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March 28, 2011

Dave Pruneau
Superintendent
Rochester Community Schools
501 W. University
Rochester, MI 48307
dpruneau@rochester.k12.mi.us

Dear Mr. Pruneau:

It has come to our attention that Rochester High School, one of the high schools in your school district, utilizes internet filtering software that improperly censors websites advocating the fair treatment of lesbian, gay, bisexual, and transgender (“LGBT”) persons. On behalf of the American Civil Liberties Union Foundation (“ACLU”) and the ACLU Fund of Michigan, 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 must immediately cease.

As reflected in the attached exhibits, the internet filtering software at Rochester High School improperly denies students access to websites for: GSA Network (gsanetwork.com), Day of Silence (dayofsilence.org), Student Organizing (studentorganizing.org), and Lambda Legal (LamdaLegal.org). When a student attempts to access any of these websites, the computers at Rochester High School display a message stating: “Your request has been blocked because it violates the Rochester Community Schools acceptable use policy.” The message further states that the websites have been blocked because they are categorized as “Society & Culture.” *See* Exhibits A through D (attached).

The Rochester Community Schools do not have a legitimate pedagogical basis for censoring students’ access to these websites. None of these websites contains (or has ever contained) sexual or other content that schools are obligated to block under the Children’s Internet Protection Act (CIPA) Pub. L. No. 106- 554:

- 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.
- The Day of Silence website contains information about the national day of silence, April 15 of each year, when hundreds of thousands of students nationwide take a vow of silence to bring attention to anti-LGBT name-calling, bullying and harassment in their schools.

- Student Organizing is a website hosted by the Gay, Lesbian and Straight Education Network that provides training and resources for students organizing GSAs at their schools.
- Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people, and those with HIV through impact litigation, education, and public policy work.

The content on these websites is fully protected speech under the First Amendment. “[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).

Moreover, the filtering scheme employed by your school district appears to engage in unconstitutional viewpoint discrimination by blocking sites that express acceptance and tolerance towards LGBT individuals but permitting sites that condemn homosexuality and sites that urge LGBT persons to change their sexual orientation or gender identity through so-called “reparative therapy.”¹ For example, your internet filtering software allows access to the websites for Parents and Friends of Ex-Gays (pfox.org) and People Can Change (peoplecanchange.com). *See* Exhibits E and F (attached).

This explicit viewpoint discrimination violates your students’ First Amendment rights. The Rochester Community Schools may not selectively censor students’ access to this information based merely on the “dislike [of] the ideas” in the censored materials. *Bd. of Educ. v. Pico*, 457 U.S. 853, 872 (1982). Whether or not school administrators agree with the content of the censored websites, secondary school 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. 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.”).

In addition to violating students’ First Amendment rights, the filtering scheme at high schools in your district also violates the Equal Access Act because it denies student

¹ “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>.

gay-straight alliances equal access to school resources and privileges that are generally available to other student non-curricular clubs. 20 U.S.C. § 4071 *et seq*; *see, e.g., Mergens*, 496 U.S. at 247; *SAGE v. Osseo County 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, where 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, too, 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).

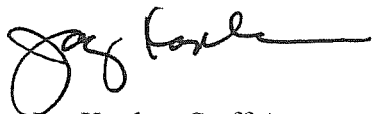
The internet filtering software at high schools in your district violates the Equal Access Act by providing unequal access to the school's resources. *See Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003) (school violated Equal Access Act by denying GSA clubs equal access to school bulletin board and intercom). By blocking access to the websites of GSA Network, Student Organizing, and Day of Silence, the Rochester Community Schools hinder the ability of GSA clubs to access valuable information such as guidance about how to run 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. By contrast, other non-curricular clubs such as Students Against Drunk Driving and Amnesty International are able to access their clubs' websites through the school's computers. *See Exhibits G and H* (attached). The Equal Access Act requires the 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).

Allowing students equal access to LGBT-related 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 LGBT 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).

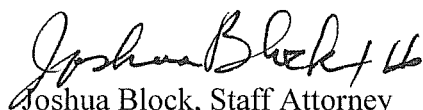
Please contact me by **April 4, 2011** to indicate whether you intend to provide students equal access to the websites for GSA Network, Day of Silence, Student Organizing, Lambda Legal, and similar LGBT-related resources in accordance with your school district's legal obligations under the First Amendment and the Equal Access Act. 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 superintendents 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,

A handwritten signature in black ink, appearing to read "Jay Kaplan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jay Kaplan, Staff Attorney
American Civil Liberties Union
Fund of Michigan
LGBT Project

A handwritten signature in black ink, appearing to read "Joshua Block". The signature is cursive and includes a stylized flourish at the end.

Joshua Block, Staff Attorney
American Civil Liberties Union Foundation
Lesbian Gay Bisexual Transgender & AIDS Project
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2593 | 212-549-2650 (fax) |
jblock@aclu.org

EXHIBIT A

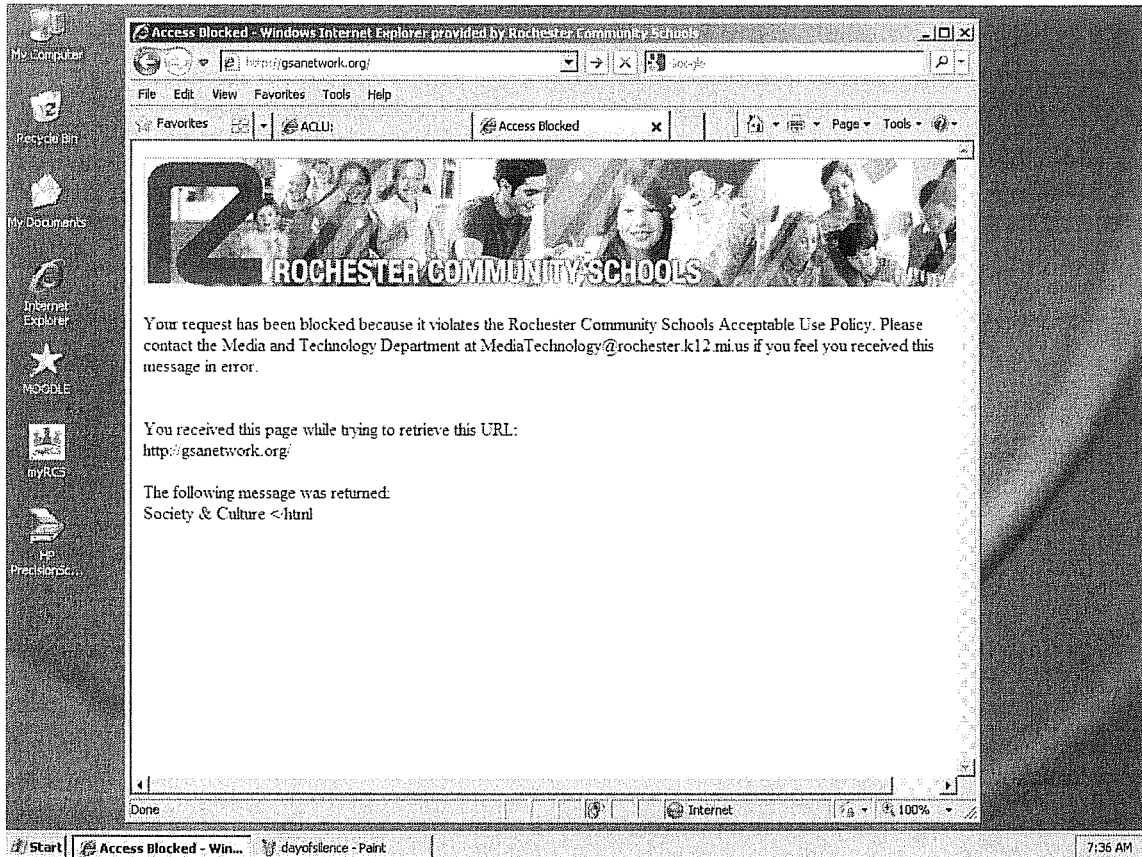


EXHIBIT B

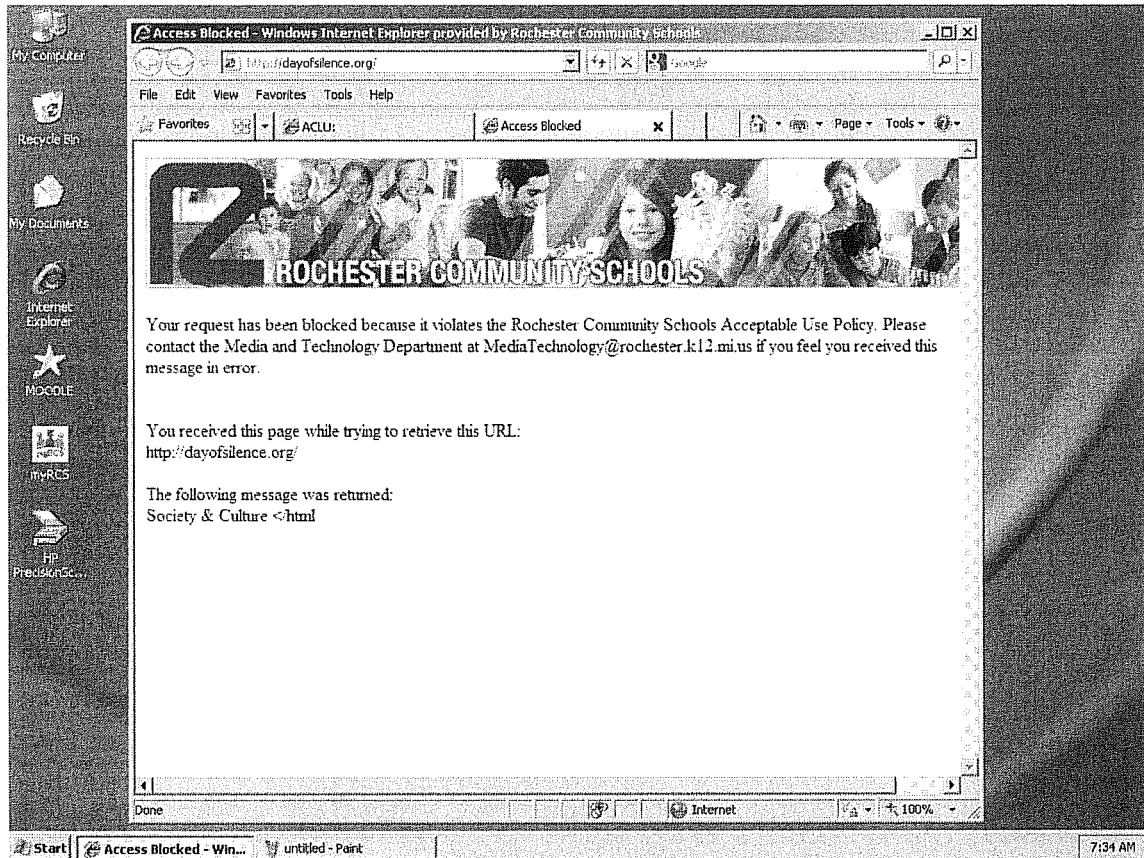


EXHIBIT C

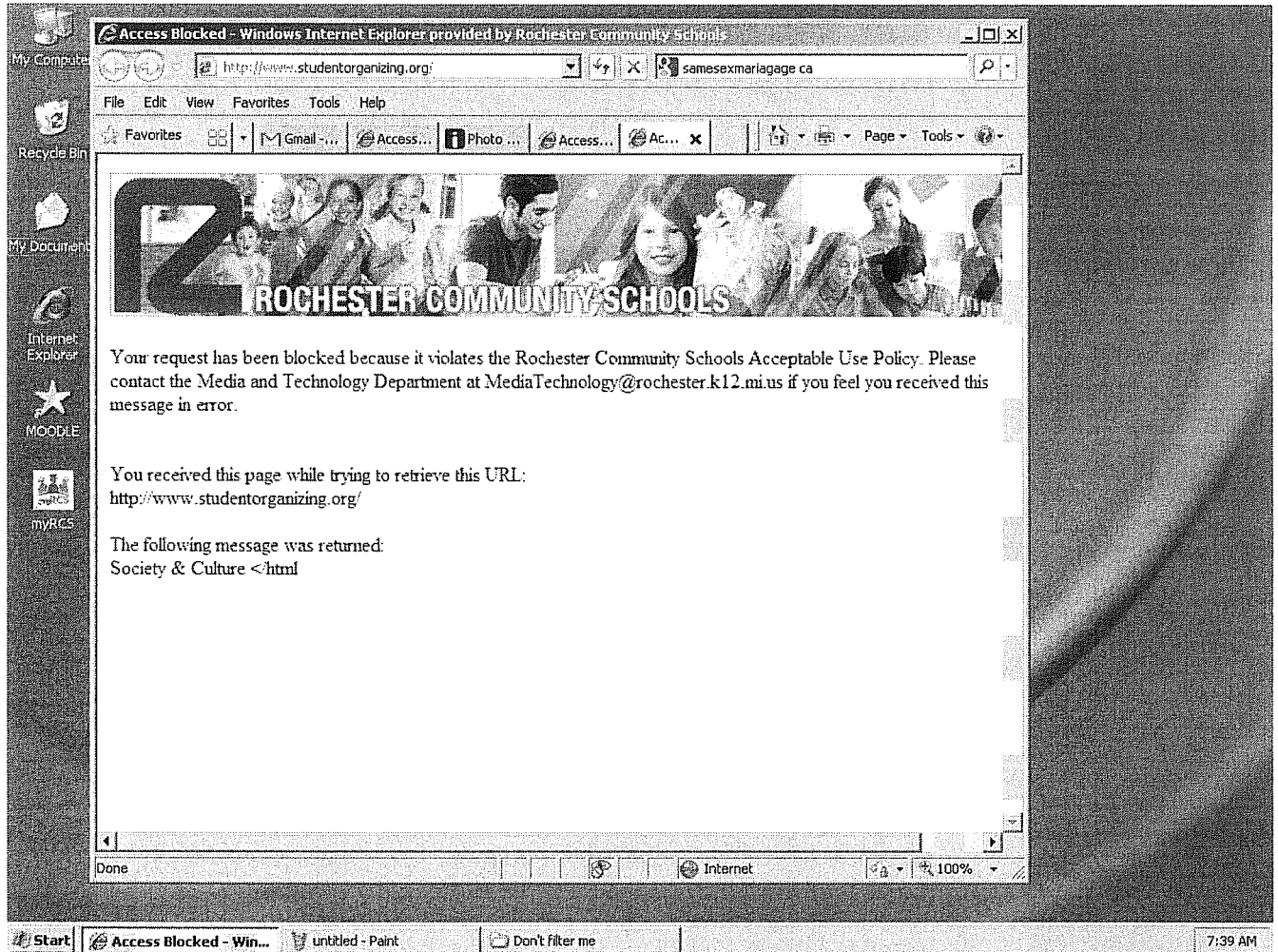


EXHIBIT D

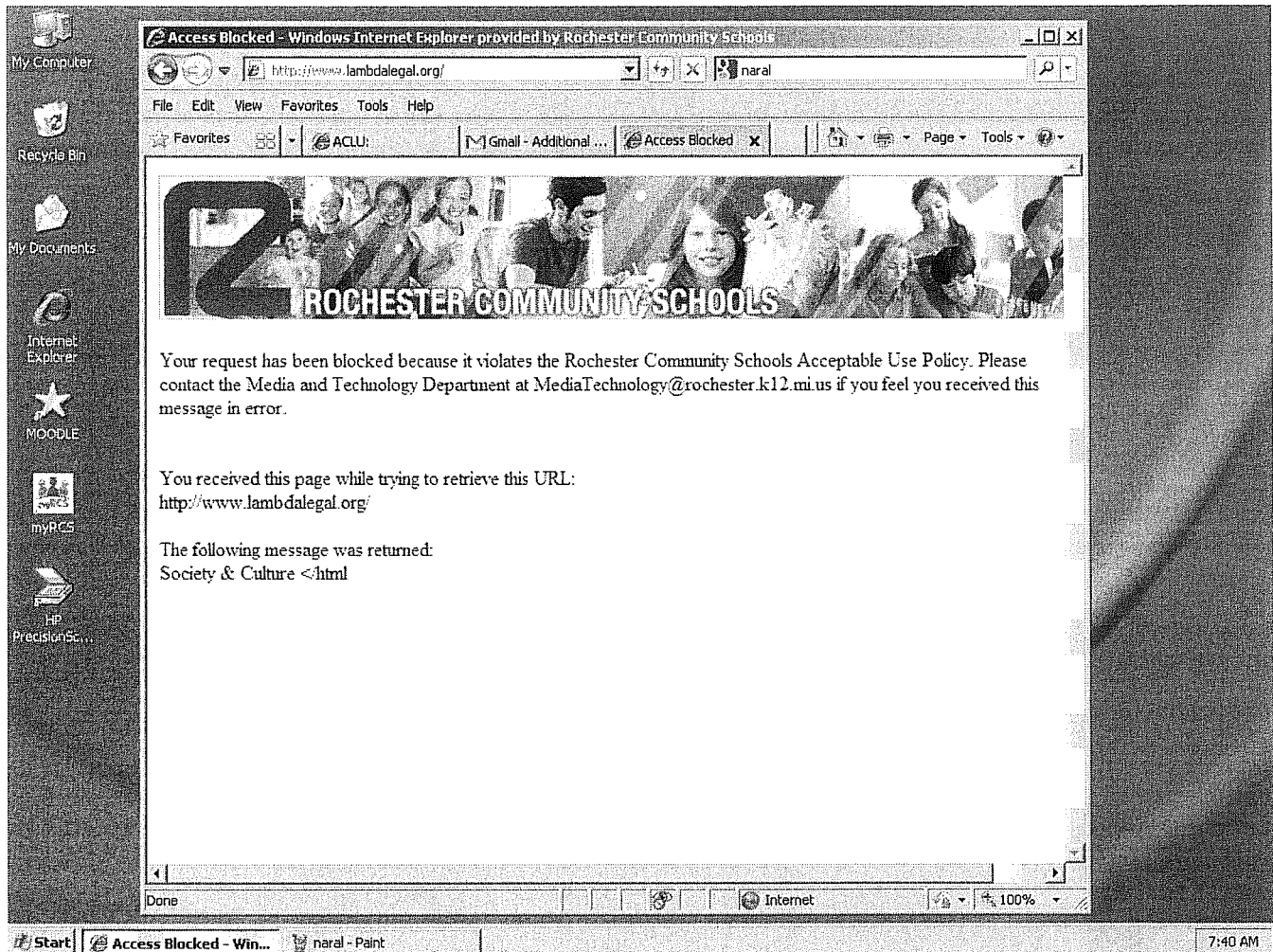


EXHIBIT E

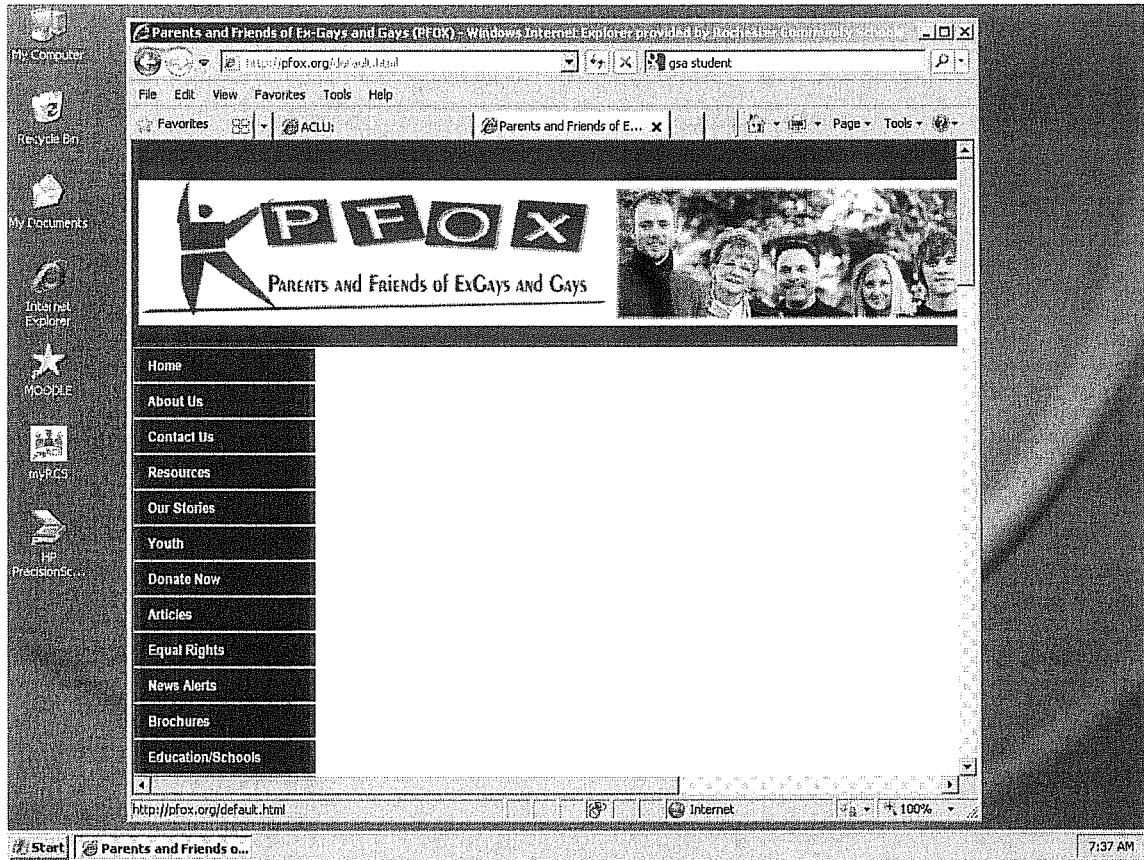


EXHIBIT F

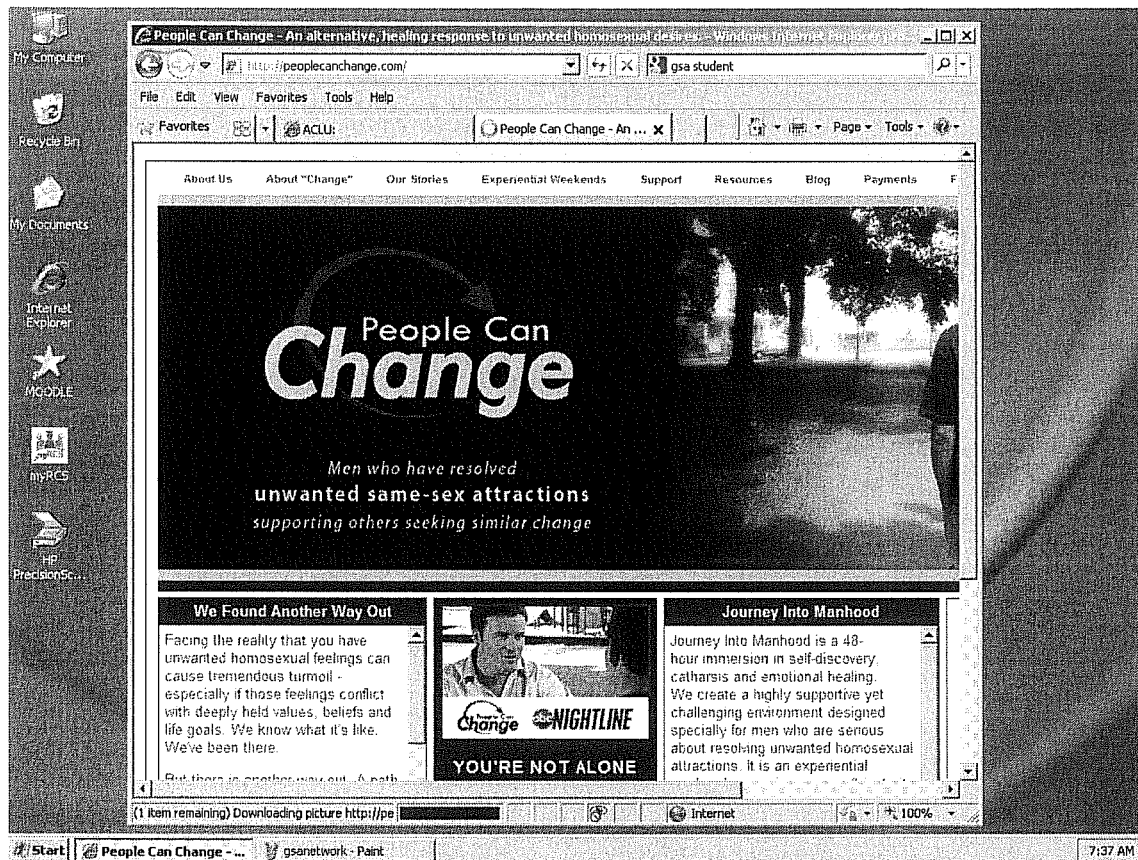


EXHIBIT G

The screenshot shows a Windows Internet Explorer browser window displaying the SADD website. The browser's address bar shows the URL <http://www.sadd.org/>. The website's navigation menu includes links for ABOUT SADD, SADD EVENTS, FOR SADD CHAPTERS, SADD BY STATE, RESOURCES, and MEDIA. A secondary menu contains links for SADD STORE, CONTACT US, SITE MAP, SEARCH, DONATIONS, and HOME.

The main content area features the SADD logo on the left, which includes the text "Students Against Destructive Decisions". Below the logo is a photograph of a young woman and the text: "Students helping students make positive decisions about challenges in their everyday lives".

The central section is titled "Welcome to SADD" and "Students Against Destructive Decisions (Founded as Students Against Driving Drunk)". It features a graphic for the "2011 SADD National Conference" held from June 26-29, 2011, in Chicago, IL. The text states: "We are excited to announce that the 2011 SADD National Conference will be held Sunday, June 26th - Wednesday, June 29th at the Hyatt Regency O'Hare in Chicago, Illinois! Mark your calendars and begin making your plans to join us!" Below this are several links: "General Information", "Registration and admission information", "Sponsorship Opportunities", "Call for Volunteers", "Scholarship Opportunities", and "Participant Fund-Raising Letter Template". A "Learn More" link is also present.

To the right of the conference information is a section titled "Students, advisors and parents: Sign up for SADD's e-newsletters!". It includes a "GO" button and a "View Past Issues" button.

Below the newsletter sign-up is a "Donate Your Car to SADD!" section. The text reads: "Now there's another way to support SADD's important work. SADD now accepts car donations - from virtually anywhere in United States! You can donate your used car - in any condition, even if it's not running - and the proceeds will help SADD."

On the far right is a "DONATE NOW SUPPORT SADD" section. It says: "Learn how you can help support SADD - make a donation, become a Friend of SADD, donate a car, shop online for SADD, and more!". Below this are social media icons for Facebook, MySpace, and YouTube, with the text "Join SADD's Facebook, MySpace and YouTube".

The browser's status bar at the bottom shows "Done", "Internet", and "100%". The Windows taskbar at the very bottom displays the Start button, the active window "Welcome to SADD - W...", and other open applications like "nhs - Paint". The system clock shows "7:41 AM".

EXHIBIT H

