet

Access Management in Public Libraries, June 2000, http://www.lis.uiuc.edu.gslis/research/internet.pdf, at 7-8. An even smaller percentage of libraries with public Internet access – less than 7% – have installed blocking software on all public Internet terminals. Id.

57. The rare instances in which public libraries have instituted mandatory filtering policies applicable to all patron use have raised serious constitutional concerns and, in some instances, legal challenges. Indeed, in the only case litigated to a decision to date, a public library's mandatory filtering policy was struck down under the First Amendment. See Mainstream Loudoun v. Board of Trustees of the Loudoun County Library, 24 F. Supp. 2d 552 (E.D. Va. 1998).

58. The content blocking required by the Act may impose significant costs on certifying libraries. Once a library pays for Internet service, no additional funds are needed to gain access to all websites and information on the Internet. Additional funds are required only to block access to websites and information on the Internet.

59. In addition, the Act would impose significant burdens on librarians and other library staff, requiring them to sacrifice their traditional functions of facilitating broad access to information, and forcing them to act as content monitors and censors.

60. Procuring hardware and software and providing the supervision required under the Act likely will impose substantial costs on libraries. In addition to start-up and maintenance costs, libraries would have to devote considerable staff time and resources to review and determine whether the blocking software should be "disabled" and to comply with other monitoring requirements and restrictions.

The Two Funding Schemes at Issue

61. As part of the Telecommunications Act of 1996, Congress enacted a "universal service" or "e-rate" program "to ensure affordable access to and use of telecommunications services." 47 U.S.C. § 254(h). Among other things, that program provides libraries and schools with discounted rates for access to telecommunications services, including local and long distance telephone service, high speed Internet access, and internal network connections.

62. The goal of the universal service program, including the E-rate discounts, is to provide access to advanced telecommunications services to as many Americans as possible, especially low-income consumers and those in remote areas. See 47 U.S.C. § 254(b)(2) ("Access to advanced telecommunications and information services should be provided in all regions of the Nation."); 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . .").

63. Universal service funding is allocated to libraries on the basis of objective criteria. Specifically, the level of e-rate discounts available to a requesting library or consortium is calculated based on the degree to which the community served is "disadvantaged" (as indicated by the percentage of students in local schools who are eligible for the National School Lunch Program) and on whether the library is located in an "urban" or "rural" area. See 47 C.F.R. § 54.505(b).

64. In addition, while a library must have a certified "technology plan" to be eligible for the E-rate discount, 47 C.F.R. § 54.504(b)(2)(vii), subjective criteria such as the content of the library's technology plan are not used in allocating funds. Indeed, applicants are expressly

told not to include their technology plans with their applications to the E-rate program, see http://www.sl.universalservice.org/apply/2qa.asp (visited 3/2/01). Rather, funds are disbursed in broad fashion based on objective criteria including the order in which requests are received, the category of service requested, and the poverty level of the community served. See 47 C.F.R. § 54.507(c) (funds initially distributed on "first-come-first-served basis"); 47 C.F.R. § 54.507(g) (if demand exceeds funding available, funds are first to be used to provide telephone and Internet connections, with remaining funds allocated for internal network wiring for applicants in neediest areas).

65. Up to $2.25 billion annually is available to provide eligible schools and libraries with e-rate discounts. 47 C.F.R. § 54.507.

66. The e-rate program is administered by a non-profit corporation called the Universal Service Administrative Company (USAC), under the direction, supervision, and control of the FCC. Defendants FCC and FCC Chairman Powell have statutory responsibility for overseeing and enforcing the universal service discount mechanism. 47 U.S.C. § 254; see also 47 C.F.R. §§ 54.500 et seq.

67. E-rate discounts are not federal funds disbursed by the federal treasury. Rather, e-rate discounts originate from telecommunications carriers, who are required to support the federal universal service mechanism as a condition of doing business.

68. Universal service discounts serve as a substantial, and often necessary, source of Internet-related funding for libraries in the United States, particularly in low-income and rural areas. As of December 1, 2000, over 14,000 e-rate applications from libraries and library

consortia had been approved, totaling more than $190 million in universal service discounts since the program's inception.

69. According to a survey conducted in 2000, 48.9% of public libraries received e-rate discounts. Bertot & McClure, Public Libraries and the Internet 2000: Summary Findings and Data Tables, Report to National Commission on Libraries and Information Science, at 4 (September 7, 2000). Libraries serving the poorest communities nationwide relied even more intensively on e-rate discounts to bridge the "digital divide." Approximately 70% of libraries serving communities with poverty levels in excess of 40% receive e-rate discounts. Id.

70. The second source of funding affected by the Act involves the Institute of Museum and Library Services (IMLS), an independent federal grantmaking agency created by the Library Services and Technology Act of 1996, 20 U.S.C. §§ 9121 et seq. (LSTA). The purposes of the program include "promot[ing] access to learning and information resources in all types of libraries for individuals of all ages"; "promot[ing] library services that provide all users access to information through State, regional, national and international electronic networks"; "provid[ing] linkages among and between libraries"; and "promot[ing] targeted library services to people of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to people with limited functional literacy or information skills." 20 U.S.C. § 9121.

71. The IMLS distributes federal funds to state library administrative agencies according to a population-based formula. The LSTA requires states to contribute matching funds and to target service toward people who might otherwise have difficulty using, or gaining access to, a library. State library agencies distribute LSTA funds to public, academic, research, school, and special libraries in their state.

72. LSTA grants serve as a substantial, and often necessary, source of Internet-related funding for libraries in the United States. In FY 2001, the IMLS issued over $200 million in LSTA funds, including approximately $148 million in grants to library agencies nationwide. Over 18% of public libraries receive LSTA or other federal grants, and more than 25% of libraries in communities with a poverty rate in excess of 40 % receive LSTA or other federal grants.

73. Both the federal e-rate discounts and LSTA grants to libraries encourage the dissemination and receipt of the broadest and most diverse forms of private speech.

Legislative History of the Act

74. A variety of government officials, agencies, and commissions have expressed concerns about the constitutionality of the Act and the problems inherent in current blocking technology.

75. For example, Rep. Istook noted that the filters are "not yet perfect" and "might inadvertently block non-obscene websites." Testimony of Rep. Istook before the House Committee on Commerce, Subcommittee on Telecommunications, Trade and Consumer Protection (Sept. 11, 1998).

76. Similarly, Harvard Law School professor Larry Lessig testified that current software does not allow for subtle decision-making about what is and is not filtered and blocks many sites containing constitutionally protected speech. Testimony of Larry Lessig before the House Committee on Commerce, Subcommittee on Telecommunications, Trade and Consumer Protection (Sept. 11, 1998). Moreover, use of commercial filtering software inevitably delegates decisions about what should and should not be filtered to private software companies. Id. Other

witnesses also voiced concerns about the fact that current filtering technology is overbroad and ineffective. See, e.g., Testimony of Agnes M. Griffen, Director, Tuscon-Pima Public Library, before the House Committee on Commerce, Subcommittee on Telecommunications, Trade and Consumer Protection (Sept. 11, 1998); Testimony of Candace Morgan, Associate Director, Fort Vancouver Regional Library, Before the Senate Committee on Commerce, Science and Transportation (March 4, 1999); Testimony of Jerry Berman, Executive Director, Center for Democracy and Technology, before the House Committee on Commerce, Subcommittee on Telecommunications, Trade and Consumer Protection (Sept. 11, 1998).

77. Similarly, in its report to Congress, the federal Commission on Child Online Protection ("COPA") declined to endorse the use of filtering software, and notably concluded that "no single technology or method will effectively protect children from harmful material online." COPA Commission Report, Oct. 20, 2000, at 9.

78. In addition, the Congressional Research Service analyzed the provisions of the Act and expressed serious doubt as to the constitutionality of the Act's requirements. Among other things, the CRS report concluded that "it does not appear possible for software to block [constitutionally unprotected] material without simultaneously blocking constitutionally protected material. This is because it may be impossible, in principle, to design technology that could distinguish obscenity from non-obscenity, child pornography from non-child pornography, and harmful-to-minors material from non-harmful-to-minors material." CRS Memorandum, Sept. 1, 2000, at 15.

79. Despite these fundamental concerns, Congress passed the Children's Internet Protection Act on December 15, 2000. The Act was signed into law on December 21, 2000.

The Statutory Language at Issue

80. The Children's Internet Protection Act requires public libraries to install content blocking software on all library Internet terminals as a condition of receiving certain funds.

81. At issue in this case are two substantially similar restrictions on library funding. Section 1721 of the Act imposes conditions on the receipt of "universal service" or "e-rate" discounts provided under the Communications Act of 1934, as amended, 47 U.S.C. § 254(h). Section 1712 of the Act restricts access to funds administered under the Library Services and Technology Act of 1996, 20 U.S.C. §§ 9121 et seq. (LSTA). Both funding programs include assistance to libraries for the provision of Internet service.

82. Section 1721 places several conditions on a library's receipt of e-rate discounts. The conditions apply to any library that has "one or more computers with Internet access" and receives universal service discounts for "the provision of Internet access, Internet service, or internal connections." Act § 1721 (to be codified at 47 U.S.C. § 254(h)(6)(A)(ii)).

83. With respect to adult Internet use, the library must certify that it:

> (i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are –
>
> (I) obscene; or
>
> (II) child pornography; and
>
> (ii) is enforcing the operation of such technology protection measure during any use of such computers.

Act § 1721 (to be codified at 47 U.S.C. § 254(h)(6)(C)).

84. The Act defines "technology protection measure" as "a specific technology that blocks or filters Internet access" to the enumerated categories of visual depictions. Id. (to be codified at 47 U.S.C. § 254(h)(7)(I)).

85. A library receiving e-rate discounts must submit an additional certification with respect to Internet use by minors, defined to include anyone under the age of 17. Act § 1721 (to be codified at 47 U.S.C. § 254(h)(7)(D)). The library must certify that, during "any use of [computers with Internet access] by minors," the required "technology protection measure" blocks not only "obscenity" and "child pornography," but also "visual depictions that are . . . harmful to minors." Act § 1721 (to be codified at 47 U.S.C. § 254(h)(6)(B)).

86. Section 1721 contains no exceptions for parental permission. The additional restrictions on minors' access apply even if a minor's parents wish to allow, or even encourage, such access.

87. Section 1721 provides for the disabling of content blocking software "during adult use," stating that "[a]n administrator, supervisor, or other person authorized by the certifying authority . . . may disable the technology measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose." Id. (to be codified at 47 U.S.C. § 254(h)(6)(D)).

88. The Act provides no other guidance or standards as to whether, and under what circumstances, the filtering software "may" be disabled.

89. The Act does not define the phrase "bona fide research or other lawful purpose."

90. A library that fails to comply with the certification requirement, or fails to adhere to the library's submitted certification, is ineligible for e-rate discounts. Id. (to be codified at 47 U.S.C. § 254(h)(6)(F)).

91. Section 1712 of the Act imposes substantially similar certification requirements on libraries that receive federal LSTA funds. If a library receives both e-rate discounts and

LSTA funds, it need submit only the certification required under Section 1721. Act § 1712 (to be codified at 20 U.S.C. § 9134(f)(1)).

92. Section 1712 prohibits the receipt of LSTA funds "used to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet" unless the library certifies that it is enforcing the use of "a technology protection measure" that blocks "visual depictions" that are "obscene" or "child pornography." Act § 1712 (to be codified at 20 U.S.C. § 9134(f)). As with Section 1721, the library also must certify that, "during any use of [the library's Internet computers] by minors," the filtering software protects against access to visual depictions that are "harmful to minors." Id. The definitions in Section 1712 mirror those in Section 1721. Id. (to be codified at 20 U.S.C. § 9134(f)(7)).

93. Although not limited to "adult use," the "disabling" provision in Section 1712 is otherwise identical to that in Section 1721. Id. (to be codified at 20 U.S.C. § 9134(f)(3).

94. A library that fails to comply with the certification requirement cannot receive LSTA funds. Id. (to be codified at 20 U.S.C. § 9134(f)(5).

95. The Act's filtering mandate is not limited to library Internet access supported only by federal funds. Rather, the universal service restrictions require a library to certify that blocking software operates on "any of its computers with Internet access," Act § 1721 (to be codified at 47 U.S.C. § 254(h)(6)(C)(i)) (emphasis added), "during any use of such computers," id. (to be codified at 47 U.S.C. § 254(h)(6)(C)(ii)) (emphasis added).

96. With respect to minors, filters purporting to block images that are "harmful to minors" must be used on "any of [the library's] computers with Internet access," id. (to be

codified at 47 U.S.C. § 254(h)(5)(B)(i)) (emphasis added), "during any use of such computers by minors," id. (to be codified at 47 U.S.C. § 254(h)(6)(B)(ii)) (emphasis added).

97. Thus, even if the library funds part of its "provision of Internet access, Internet service, or internal connections" with money from sources other than federal funds, the library must install filters on all of its computers with Internet access.

98. The same is true for the LSTA restrictions, which apply to any library that receives LSTA funds "to purchase computers used to access the Internet, or to pay for the direct costs associated with accessing the Internet." Act § 1712 (to be codified at 20 U.S.C. § 9134(f)(1)).

99. The LSTA restrictions require a library to certify that blocking software operates on "any of its computers with Internet access," Act § 1712 (to be codified at 20 U.S.C. § 9134(f)(1)(B)(i) (emphasis added), "during any use of such computers," id. (to be codified at 20 U.S.C. § 9134(f)(1)(B)(ii) (emphasis added).

100. With respect to minors, filters purporting to block images that are "harmful to minors" must be used on "any of [the library's] computers with Internet access," Act § 1712 (to be codified at 20 U.S.C. § 9134(f)(1)(A)(i) (emphasis added), "during any use of such computers by minors," id. (to be codified at 20 U.S.C. § 9134(f)(1)(A)(ii) (emphasis added).

101. Accordingly, even if the library "purchase[s] computers used to access the Internet, or to pay for the direct costs associated with accessing the Internet" with money from sources other than federal funds, the library must install filters on all of its computers with Internet access.

102. In Section 1732, the Act provides an additional certification requirement, not challenged in this action, which requires a recipient of e-rate discounts to

> (A) adopt and implement an Internet safety policy that addresses –
> (i) access by minors to inappropriate matter on the Internet and World Wide Web;
> (ii) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;
> (iii) unauthorized access, including so-called 'hacking,' and other unlawful activities by minors online;
> (iv) unauthorized disclosure, use, and dissemination or personal identification information regarding minors; and
> (v) measures designed to restrict minors' access to materials harmful to minors.
> (B) provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

Act § 1732 (to be codified at 47 U.S.C. § 254(l)).

103. Unlike the more restrictive requirements of Sections 1712 and 1721, Section 1732 notably allows for local, rather than federal, determination "regarding what matter is inappropriate for minors," and how best to address such content in a constitutional manner. Id. (to be codified at 47 U.S.C. § 254(l)). In fact, Section 1732 expressly prohibits federal review or control over the local determination of "inappropriate" content. Id.

The Impact of the Act on Internet Access in Libraries

104. Through the Act, Congress has sought to use its spending power to restrict otherwise available, constitutionally protected speech on the Internet and the ability of library patrons to receive such information.

105. By conditioning funding to libraries on the mandatory installation and use of filtering software on all library Internet terminals, Sections 1712 and 1721 of the Act, to be codified at 20 U.S.C. § 9134 and 47 U.S.C. § 254(h), present libraries with a Hobson's choice:

Public libraries must either use content filters to block patrons' access to constitutionally protected expression on the Internet, or forgo vital federal assistance to which they would otherwise be entitled and abandon their traditional function of providing the widest and most diverse information resources to the public.

106. Many libraries that opt out of the federal assistance programs will be unable to serve their communities with any Internet access, thereby further expanding the "digital divide" separating those with access to this democratizing medium from those without such access.

107. On the other hand, libraries that install filtering software will, by necessity, impose content- and viewpoint-based restrictions on their patrons' right to receive information. Such restrictions are particularly egregious in the context of a public library, a traditional sphere of free expression designed for freewheeling inquiry.

108. In addition, compliance with the Act's filtering requirements – including procuring hardware and software, providing the necessary supervision, devoting considerable staff time and resources to review and determine whether the blocking software should be "disabled," and complying with other monitoring requirements and restrictions – likely will inflict substantial costs on libraries.

109. By imposing sweeping nationwide restrictions on the provision of local public Internet access, the Act deprives local communities, libraries, and librarians of the ability to adopt and implement Internet use policies in the same way they develop other library policies – based on the needs of their communities.

110. The central objective of the Act – preventing access by both adults and children to certain defined visual depictions – cannot possibly be achieved. As a practical matter, no

technology exists that would effectively block this material without substantial overblocking and underblocking.

111. In addition, it is not even theoretically possible for filtering software to target the narrow categories of unprotected speech enumerated in the Act. As a matter of law, private, nongovernmental filtering software companies cannot determine whether a particular visual depiction actually meets the legal definition of "obscenity," "child pornography," or "harmful to minors."

112. Blocking decisions made by private filtering companies – which typically refuse to disclose their blocking criteria or list of blocked sites – are not subject to any review, either by a proper judicial authority, or by the libraries who use the software.

113. In any case, even if private software companies somehow were able to establish filtering criteria limited to the narrow legal definitions of "obscenity" or "harmful to minors," those categories of unprotected speech – which rely on some notion of "community standards" – cannot properly be applied to the Internet. "[B]ecause of the peculiar geography-free nature of cyberspace, a 'community standards' test would essentially require every Web communication to abide by the most restrictive community's standards." ACLU v. Reno, 217 F.3d 162, 175 (3rd Cir. 2000).

114. Filtering software purporting to comply with the Act's requirements inevitably will block library patrons' access to vast amounts of constitutionally protected speech. Such software blocks a host of valuable expressive content and viewpoints on the Internet. It threatens to reduce adults' Internet access to material suitable only for children. Filtering software also limits children's access to countless websites that are perfectly suitable and appropriate for

minors. In addition, filters reduce older minors' access to materials geared to significantly younger children.

115. Because currently available filtering technology is incapable of selectively blocking particular visual images, including those attached to e-mail, the Act's blocking mandate effectively requires public libraries to ban all e-mail to ensure that patrons do not gain access to e-mail attachments falling within the Act's categorical list of prohibited visual depictions.

116. Section 1712 of the Act expressly does not "prohibit a library from limiting Internet access to or otherwise protecting against materials other than" obscenity, child pornography, and depictions that are harmful to minors. Act § 1712 (to be codified at 20 U.S.C. § 934(f)(2)). Thus, libraries incur no penalty under Act for blocking more constitutionally protected information available on the Internet, but libraries will lose their funding if they fail to block enough Internet speech. This scheme encourages and facilitates overblocking by the government based on disfavored content and viewpoint.

117. Consequently, application of Sections 1712 and 1721 of the Act will lead to the suppression of expression fully protected by the First Amendment.

118. In addition to these constitutional infirmities, the Act sweeps within its ambit privately funded expression unrelated to and unsupported by the federal funding programs at issue here.

119. For example, even if only 1% of the money used to purchase library computers and Internet access came from federal e-rate and LSTA funds, the Act would require all of the library's Internet terminals to have blocking software during any use of those computers. Act §§

1712, 1721 (to be codified at 20 U.S.C. § 9134(f)(1) and 47 U.S.C. § 254(h)(6)(B)-(C), respectively).

120. The Act's "disabling" provisions pose a variety of practical and constitutional problems. First, the Act gives library employees unbridled discretion to determine whether, and under what circumstances, a patron may have the filters disabled. Act §§1712 and 1721 (to be codified at 20 U.S.C. § 9134(f)(3) and 47 U.S.C. § 254(h)(3), respectively).

121. In addition, the Act employs hopelessly vague terminology in defining the disabling process. It is impossible to determine what constitutes a "bona fide research or other lawful purpose[]." Without any guiding standards or criteria, the disabling provisions invite abuse and widespread discrimination on the basis of the patron's identity, the particular information to which the patron wishes to gain access, or other legally impermissible criteria.

122. The disabling provisions also have a dangerous chilling effect on the exercise of patrons' right to receive information anonymously. By placing the disabling decisions in the hands of library employees, the Act requires patrons affirmatively to request unblocking. Library patrons who wish to gain access to sensitive, though non-obscene, information on the Internet may be deterred by this requirement. The unblocking provisions therefore attach an unconstitutional stigma to and chill the receipt of fully protected expressive materials.

123. The Act contains no parental permission exception to the additional blocking restrictions on minors' library Internet access. The Act therefore supplants parents' authority and responsibility to make important decisions regarding the scope of information to which their children have access.

124. The requirements of the Act are not the least restrictive means of accomplishing any compelling governmental purpose. In passing the Act, Congress did not adequately consider whether less restrictive alternatives would accomplish its asserted interest in protecting patrons from unwanted materials.

125. For example, Congress failed to address whether its legislative goals could be served by libraries' adoption of objective Internet use policies. Such policies, which the overwhelming majority of libraries now have in place and have been successful in addressing content concerns, might include: educational assistance and guidance from library staff regarding safe, effective Internet use; clear, specific standards governing patron Internet use; instructions that the use of public Internet terminals must be for lawful purposes, including specific prohibitions on access to materials that are obscene, child pornography, or harmful to minors; content-neutral regulations, including strict time-limits and, if the library permits printing from Internet terminals, clear limits on the number of pages patrons may print; an appeals mechanism, even if that mechanism is an informal one, to allow patrons to challenge any adverse decisions relating to their Internet use; mechanisms ensuring that the libraries' Internet use policies are consistent with the libraries' policies governing the use of other available media; special provisions for minors, including Internet training, tutorials, and lists and direct links to sites developed for children; the use of privacy screens and screensaver technology to prevent general viewing of unwanted material from other patrons; and general behavior policies to address any disruption or problem behavior.

126. Section 1732 of the Act offers one, although hardly the only, alternative to the harsh measures adopted in Sections 1712 and 1721. Section 1732 requires adoption of an

"Internet safety policy" by all public libraries after a public hearing, which must include several specific elements. Congress did not consider or test whether this or other less restrictive alternatives would accomplish its asserted interests.

CAUSES OF ACTION

COUNT 1:

127. Plaintiffs repeat and reallege paragraphs 1-126.

128. The Act facially violates the First and Fifth Amendments to the United States Constitution because it conditions access to funding and discounts on acceptance of content and viewpoint restrictions on otherwise available, constitutionally protected speech on the Internet. The Act unconstitutionally burdens the rights of plaintiffs, their members, patrons, and Internet speakers to communicate and receive protected expression.

129. By conditioning funding to libraries on the mandatory installation and use of filtering software on all library Internet terminals, Sections 1712 and 1721 of the Act (to be codified at 20 U.S.C. § 9134 and 47 U.S.C. § 254(h), respectively) imposes unconstitutional conditions on public libraries.

130. Enforcement of the Act would violate the constitutional rights of public library patrons to receive information, and would force libraries either to violate the rights of patrons and speakers, or to forgo a substantial government benefit to which they would otherwise be entitled.

131. The Act impermissibly imposes content- and viewpoint-based restrictions on speech in a traditional area of free expression and a limited public forum.

132. The Act impermissibly restricts Internet expression in public libraries in ways which distort its usual functioning.

133. The requirements of the Act are not the least restrictive means of accomplishing any compelling governmental purpose.

134. The Act, in plain terms and in practical effect, unduly restricts, burdens, and deters a substantial amount of speech, in violation of the First and Fifth Amendments of the United States Constitution.

COUNT 2:

135. Plaintiffs repeat and reallege paragraphs 1-134.

136. The speech restrictions imposed by the Act, Sections 1712 and 1721 (to be codified at 20 U.S.C. § 9134 and 47 U.S.C. § 254(h), respectively) apply not only to Internet connections and computers funded by the federal e-rate and LSTA programs, but also to any of the recipient library's computers with Internet access. The Act therefore restricts and burdens constitutionally protected expression that is supported exclusively by private, local, or state funds, in violation of the First and Fifth Amendments of the United States Constitution.

COUNT 3:

137. Plaintiffs repeat and reallege paragraphs 1-136.

138. Sections 1712 and 1721 of the Act (to be codified at 20 U.S.C. § 9134 and 47 U.S.C. § 254(h), respectively) effectuate prior restraints on speech, in violation of the First and Fifth Amendments of the United States Constitution.

COUNT 4:

139. Plaintiffs repeat and reallege paragraphs 1-138.

140. The Act's "disabling" provisions, Sections 1712 and 1721 (to be codified at 20 U.S.C. § 9134(f)(3) and 47 U.S.C. § 254(h)(3), respectively), restrict, burden, and chill patrons' right to communicate and receive protected expression anonymously, in violation of the First and Fifth Amendments to the United States Constitution.

COUNT 5:

141. Plaintiffs repeat and reallege paragraphs 1-140.

142. The Act's "disabling" provisions, Sections 1712 and 1721 (to be codified at 20 U.S.C. § 9134(f)(3) and 47 U.S.C. § 254(h), respectively), violate the First and Fifth Amendments to the United States Constitution by granting library officials standardless, unfettered, and unreviewable discretion to determine whether and when patrons may gain unfiltered access to protected expression.

COUNT 6:

143. Plaintiffs repeat and reallege paragraphs 1-142.

144. Sections 1712 and 1721 of the Act (to be codified at 20 U.S.C. § 9134 and 47 U.S.C. § 254(h), respectively) are unconstitutionally vague, in violation of the First and Fifth Amendments of the United States Constitution.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully ask that this Court:

A. Declare that Sections 1712 and 1721 of the Children's Internet Protection Act, to be codified at 20 U.S.C. § 9134 and 47 U.S.C. § 254(h), respectively, are unconstitutional;

B. Permanently enjoin defendants from enforcing those provisions;

C. Award plaintiffs such costs and fees as are allowed by law; and

D. Grant plaintiffs such other and further relief as this Court deems equitable, just, and proper.

Respectfully submitted,

____

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