

Sacramento Public Library Authority Board  
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Statement of John Cary Sims Concerning Agenda Item 7.1  
(Proposed Amendment to Internet Access Policy)

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I am a frequent user of the Sacramento Public Library, a parent of three teenagers who also use the Library, and a member of the Sacramento community. As the Board is well aware, the Library's policies concerning internet access raise a number of complex First Amendment issues. I have extensive experience in the litigation of First Amendment cases, having spent 11 years as an attorney with the Public Citizen Litigation Group in Washington, D.C., the public interest law firm founded by Ralph Nader. Since 1986, I have been a member of the full-time faculty at the University of the Pacific, McGeorge School of Law, where I have taught and written extensively on constitutional law. The First Amendment in particular is an area in which I have focused my academic research and writing.

In my opinion, the proposed amendment to the Library's internet access policy that is before the Board today represents a positive step. As I mentioned in my testimony before the Board on January 25, 2007, any effort to impose content-based restrictions on internet access by Library patrons raises serious First Amendment problems. On the other hand, it is vital that all Library users, especially children, be provided a comfortable and supportive environment, and that no one be exposed involuntarily to potentially objectionable material. The proposal allows

copyright-free access to information – the Library’s core function – while emphatically protecting the right of other users to avoid material that they may find offensive.

The Board already has before it an excellent analysis of the legal issues prepared by Robin Leslie Stewart of the law firm of Kronick, Moskowitz, Tiedemann & Girard, so there is no need for me to address all of the First Amendment concerns surrounding the proposal and the broader issue of public internet access. I will be happy to address any particular issues of interest to members of the Board. However, the Pacific Justice Institute, in urging that the Board undertake aggressive censorship of potentially offensive internet material, places great reliance on the Supreme Court’s decision in United States v. American Library Association, 539 U.S. 194 (2003) . I would like to briefly discuss that case, to make clear that it in no way supports censorship, and in fact provides additional support for the path that the Board has chosen in the past and will continue to follow under today’s proposal.

The sole question decided by the Supreme Court in ALA was that Congress had not violated the Constitution in requiring public libraries to adopt internet filtering as a condition of receiving federal financial support. The Pacific Justice Institute states that “a clear majority of the Supreme Court has expressed support for libraries’ efforts to restrict access to internet pornography, even to the point of prohibiting it entirely.” Letter from Matthew B. McReynolds, Pacific Justice Institute, to the Board, January 24, 2007, at 3. To the contrary, the plurality opinion written by then-Chief Justice Rehnquist upheld the statute precisely because it gives library patrons the type of free choice as to the materials viewed that the Sacramento Library grants:

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.

539 U.S. at 209. Thus, if the Board were to change its policy 180° and impose the type of censorship sought by the Pacific Justice Institute, it would be acting contrary to the most basic assumption on which the Supreme Court's analysis was based. Chief Justice Rehnquist did state in passing that "[m]ost libraries already exclude pornography from their print collections because they deem it inappropriate for inclusion," 539 U.S. at 208, but that is dictum unnecessary to the plurality's reasoning, of doubtful applicability to internet access issues, and inconsistent with the facts of ALA as presented to the Court. Justice Kennedy was most explicit in making the outcome of ALA entirely dependent on the fact that the statute in issue guaranteed a patron's First Amendment rights in precisely the way that the Sacramento Library does:

If, on the request of an adult user, a librarian will unblock filtered material or disable the Internet software filter without significant delay, there is little to this case. The Government represents this is indeed the fact.

539 U.S. 214 (opinion concurring in the judgment). Even on this assumption, Justices Stevens, Souter, and Ginsburg dissented. Chief Justice Rehnquist is no longer a member of the Supreme Court, nor is Justice O'Connor, who joined his opinion.

The Pacific Justice Institute, and a number of supporting witnesses who testified at the January 25 hearing, urge that the Board ban access by Library patrons to internet sites that they believe should be identified as objectionable. That type of content-based regulation would almost certainly be unconstitutional, and if adopted its implementation and enforcement would make huge demands on Library resources. As explained above, the effort to use the Supreme Court's decision in ALA to support this type of censorship is directly contrary to the assumptions

on which the Supreme Court decided that case.

Public libraries exist to make information available to the members of their communities, not to decide which materials readers or internet users should find of interest. Today's proposal is an appropriate one, because it preserves the freedom to read that is a core element of the First Amendment, while continuing and improving the Library's efforts to guarantee the privacy rights of all patrons.