

Congressional delegations. His knowledge of Air Force issues and policy and his commitment to the United States Air Force is impressive and will be missed by Members who, like me, have found him to be unfailingly helpful whenever his assistance was requested.

Mr. Speaker, please join me in thanking Colonel Bull, his wife Carol, and his two daughters, Cristina and Lauren, for his service to the Air Force and to our nation, and extend our best wishes for his retirement.

HONORING ROBERT A. MUNYAN,
PRESIDENT, IBEW LOCAL 1289

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 20, 1999

Mr. PALLONE. Mr. Speaker, it is my great pleasure to rise today to honor a man who has spent the last 43 years of his life representing the interests of working men and women in Central New Jersey.

Robert A. Munyan, today, retires as President and Business Manager of International Brotherhood of Electrical Workers Local Union 1289.

For the last several decades, Robert Munyan has spent a majority of his time improving the quality of life for thousands of workers in the State of New Jersey. Throughout his career in organized labor, Mr. Munyan has held numerous positions for Local 1289, culminating with his election as President and Business Manager in 1980.

Mr. Munyan has played an essential role in IBEW contract negotiations, helping shape the New Jersey Master Energy Plan, and protecting workers' rights in the New Jersey State Energy Deregulation Bill. He continues to be a constant supporter of organized labor and works to ensure that all workers have a voice.

With Robert Munyan's retirement, IBEW Local 1289 is losing a worker, a family man, and a leader. I want to offer Mr. Munyan my congratulations and thanks for his outstanding career of service. It is with men like Robert Munyan that our nation's labor movement is such a huge success. He will be sorely missed.

COSPONSOR H.R. 2560

HON. ERNEST J. ISTOOK, JR.

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 20, 1999

Mr. ISTOOK. Mr. Speaker, I rise today to urge my colleagues to cosponsor H.R. 2560, the "Child Protection Act of 1999." This bill would require that filters that block obscenity and child pornography be placed on all computers with Internet connections that minors can access which have been purchased with Federal funds. Here is a copy of my "Dear Colleague" and a copy of the Congressional Research Service opinion that says this approach is constitutional. It is important that we protect our children from obscenity and child pornography.

PROTECT OUR CHILDREN FROM OBSCENITY!!!

DEAR COLLEAGUE: There are over 30,000 pornographic Internet web sites. 12-17 year old

adolescents are among the larger consumers of Porn (U.S. Commission on Pornography) Transporting obscenity on the Internet is a Federal crime. (Punishable by a fine and not more than 5 years in prison for the first offense and a fine and up to 10 years in prison for the second offense, plus a basic fine of up to \$250,000. 18 USC 1462)

In 1998, Congress tried to protect children from obscenity with the "Child Online Protection Act." That legislation attempted to protect our children by requiring adult identification before admission to a site. The court has blocked this since some adults may not have appropriate identification and might be denied access. Our children are still in danger.

If we cannot protect our children from the obscenity on websites, the only solution is to protect them when they use the Internet. In 1998, the Labor-HHS-Education Appropriations subcommittee adopted an amendment which would protect our children from obscenity on the Internet. This provision was supported by every member of the subcommittee, both Democrat and Republican. The roll call vote was unanimous.

This legislation requires a school or library which receives Federal funds for the purchase of computers or computer-related equipment (modems, LANs, etc.), to install an Internet obscenity/child pornography filter on any computer to which minors have access.

Because the filters are not yet perfect, and might inadvertently block non-obscene websites, the provision allows access to other sites with the assistance of an adult. The filter can be turned off with a password, for example, for that one session; the filters routinely turn back on automatically after that user exits the Internet. The filter software is required only for computers to which minors have access, so, for example, it would not restrict a teacher's computer in their personal office, or any computer in a strictly-adult section of a library.

If the filtering software is not installed, the school or library involved would have funds withheld for further payments toward computers and computer-related services, until they comply with the law.

State agencies, who have oversight of the appropriated funds, are responsible for approving software to comply with this legislation. There is no authority for the Department of Education to dictate this selection. The Department of Education only has authority to determine the accepted software packages usable by Indian Tribes and Department of Defense schools and libraries. This is designed to assure local control, and to foster competition in the software market.

The Supreme Court has determined that obscenity is not constitutionally-protected speech. This legislation will not curtail anyone's constitutionally-protected speech.

If you have questions or to cosponsor, call Dr. Bill Duncan (Rep. Istook) at 5-2132.

ERNEST J. ISTOOK, Jr.,

Member of Congress.

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, June 7, 1999.

MEMORANDUM

To: Honorable Ernest J. Istook, Attention: Dr. William A. Duncan

From: Henry Cohen, Legislative Attorney, American Law Division.

Subject: Constitutionality of Blocking URLs Containing Obscenity and Child Pornography.

This memorandum is furnished in response to your question whether a draft bill titled the "Child Protection Act of 1999" would be

constitutional if it were implemented by blocking URLs known to contain obscenity or child pornography. The draft bill would apply to any elementary or secondary school or public library that receives federal funds "for the acquisition or operation of any computer that is accessible to minors and that has access to the Internet." It would require such schools and libraries to "install software on [any such] computer that is determined [by a specified government official] to be adequately designed to prevent minors from obtaining access to any obscene information or child pornography using that computer," and to "ensure that such software is operational whenever that computer is used by minors, except that such software's operation may be temporarily interrupted to permit a minor to have access to information that is not obscene, is not child pornography, or is otherwise unprotected by the Constitution under the direct supervision of an adult designated by such school or library."

The First Amendment provides: "Congress shall make no law . . . abridging the freedom of speech, or of the press." The First Amendment does not apply to two types of pornography: obscenity and child pornography, as the Supreme Court has defined them.¹ It does, however, protect most pornography, with "pornography" being used to mean any erotic publication. The government may not, on the basis of its content, restrict pornography to which the First Amendment applies unless the restriction is necessary "to promote a compelling interest" and is "the least restrictive means to further the articulated interest."² It was on this ground that a federal district court struck down a Loudoun County, Virginia, public library policy that blocked access to pornography on all library computers, whether accessible to adults or children.³

The Loudoun County case involved a policy under which "all library computers would be equipped with site-blocking software to block all sites displaying: (a) child pornography and obscene material; and (b) material deemed harmful to juveniles . . . To effectuate the . . . restriction, the library has purchased X-Stop, commercial blocking software manufactured by Log-On Data Corporation. While the method by which X-Stop chooses to block sites has been kept secret by its developers, . . . it is undisputed that it has blocked at least some sites that do not contain any material that is prohibited by the Policy."⁴

The court found "that the Policy is not narrowly tailored because less restrictive means are available to further defendant's interest . . ."⁵ One of these less restrictive means was that "filtering software could be installed on only some Internet terminals and minors could be limited to using those terminals. Alternately, the library could install filtering software that could be turned off when an adult is using the terminal. While we find that all of these alternatives are less restrictive than the Policy, we do not find that any of them would necessarily be constitutional if implemented. That question is not before us."⁶

X-Stop, as the court noted, blocks sites. If this means that it blocks URLs that are known to display child pornography and obscenity (and material deemed harmful to juveniles), as opposed to blocking particular material, on all sites, that constitutes child pornography or obscenity, then it would be the sort of software that you ask us to assume would be used to implement the draft bill. The draft bill, however, would be implemented by one of the "less restrictive

Footnotes appear at end of memorandum.

means" to which the court referred—i.e., by a less restrictive means than the Loudoun County library used. The draft bill would be implemented by a means that would permit the blocking software to be turned off when an adult is using the terminal. The court in the Loudoun County case did not find that this less restrictive means "would necessarily be constitutional if implemented," but it did not rule out the possibility.

Under the draft bill, whether computers were programmed to block URLs that are known to display child pornography and obscenity, or were programmed to block particular material, on all sites, that constitutes child pornography or obscenity, they would apparently, of necessity, block some material that constitutes neither child pornography nor obscenity. If, however, the former method of blocking were used—i.e., the method of blocking URLs that you ask us to assume would be used—then there would be a Supreme Court precedent that would suggest that the draft bill would be constitutional even if it resulted in the blocking of some material that constitutes neither child pornography nor obscenity. This precedent is *Ginsberg v. New York*.⁷

In *Ginsberg*, the Court upheld a New York State "harmful to minors" statute, which is similar to such statutes in many states. This statute prohibited the sale to minors of material that—

(i) predominantly appeals to the prurient . . . interest of minors, and (ii) is patently offensive to prevailing standards in the adult community . . . with respect to what is suitable material for minors, and (iii) is utterly without redeeming social importance for minors.⁸

The material that this statute prohibited being sold to minors were what the Court referred to as "'girlie' picture magazines."⁹ It seems unlikely that such magazines were all literally "utterly without redeeming social importance for minors," as some of the magazines that the statute probably prohibited from being sold to minors probably had at least one article concerning a matter of at least slight social importance for minors. Yet this possible objection to the statute was not raised by the Court's opinion or even by the concurring or two dissenting opinions to *Ginsberg*.

Furthermore, the draft bill's prohibition would be less restrictive than the New York statute's, as the draft bill's prohibition would be limited to obscenity and child pornography. The Supreme Court has defined "obscenity" by the Miller test, which asks:

(a) whether the "average person applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.¹⁰

The Miller test parallels the New York statute's description of material that is harmful to minors, but, in two respects, it covers less material than does the New York statute. First, to be obscene under the Miller test, material must be prurient and patently offensive as to the community as a whole, not merely as to minors. Second, to be obscene under the Miller test, material must, taken as a whole, lack serious value, but need not be utterly without redeeming social importance for minors.

As for child pornography, it did not exist as a legal concept (i.e., as a category of speech not protected by the First Amendment) when *Ginsberg* was decided. The Supreme Court, however, has defined it so that it is immaterial whether it has serious

value.¹¹ Therefore, the draft bill, in this respect, may be viewed as covering less material than laws against child pornography, as well as less material than laws against obscenity. As *Ginsberg* upheld a statute prohibiting the sale to minors of material that goes beyond obscenity and child pornography, and as the draft bill would be limited to those two categories, it appears that, based on the *Ginsberg* precedent, the draft bill, if implemented by blocking URLs known to contain obscenity or child pornography, would be constitutional.

FOOTNOTES

¹ *Miller v. California*, 413 U.S. 15 (1973) (obscenity); *New York v. Ferber*, 458 U.S. 747 (1982) (child pornography).

² *Sable Communications of California v. Federal Communications Commission*, 492 U.S. 115, 126 (1989).

³ *Mainstream Loudoun v. Board of Trustees of the Loudoun County Library*, 24 F. Supp.2d 552 (E.D. Va. 1998). On April 19, 1999, the defendant decided not to appeal this decision.

⁴ *Id.* at 556.

⁵ *Id.* at 567.

⁶ *Id.*

⁷ 390 U.S. 629 (1968).

⁸ *Id.* at 633.

⁹ *Id.* at 634.

¹⁰ *Miller v. California*, *supra* note 1, at 24.

¹¹ *New York v. Ferber*, *supra* note 1, at 763-764.

HOUSE JOINT RESOLUTION 99-1037

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 20, 1999

Mr. SCHAFFER. Mr. Speaker, Colorado is a national leader in the efforts to protect public health and the integrity of our environment. My state's devotion to high standards is coupled to its desire to maintain the economic prosperity and the excellent quality of life all Coloradans enjoy.

In fact, Colorado has found ways to achieve both objectives due to the brilliance of her citizenry and facility of the state legislature. In particular, I commend the exemplary leadership of Colorado State Representative Jack Taylor, and State Senator Ken Chlouber, in challenging those federal actions which molest Colorado's ability to achieve its enviable balance of environmental health and economic liberty.

This year, the pair persuaded members of their respective houses to join in elevating Colorado's grievances to a national level. As one whose voice speaks for Colorado, I urge my colleagues tonight to lend careful consideration to Colorado's position on the matter of its relationship to the federal regulatory structure.

A resolution adopted by the Colorado General Assembly (HJR 99-1037) was forwarded to the Congress urging our intervention and initiative in this important matter. The content of the Resolution is worthy of review here and now.

Mr. Speaker, protection of public health and the environment is among the highest priority of government requiring a united and uniform effort at all levels. The United States Congress has enacted environmental laws to protect the health of the citizens of the United States. These federal environmental laws often delegate the primacy of their administration and enforcement to individual states.

Mr. Speaker, the United States Environmental Protection Agency (EPA) is responsible for the administration and enforcement of

these federal environmental laws. The states that have been delegated primacy have demonstrated to the EPA that they have adopted laws, regulations, and policies at least as stringent as federal standards. These individual states are best able to administer and enforce environmental laws for the benefit of all citizens of the United States.

Accordingly, the EPA and the states have bilaterally developed policy agreements over the past twenty-five years that reflect the roles of the states and the EPA. These agreements also recognize the primary responsibility for enforcement action resides with the individual states, with EPA taking enforcement action principally where an individual state requests assistance, or is unwilling or unable to take timely and appropriate enforcement action.

However, inconsistent with these policy agreements, the EPA has levied fines and penalties against regulated entities in cases where the state previously took appropriate action consistent with the agreements to bring such entities into compliance. For example, Colorado statutes give authority to the appropriate state agencies for the administration and enforcement of state and federal environmental laws, but the EPA continues to enforce federal environmental laws despite the state's primacy and has acted in areas of violations where the state has already acted.

The EPA has been unwilling to recognize the importance of Colorado's ability to develop methods for the state to meet the standards established by the EPA and federal environmental laws while recognizing state and local concerns unique to Colorado. Mr. Speaker, a cooperative effort between the states and the EPA is clearly essential to ensure such consistency, while making certain to consider state and local concerns.

The EPA has been hesitant to recognize that economic incentives and rewarding compliance are acceptable alternatives to acting only after violations have occurred.

Currently, the EPA's enforcement practices and policies result in detailed oversight, and overfiling of state actions causing a weakening of the states' ability to take effective compliance actions and resolve environmental issues. The EPA's redundant enforcement policy and actions have adversely impacted its working relationships with Colorado and many western states.

In response to the EPA, the Western Governors' Association has adopted "Principles for Environmental Protection of the West," which encourages collaboration and polarization between the EPA and the states, and further encourages the replacement of the EPA's command-and-control structure with economic incentives encouraging results and environmental decisions that weigh costs against benefits in taking actions.

Mr. Speaker, Congress must require the EPA to recognize the states have the requisite authority, expertise, experience, and resources to administer delegated federal environmental programs. The EPA should afford states flexibility and deference in the administration and enforcement of delegated federal environmental programs.

EPA enforcers should also refrain from over-filing against recognized violators when a state has negotiated a compliance action in accordance with its approved EPA management systems so that compliance action achieves compliance with applicable requirements. The EPA should allow states the ability