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Via Facsimile to 501-447-1159 and Regular Mail

May 11, 2011

Dr. Morris Holmes
Superintendent
Little Rock School District
810 West Markham Street
Little Rock, AR 72201

Dear Dr. Holmes:

The American Civil Liberties Union Foundation ("ACLU") and the ACLU of Arkansas Foundation are non-profit organizations that work to protect constitutional rights and civil liberties, including the rights of public school students. We have received a complaint that your school district utilizes internet filtering software provided by Fortiguard to improperly censor websites advocating the fair treatment of lesbian, gay, bisexual, and transgender ("LGBT") persons. The filtering software in your district currently blocks such sites because they fall into the category of "Advocacy Groups," "Homosexuality," "Abortion," or "Sexual Education." On behalf of the ACLU and the ACLU of Arkansas, I am writing to inform you that this practice violates both the First Amendment and the Equal Access Act, 20 U.S.C. § 4071 *et seq.*, and the filters for "Advocacy Groups," "Homosexuality," "Abortion," and "Sexual Education" must be disabled immediately.

I. Factual Background

As reflected in the attached exhibits, the Fortiguard internet filtering software used by the Little Rock School District has been configured to improperly deny students access to websites for, among other things, GSA Network (gsanetwork.org) and Gay Lesbian and Straight Education Network ("GLSEN") (www.glsen.org).¹ When a student attempts to access these websites, the computers in your district display a message stating: "You have tried to access a web page which is in violation of Little Rock School District

¹ GSA Network is a youth leadership organization that connects school-based Gay-Straight Alliances to each other and to community resources through peer support, leadership development, and training. GLSEN is an organization that provides information and resources for educators and students concerning topics such as forming and running Gay-Straight Alliances, creating safe spaces in schools for LGBT students, and dealing with bullying, harassment, and discrimination.

Acceptable Use policy.” The message further states that GSA Network has been blocked because it is an “Advocacy Organization” and GLSEN has been blocked because of “Homosexuality.” See Exhibits A and B (attached). Documents produced in response to a public records request confirm that your school district has activated the “Homosexuality” and “Advocacy Organization” filters on your software system. See Exhibits C and D (attached).

The Little Rock School District does not have a legitimate pedagogical basis for censoring students’ access to these websites. The filters for “Homosexuality,” “Advocacy,” “Abortion,” and “Sexual Education” may be disabled without posing any risk of violating the Children’s Internet Protection Act (“CIPA”). The Fortiguard software has separate filtering categories to block access to websites classified as “Adult Materials,” “Nudity and Risqué,” or “Pornography.” See List of Fortiguard filter categories, at http://www.fortiguard.com/webfiltering/webfiltering_categories.html#cat1. In contrast, the filters for “Advocacy Organizations,” “Homosexuality,” “Abortion” and “Sexual Education” are designed to block access to LGBT and health related websites that do not contain sexually explicit content.

According to documents produced in response to a public records request, you have already received complaints from at least one teacher about your filtering system. On March 29, 2011, the school district received an e-mail from a teacher who was blocked from accessing the website for the Gay and Lesbian Alliance Against Defamation (“GLAAD”). In that e-mail, the teacher eloquently explained why “[t]he blocking of the GLAAD website is not only inappropriate; it is also detrimental to teachers, students, and staff.” The teacher explained:

The article I was attempting to access related to the American Federation of Teachers partnering with GLAAD on an anti-bullying campaign. When I saw the web filter violation, I must say I was shocked to see the category listed as “Homosexuality.” I understand blocking sexually provocative material on the web- I have no problem with that. I do, however, take issue with a reputable website being blocked because it houses homosexual content that is nonsexual in nature.

The GLAAD website has many teacher resources that deal with issues pertaining to bullying and tolerance. I find it wholly inappropriate that a reputable website has been deemed worthy of filtering, especially under the category “Homosexuality”. Homosexuality is not a disease or deviant behavior; the use of the word homosexuality in this context is abhorrent. The fact that homosexuality is a reason to prohibit the use of the website is not only disgusting, it is unlawful. Please consider revising the current filter on GLAAD, as well as the current usage of the word homosexuality as a category for filtering content

See Exhibit E (attached).

Over a month has passed since you received this teacher complaint. Your continued use of the filters violates your students' rights under the First Amendment and the Equal Access Act and could give rise to legal liability.

II. The First Amendment

Your students have a First Amendment right to access the websites for GSA Network, GLSEN, and similar materials that are blocked by the identified filters. “[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) (plurality) (internal quotation marks and citations omitted). “[T]he issue of equal rights for citizens who are homosexual is presently a topic of fervent discussion and debate within the courts, Congress, and the legislatures of the States The nation’s high school students, some of whom are of voting age, should not be foreclosed from that national dialogue.” *Gillman v. Sch. Bd. for Holmes County, Fla.*, 567 F. Supp. 2d 1359, 1374 (N.D. Fla. 2008); see also *Fricke v. Lynch*, 491 F. Supp. 381, 385 (D.R.I. 1980) (holding that First Amendment protects non-sexual expression of a student’s gay sexual orientation).

The filtering scheme employed by the Little Rock School District appears to engage in unconstitutional discrimination against LGBT viewpoints and information about sexual health. See Fortiguard URL Lookup, available online at <http://www.fortiguard.com/webfiltering/webfiltering.html#urllookup>. In addition to blocking GLSEN, the Fortiguard filter for “Homosexuality” also blocks access to other LGBT-supportive sites such as the National Gay & Lesbian Chamber of Commerce (nglcc.org) and the Pride Foundation (pridefoundation.org). The “Homosexuality” filter does not, however, block access to sites such as National Association for Research & Therapy of Homosexuality (narth.com) and People Can Change (peoplecanchange.com), which condemn homosexuality and urge LGBT persons to change their sexual orientation or gender identity through abstinence and so-called “reparative therapy.”² Similarly, Fortiguard’s filter for “Advocacy Organizations,” blocks access to GSA Network, but does not block access to advocacy organizations that oppose legal protections for LGBT people, such as the Family Research Council (frc.org), or the Alliance Defense Fund (alliancedefensefund.org).

This viewpoint discrimination violates your students’ First Amendment rights. The Little Rock School District may not selectively censor students’ access to information based merely on the “dislike [of] the ideas” in the censored materials. *Pico*, 457 U.S. at 872. “[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.” *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (internal quotation marks and citation omitted). Whether or not school administrators agree with the content of the censored websites, students are mature enough to understand that a school does not endorse or support speech to which it merely permits access on a nondiscriminatory basis. See *Bd.*

² “Reparative therapy” is a practice denounced as dangerous and harmful to young people by such groups as the American Psychological Association, the American Psychiatric Association, and the American Academy of Pediatrics. See *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel* (2006), available online at <http://apa.org/pi/lgbt/resources/just-the-facts.pdf>.

of *Educ. of Westside Cmty. Schools v. Mergens*, 496 U.S. 226, 250 (1990) (“[T]he proposition that schools do not endorse everything they fail to censor is not complicated.”).

III. The Equal Access Act

In addition to violating students’ First Amendment rights, the filtering scheme also violates the Equal Access Act because it denies student who are seeking to form gay-straight alliances (“GSAs”) equal access to school resources that are generally available to other student non-curricular clubs. See 20 U.S.C. § 4071 *et seq.*; *Mergens*, 496 U.S. at 247; *SAGE v. Osseo Area Schools Dist.*, 471 F.3d 908 (8th Cir. 2006); *Gonzalez v. Bd. of Educ.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008). The Equal Access Act mandates that, when a public secondary school that received federal financial assistance permits even one non-curricular group to use school resources, it must permit all other non-curricular student groups to do so on equal terms. See *Mergens*, 496 U.S. at 237, 247 (requiring equal access to school newspaper, bulletin boards, public address system, and club fair); *Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003) (school violated Equal Access Act by denying GSA clubs equal access to school bulletin board and intercom).

The Equal Access Act requires the Little Rock School District to provide GSAs with equal access to all school resources -- including online resources -- that are made available to other non-curricular clubs. See *SAGE*, 471 F.3d at 912 (LGBT-related group must have “equal access to the same avenues of communication as other noncurriculum related groups”) (emphasis in original). The websites for GSA Network and GLSEN provide students with advice about how to establish a GSA at their school, suggestions for running an effective club, ideas regarding club activities, sample GSA club by-laws, and tips on how to work with teachers and administrators to address bullying and harassment in schools. But because the Little Rock School District blocks access to the GSA Network and GLSEN websites, students who seek to form GSAs cannot access those resources. By contrast, students seeking to establish or develop activities for other non-curricular clubs such as the Key Club are able to access their clubs’ websites through the school’s computers. This unequal treatment violates the Equal Access Act.

IV. Additional Considerations

Allowing students equal access to these blocked websites is not just a legal duty; it also makes sense from a safety perspective, particularly in light of the epidemic of LGBT youth suicides and bullying. Prohibiting access to these websites is especially problematic because many students do not have computers or internet access at home and so can only access the internet at school. As one court put it, “as any concerned parent would understand, this case [holding that members of the Gay-Straight Alliance must be permitted access to the school’s resources in the same way as other clubs], may involve the protection of life itself.” *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000).

We wish to emphasize that unblocking individual websites upon request is not an appropriate solution to this problem. It is unfair and burdensome to force students to seek special permission every time they wish to access a website that reflects LGBT-related viewpoints or safe sex information when, in contrast, students may freely access

other viewpoints without seeking such permission. Such unequal burdens violate the Equal Access Act and the First Amendment. Moreover, in the particular context of LGBT-related websites, requiring students to make individualized requests is especially harmful and counterproductive because it would force some LGBT students to risk "outing" themselves by requesting that a website be unblocked. There is no reason why the burden should be placed on a vulnerable population to affirmatively request that school administrators unblock websites for resources that they already have a legal right to access.

V. Conclusion

Please respond by **May 18, 2011** with copies of screenshots and all other documents which indicate that the district has disabled the filters for "Advocacy Groups," "Homosexuality," "Abortion" and "Sexual Education" and provide students equal access to the websites for GSA Network, GLSEN, and similar LGBT-related and sexual education related resources in accordance with your school district's legal obligations under the First Amendment and the Equal Access Act. After being contacted by the ACLU, several other school districts across the country have disabled similar anti-LGBT filters on their filtering software. We urge Little Rock School District to do the same.

If you continue to censor these websites, you could be subject to legal liability and the expense of litigation, as the boards of education and superintendants of two Tennessee school districts that used a similar type of filtering software recently discovered. Ultimately, after being sued by the ACLU, both Tennessee school districts agreed to enter into a settlement agreement enforceable by the federal district court to stop blocking access of online information about lesbian, gay, bisexual, and transgender issues. See *Franks v. Metro. Bd. of Pub. Educ.*, No. 3:09- 00446 (M.D. Tenn. 2009).

Sincerely,



Holly Dickson

cc: Khayyam Eddings, Esq.

EXHIBIT A

Web Filter Violation - Mozilla Firefox


File Edit View History Bookmarks Yahoo! Tools Help

http://gsanetwork.org/

Most Visited Getting Started Latest Headlines Tell Free White Pages ... Kick this video

Web Filter Violation

FORTIGUARD Web Filtering



Web Page Blocked

You have tried to access a web page which is in violation of Little Rock School District Acceptable Use policy.

URL: gsanetwork.org/
Category: Advocacy Organizations

To have the rating of this web page re-evaluated [please click here.](#)

Powered by FortiGuard.

Taskbar: Web Filter Violat..., Web Filter Violat..., Contacts - Micro..., Ally - Contact, DVD RW Drive (D:..., Document1 - Mic..., 12:43 PM

EXHIBIT B

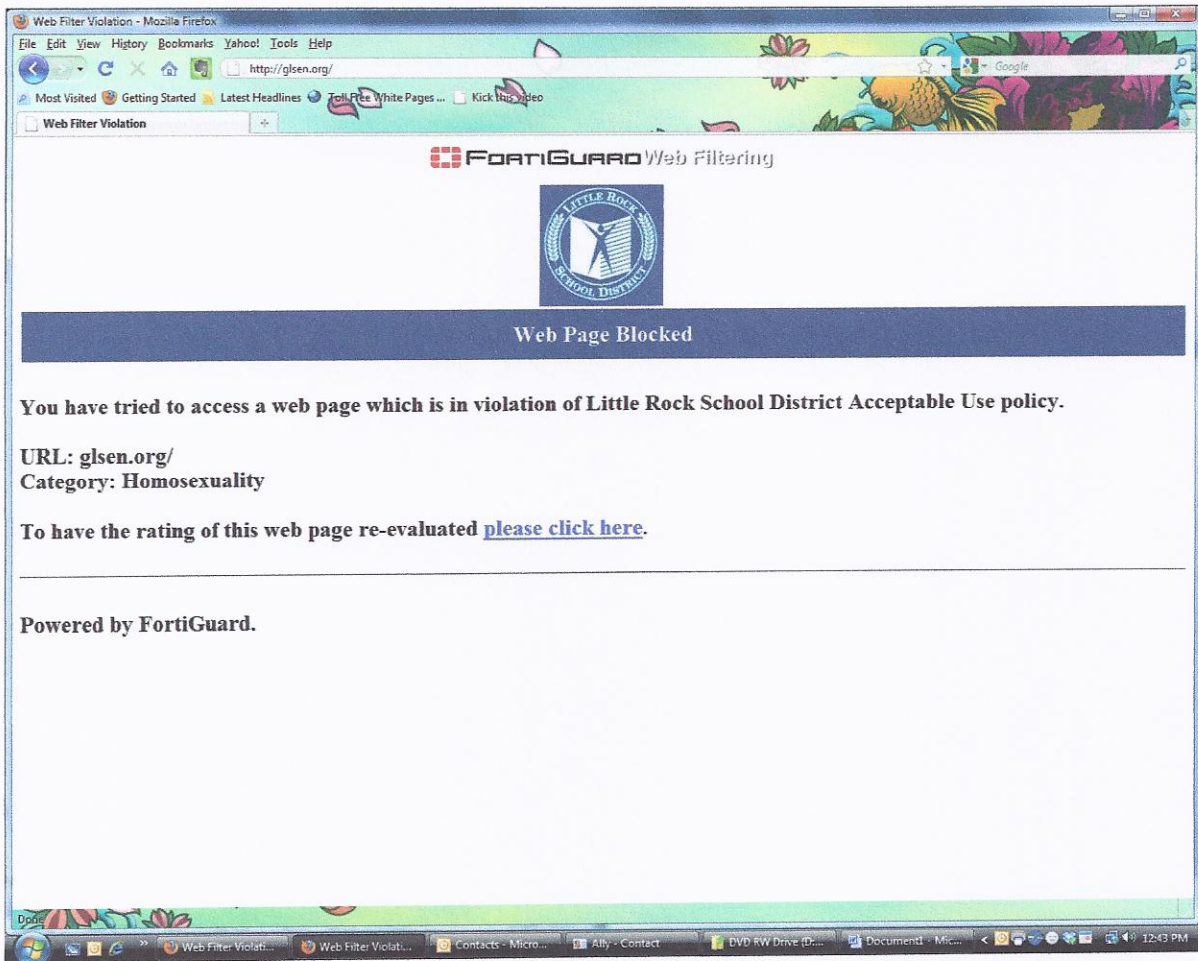


EXHIBIT C

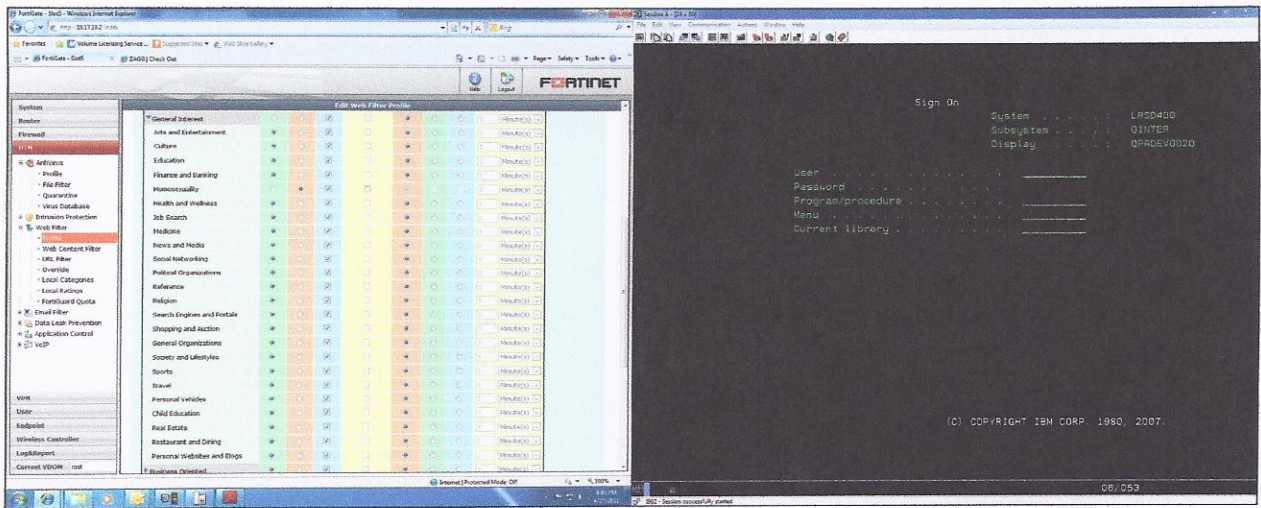


EXHIBIT D

The screenshot displays the Fortinet FortiGate configuration interface. The main window shows the 'Web Filter Profile' configuration page. The 'Category' list includes various content categories such as Potentially Liable, Controversial, Abortion, Adult Materials, and Gambling. Each category has columns for 'Allow', 'Block', 'Log', 'Allow Override', and 'FortiGuard Quota'. The 'FortiGuard Quota' column shows 'Min: 4000' for most categories.

On the right side, a terminal window is open, showing the following system information:

```

Sign On
System : LRS0400
Subsystem : DINTER
Display : QPRDEV0020

User :
Password :
Program/procedure :
Menu :
Current library :
    
```

At the bottom of the terminal window, the copyright notice '(C) COPYRIGHT IBM CORP. 1980, 2007' is visible. The system status bar at the bottom of the interface shows '08/05/2007'.

EXHIBIT E

From: [REDACTED]
Sent: Tuesday, March 29, 2011 1:09 PM
To: [REDACTED]
Subject: Website block

[REDACTED]

Thank you so much for speaking with me concerning the website I attempted to access. The blocking of the GLAAD website is not only inappropriate, it is also detrimental to teachers, students, and staff. This website offers a plethora of good information for educators and students.

The article I was attempting to access related to the American Federation of Teachers partnering with GLAAD on an anti-bullying campaign. When I saw the web filter violation, I must say I was shocked to see the category listed as "Homosexuality." I understand blocking sexually provocative material on the web- I have no problem with that. I do, however, take issue with a reputable website being blocked because it houses homosexual content that is nonsexual in nature.

The GLAAD website has many teacher resources that deal with issues pertaining to bullying and tolerance. I find it wholly inappropriate that a reputable website has been deemed worthy of filtering, especially under the category "Homosexuality". Homosexuality is not a disease or deviant behavior; the use of the word homosexuality in this context is abhorrent. The fact that homosexuality is a reason to prohibit the use of the website is not only disgusting, it is unlawful. Please consider revising the current filter on GLAAD, as well as the current usage of the word homosexuality as a category for filtering content.

Thank you,

[REDACTED]

EXHIBIT F

The screenshot shows a web browser window displaying the homepage of 'People Can Change'. The browser's address bar shows the URL 'http://peoplecanchange.com/'. The website's navigation menu includes links for 'About Us', 'About "Change"', 'Our Stories', 'Experiential Weekends', 'Support', 'Resources', 'Blog', 'Payments', and 'Find a Counselor/Coach'. A 'Default: N/A' button is also visible.

The main banner features the 'People Can Change' logo, which consists of the words 'People Can Change' in a stylized font with a red arrow curving around the word 'Change'. Below the logo, the text reads: 'Men who have resolved unwanted same-sex attractions supporting others seeking similar change'. The background of the banner is a photograph of a man with a backpack walking on a path in a park.

Below the banner, there are three main content blocks:

- We Found Another Way Out:** This block contains text explaining that facing the reality of unwanted homosexual feelings can cause turmoil, especially if they conflict with deeply held values. It offers a path to resolution through coaching and support. A 'READ MORE' link is provided.
- YOU'RE NOT ALONE:** This block features a 'Change NIGHTLINE' logo and lists several support options: 'Journey Together Coaching Tele-Group', 'Especially for Wives Coaching Tele-Group', 'Men's Online Group (free)', 'Wives' Online Group (free)', and 'A Wife's Healing Journey weekend'.
- Journey Into Manhood:** This block describes a 48-hour immersion program for men. It includes a 'Register Now' button and details about the program's focus on self-discovery, catharsis, and emotional healing. It also mentions that the program is offered at various camps and retreat centers throughout the U.S. and in England.

At the bottom of the page, there is a 'CALENDAR' section listing upcoming events: 'A Wife's Healing Journey' (Jun 10-12, 2011; East of Los Angeles) and 'Journey Into Manhood' (May 20-22, 2011; Southern Indiana; Jul 29-31, 2011; Southern California; Sep 23-25, 2011; Salt Lake City, UT; Oct 28-30, 2011; Houston, TX). A 'REGISTER NOW' link is provided for the first event.

The footer contains contact information: 'P.O. Box 412, Ruckersville, VA 22985', '434-965-8551', and 'lyn@peoplecanchange.com'. There is also a copyright notice: '©2000-2010 People Can Change. All rights reserved.' and a search bar.

EXHIBIT G

Family Research Council - Mozilla Firefox
http://www.frc.org/

Family Research Council
Advancing Faith, Family and Freedom

Join us on

HOME | ISSUES | NEWSROOM | ACTION | EVENTS | UNIVERSITY | DONATE | EXPERTS | ABOUT

FRC Praises 9th Circuit Court for Keeping Marriage Law in Place While Considering Appeal

Press Release

WASHINGTON, D.C. - Family Research Council (FRC) praised the Ninth Circuit Court of Appeals for today denying a motion which would have forced California to immediately resume same-sex "marriages" while the court considers a case challenging Proposition 8, the state constitutional amendment which defines marriage as a union of one man and one woman. [continue reading...]

Washington Watch Radio
This week: CR and Marriage in the states

Search Our Issues

Featured Resources
NEW: MARRI Annual Report
Top Ten Harms of Same-sex Marriage
Education: Who Should Decide?

Sex Trafficking in America: From the Boulevard to Planned Parenthood

Watch the Webcast

WASHINGTON UPDATE

TONY PERKINS

Planned Parenthood Purports to Put Perfidious Pinch on Principled Pence
States of the Family
iTunes Latest Decision? App-alling!

Subscribe to the Update:

FRC in the Media

- FOX: Tony Perkins on CR and Budget
- FOX: Peter Sprigg on Apple removing iPhone app
- MSNBC: Peter Sprigg on DOMA
- C-SPAN: Tom McClusky on the Political Climate

ACTION ALERT

President Obama won't defend it, but you can...

As you likely know by now, President Obama has recently ordered his attorney general to unilaterally declare the Defense of Marriage Act (DOMA) unconstitutional. This was a direct challenge to the courts as well as Congress, implying both are irrelevant in making and enforcing laws in this country.

Click here to take action
View all alerts here.

LEGISLATIVE ACTIVITY
CONTACT OFFICIALS
STATE & LOCAL

We take very seriously the trust you place in FRC when you send a gift. **SUPPORT FRC WHILE**

Key Club Internat... Family Research C... Inbox - Microsoft... Ally - Contact... DVD RW Drive (b)... Document1 - Mic... 1:43 PM

EXHIBIT H

The screenshot shows the Alliance Defense Fund (ADF) website in a Mozilla Firefox browser window. The browser's address bar displays the URL <http://www.alliancedefensefund.org/>. The website's header features the ADF logo with the tagline "Alliance Defense Fund Defending Our First Liberty" and the motto "A legal alliance - defending the right to hear and speak the Truth." A search bar is located in the top right corner.

The main navigation menu includes the following items: ABOUT ADF, THE ISSUES, GET LEGAL HELP, MAKE A DIFFERENCE, and DONATE. Below the navigation menu, there is a row of five featured articles, each with a thumbnail image and a title:

- Abortifacients Exposed**: Image of a person in a surgical mask.
- Guarding the Sanctity of Human Life**: Image of an elderly man in a dark jacket.
- The ACLU's Plan to Re-shape America**: Image of a hand holding a small globe.
- Truth & Triumph**: Image of a book cover titled "TRUTH & TRIUMPH SOMETHING LOST".
- An Evening with President George W. Bush**: Image of President George W. Bush.

Below the featured articles, there are several sections:

- ADF ON THE RADIO**: Includes links for "NEWS & CASE UPDATES" and "E-MAIL SIGN-UP".
- VIDEO UPDATES**: Includes social media icons for YouTube and Twitter.
- ADF IN THE BLOGS**: Features two blog entries:
 - NH Officials Sign Up for Lawsuit by Pulling Plug on Bible Marquee**: By Alan Sears | posted Mar 22, 2011 | 0 Comments.
 - Putting the "marketplace of ideas" into action**: From SPEAK UP UNIVERSITY | RSS.

The bottom of the screenshot shows the Windows taskbar with several open applications: Key Club Internat..., ADF - Alliance Def..., Inbox - Microsoft..., Ally - Contact, DVD RW Drive (D:...), and Document1 - Mic... The system clock in the bottom right corner shows 1:48 PM.

EXHIBIT I

The screenshot shows the homepage of the Kiwanis International website. The browser window title is "Key Club International - a Kiwanis International High School Program - Mozilla's Firefox". The address bar shows "http://www.keyclub.org/home.aspx". The website header includes the "Kiwanis Service Leadership Programs" logo and a navigation menu with "KEY CLUB" and sub-items: "DISCOVER", "SERVE", "LEAD", "RESOURCES", "JOIN", and "GIVE NOW". A search bar is also present. The main banner features the text "Don't miss Kiwanis One Day" and "One day. One way. One K." with a photo of a group of people. Below the banner is a "NEWS" section with two articles: "LINDA CANADAY SCHOLARSHIP OFFERED FOR 2011" (dated March 20, 2011) and "KEY CLUB MAGAZINE DOES IT DIGITALLY" (dated March 16, 2011). The sidebar contains social media links for Facebook, Twitter, Flickr, and YouTube, along with RSS and Email icons. The footer includes the Kiwanis logo and copyright information: "© 2010 Kiwanis International All Rights Reserved. Terms of Use | Privacy Policy Site Map". The taskbar at the bottom shows several open applications and the system clock at 1:46 PM.