versal restriction at the source." [1379] Subsequently, the district court found COPA to violate the First Amendment and issued a permanent injunction against its enforcement; the Third Circuit affirmed, and the Supreme Court denied certioriari.[1380]

In *United States v. American Library Association, Inc.*, a four-Justice plurality of the Supreme Court upheld the Children's Internet Protection Act (CIPA), which, as the plurality summarized it, provides that a public school or "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." [1381] The plurality asked "whether libraries would violate the First Amendment by employing the filtering software that CIPA requires." [1382] Does CIPA, in other words, effectively violate library *patrons*' rights? The plurality concluded that it does not, after finding that "Internet access in public libraries is neither a 'traditional' nor a 'designated' public forum," and that it therefore would not be appropriate to apply strict scrutiny to determine whether the filtering requirements are constitutional.[1383]

The plurality acknowledged "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." [1384] It found, however, that, "[a]ssuming that such erroneous blocking presents constitutional difficulties, any such concerns are dispelled by the ease with which patrons may have the filtering software disabled." [1385]

The plurality also considered whether CIPA imposes an unconstitutional condition on the receipt of federal assistance—in other words, does it violate public *libraries*' rights by requiring them to

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[1379] Ashcroft v. ACLU, 542 U.S. 656, 667 (2004). Justice Breyer, dissenting, wrote that blocking and filtering software is not a less restrictive alternative because "it is part of the status quo" and "[i]t is always less restrictive to do *nothing* than to do *something*." Id. at 684. The majority opinion countered that Congress "may act to encourage the use of filters," and "[t]he need for parental cooperation does not automatically disqualify a proposed less restrictive alternative." Id. at 669.

[1380] American Civil Liberties Union v. Gonzales, 478 F. Supp. 2d 775 (E.D. Pa. 2007), *aff'd sub nom.* American Civil Liberties Union v. Mukasey, 534 F.3d 181 (3d Cir. 2008), *cert. denied*, 129 S. Ct. 1032 (2009).

[1381] 539 U.S. 194, 199 (2003).

[1382] 539 U.S. at 203.

[1383] 539 U.S. at 205.

[1384] 539 U.S. at 208.

[1385] 539 U.S. at 209. Justice Kennedy, concurring, noted that, "[i]f some libraries do not have the capacity to unblock specific Web sites or to disable the filter . . . that would be the subject for an as-applied challenge, not the facial challenge made in this case." 539 U.S. at 215. Justice Souter, dissenting, noted that "the statute says only that a library 'may' unblock, not that it must." 539 U.S. at 233.