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April 11, 2011

Gregory J. Baracy, Ed. D.,  
Superintendent  
Wayne-Westland Community Schools  
36745 Marquette  
Westland, Michigan 48185  
Fax: (734) 595-2123

Dear Dr. Baracy:

It has come to our attention that Wayne-Westland Community Schools utilizes Internet filtering software provided by Websense 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 “Gay or Lesbian or Bisexual Interest.” On behalf of the American Civil Liberties Union Foundation (“ACLU”) and the ACLU of Michigan Foundation, 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 filter for “Gay or Lesbian or Bisexual Interest” must be removed immediately.

As reflected in the attached exhibits, the Internet filtering software at Wayne-Westland Community Schools improperly denies students access to the website for the GSA Network ([gsanetwork.org](http://gsanetwork.org)). GSA Network is a youth leadership organization that connects school-based Gay-Straight Alliances (“GSAs”) to each other and to community resources through peer support, leadership development, and training. When students seek to access the GSA Network website, the computers at your school display the demeaning and stigmatizing message that the site has been blocked because it has been categorized as “Gay or Lesbian or Bisexual Interest.” *See* Exhibit A (attached).<sup>1</sup>

Wayne-Westland Community Schools does not have a legitimate pedagogical basis for censoring students’ access to GSA Network or other “Gay or Lesbian or Bisexual Interest” websites. Websites categorized by Websense as “Gay or Lesbian or Bisexual

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<sup>1</sup> We have also received reports that the websites for the ACLU ([www.aclu.org](http://www.aclu.org)) and the Gay Lesbian and Straight Education Network (“GLSEN”) ([www.glsen.org](http://www.glsen.org)), have been blocked as “Advocacy Groups,” even though the websites for groups that oppose rights for LGBT people, such as the Alliance Defense Fund ([www.adf.org](http://www.adf.org)), have not been similarly blocked. It is our understanding that ACLU and GLSEN have now been unblocked, but only for specific students. The school district should promptly remove any remaining filter to ensure that all students have equal access to the websites for advocacy groups on a viewpoint-neutral basis.

Interest” do not contain sexual or other content that schools are obligated to block under the Children’s Internet Protection Act (“CIPA”) Pub. L. No. 106- 554. According to Websense, the filter for “Gay or Lesbian or Bisexual Interest” blocks “[s]ites that provide information about or cater to gay, lesbian, or bisexual lifestyles, but *excluding* those that are sexually or issue-oriented” (emphasis added). See Websense List of Filter Categories, at <http://www.websense.com/content/URLCategories.aspx>. The Websense filtering software has separate filter categories for “Adult Material” to block websites with pornographic or sexually explicit content. By contrast, the Websense filter for “Gay or Lesbian or Bisexual Interest” blocks access to speech that is fully protected under the First Amendment.

Your students have a First Amendment right to access this information. “[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 the 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. Students researching the women’s rights movement may freely access the Wikipedia page for “Women’s Rights.” See Exhibit B (attached). But students researching the legal protections for LGBT people are blocked from accessing the Wikipedia page for “LGBT Rights by County or Territory” because it has been categorized as “Gay or Lesbian or Bisexual Interest.” See Exhibit C (attached).<sup>2</sup> Moreover, even though the “Gay or Lesbian or Bisexual Interest” filter blocks students from accessing sites that express acceptance and tolerance towards LGBT individuals, the web filter does not block access to sites that condemn homosexuality and sites that urge LGBT persons to change their sexual orientation or gender identity through so-called “reparative therapy.”<sup>3</sup> For example, your internet filtering software

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<sup>2</sup> Our understanding is that students may view the blocked Wikipedia page for LGBT rights by using their allotted “quota time” for personal internet use. By contrast, students accessing the Wikipedia page for “Women’s Rights” may view the web page without using any of their limited personal quota time.

<sup>3</sup> “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>.

allows access to the websites for National Association for Research & Therapy of Homosexuality ([www.narth.com](http://www.narth.com)) and Parents & Friends of Ex-Gays ([www.pfox.com](http://www.pfox.com)). See Exhibits D and E (attached).

This viewpoint discrimination violates your students' First Amendment rights. Wayne-Westland Community Schools 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, 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 students who are seeking to form GSAs equal access to school resources that are generally available to other 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 Wayne-Westland Community Schools 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 groups must have "equal access to the same avenues of communication as other non-curriculum related groups") (emphasis in original). The website for the GSA Network -- and similar "Gay or Lesbian or Bisexual Interest" websites -- provides 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 Wayne-Westland Community Schools blocks access to the GSA Network, 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 Students Against Drunk Driving or the debate club are able to access their clubs' websites through the school's computers. See Exhibit F and G (attached). This unequal treatment violates the Equal Access Act.

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 25, 2011** to indicate whether you intend to provide students equal access to the websites for GSA Network 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,

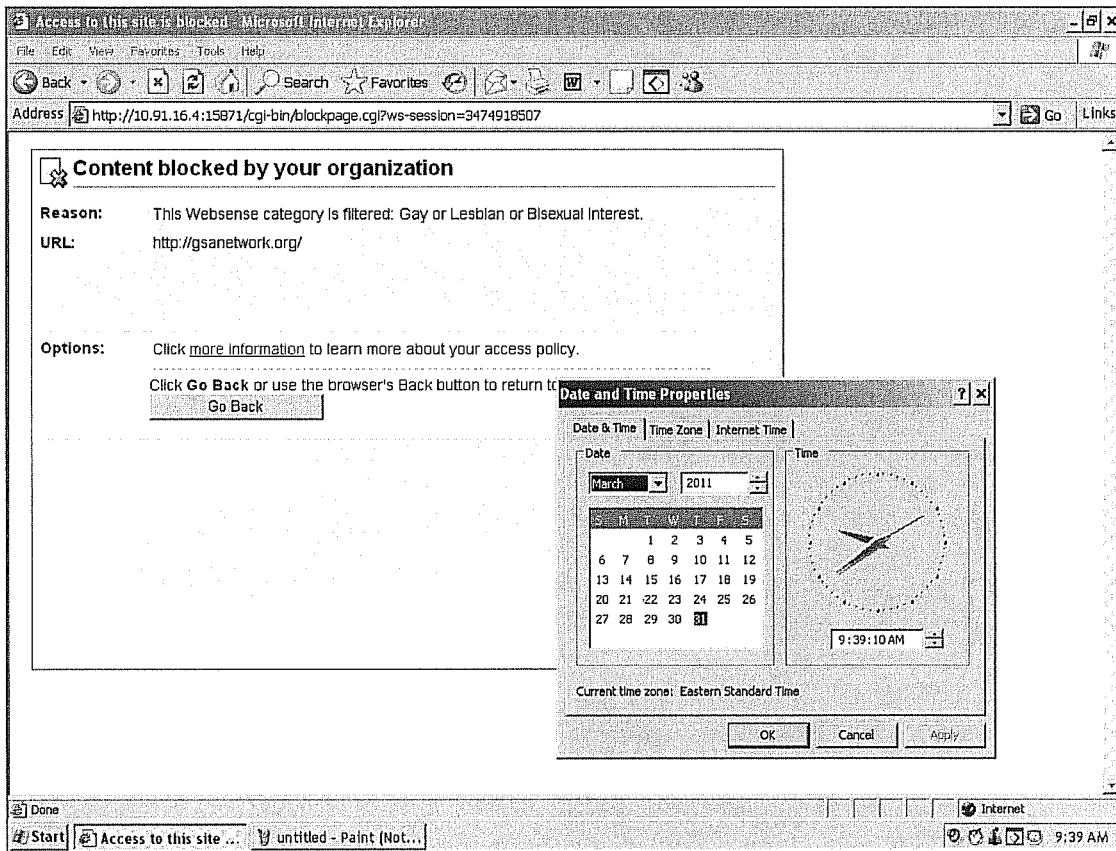


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American Civil Liberties Union  
Fund of Michigan  
LGBT Project



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jblock@aclu.org

# EXHIBIT A



# EXHIBIT B

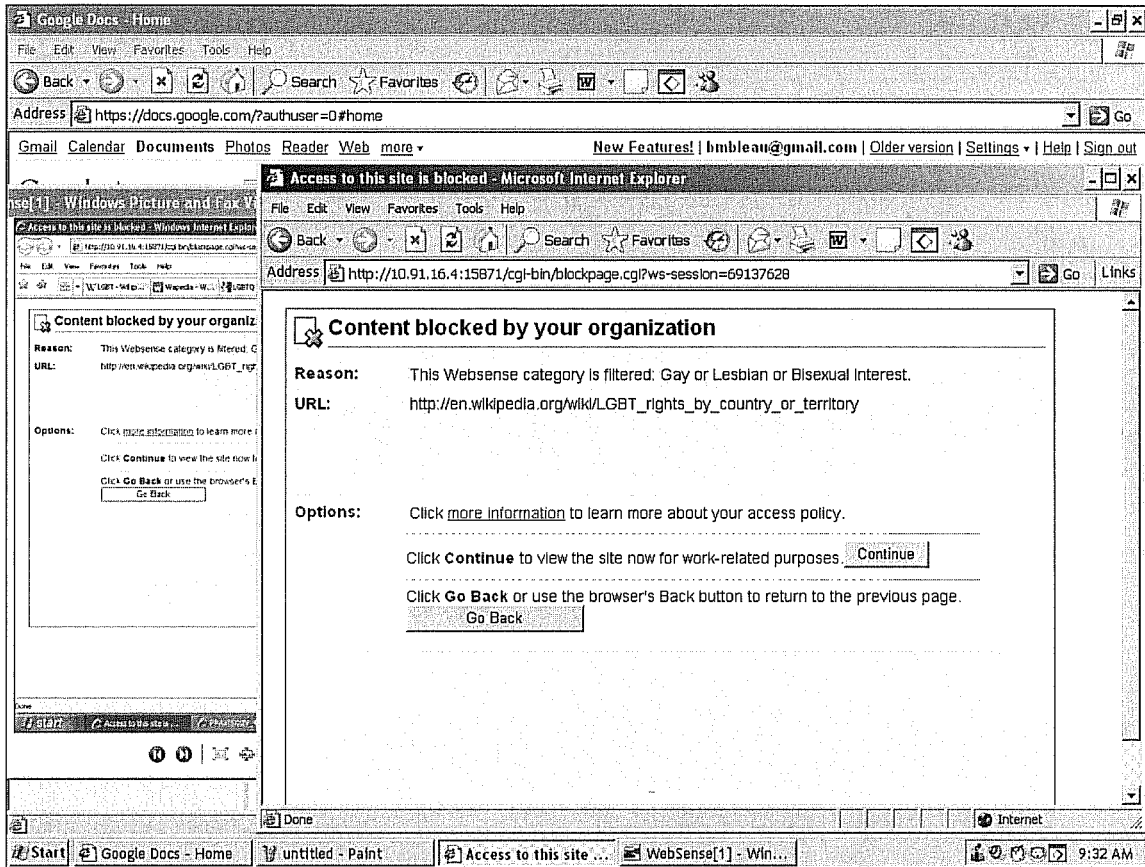
The screenshot displays a Microsoft Internet Explorer browser window. The address bar shows the URL <https://docs.google.com/?authuser=0#home>. The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. Below the menu bar are navigation buttons for Back, Forward, Stop, Home, Search, and Favorites. The main content area is blocked by a message: "Content blocked by your organization". The message states: "This WebSense category is filtered: Gay or Lesbian or Bisexual Interest" and provides a link to [http://en.wikipedia.org/wiki/LGBT\\_rights\\_by\\_country\\_or\\_territory](http://en.wikipedia.org/wiki/LGBT_rights_by_country_or_territory). It offers options to "Click more information to learn more about your access policy", "Click Continue to view the site now for work-related purposes", and "Click Go Back or use the browser's Back button to return to the previous page".

Overlaid on the blocked page is another browser window titled "Women's rights - Wikipedia, the free encyclopedia - Microsoft Internet Explorer". The address bar shows [http://en.wikipedia.org/wiki/Women%27s\\_rights](http://en.wikipedia.org/wiki/Women%27s_rights). The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The main content area displays the Wikipedia article for "Women's rights". The article title is "Women's rights" and it is identified as "From Wikipedia, the free encyclopedia". The article text begins: "Women's rights are entitlements and freedoms claimed for women and girls of all ages in many societies. In some places these rights are institutionalized or supported by law, local custom, and behaviour, whereas in others they may be ignored or suppressed. They differ from broader notions of human rights through claims of an inherent historical and traditional bias against the exercise of rights by women and girls in favour of men and boys. [1] Issues commonly associated with notions of women's rights include, though are not limited to, the right: to bodily integrity and autonomy; to vote (suffrage); to hold public office; to work; to fair wages or equal pay; to own property; to education; to serve in the military or be conscripted; to enter into legal contracts; and to have marital, parental and religious rights. [2]"

The Wikipedia page includes a navigation sidebar on the left with links for Main page, Contents, Featured content, Current events, Random article, and Donate to Wikipedia. A "Rights" sidebar on the right lists "Theoretical distinctions" (Natural and legal rights, Claim rights and liberty rights, Negative and positive rights, Individual and group rights) and "Human rights divisions" (Three generations of human rights, Civil and political rights, Economic, social and cultural rights). It also includes a "Rights to claimants" section listing "Animals • Human • Women • Men".

The taskbar at the bottom shows several open applications: Start, Google Docs - Home, SCHOOL FILTER, Women's rights, and WebSense[1] - Win... The system clock indicates 9:34 AM.

# EXHIBIT C



# EXHIBIT D

**NARTH - Microsoft Internet Explorer**

File Edit View Favorites Tools Help

Back Search Favorites

Address <http://narth.com/> Go Links

**NARTH**  
NATIONAL ASSOCIATION FOR RESEARCH & THERAPY OF HOMOSEXUALITY

HOME GET INVOLVED MAIN ISSUES NEWS WATCH INTERNATIONAL AVAILABLE RESOURCES DONATE ABOUT NARTH

headline »

## Practice Guidelines for the Treatment of Unwanted Same-Sex Attractions and Behaviors

March 21, 2011 - 11:05 am | Comments Off

In December, 2008, at its annual strategic planning meeting, the National Association for Research and Therapy of Homosexuality (NARTH)'s Board of Directors formally accepted the following Practice Guidelines for the Treatment of Unwanted Same-Sex Attractions ...

Read the full story »

featured »

### NARTH Convention Call for Posters

February 25, 2011 - 10:50 am | Comments Off

**Printed Copies of Journal of Human Sexuality, Vol. II Now Available**

February 18, 2011 - 9:59 am | Comments Off

**2011 Convention - A Call for Workshop Proposals**

January 21, 2011 - 4:30 pm | Comments Off

featured headline meetings **narth** video

narth, research, video »

### "Is there a gay gene?" Dr. Neil Whitehead

March 20, 2011 - 12:26 pm | Comments Off

**NARTH »**

Latest Twin Study Confirms Genetic Contribution To SSA Is Minor

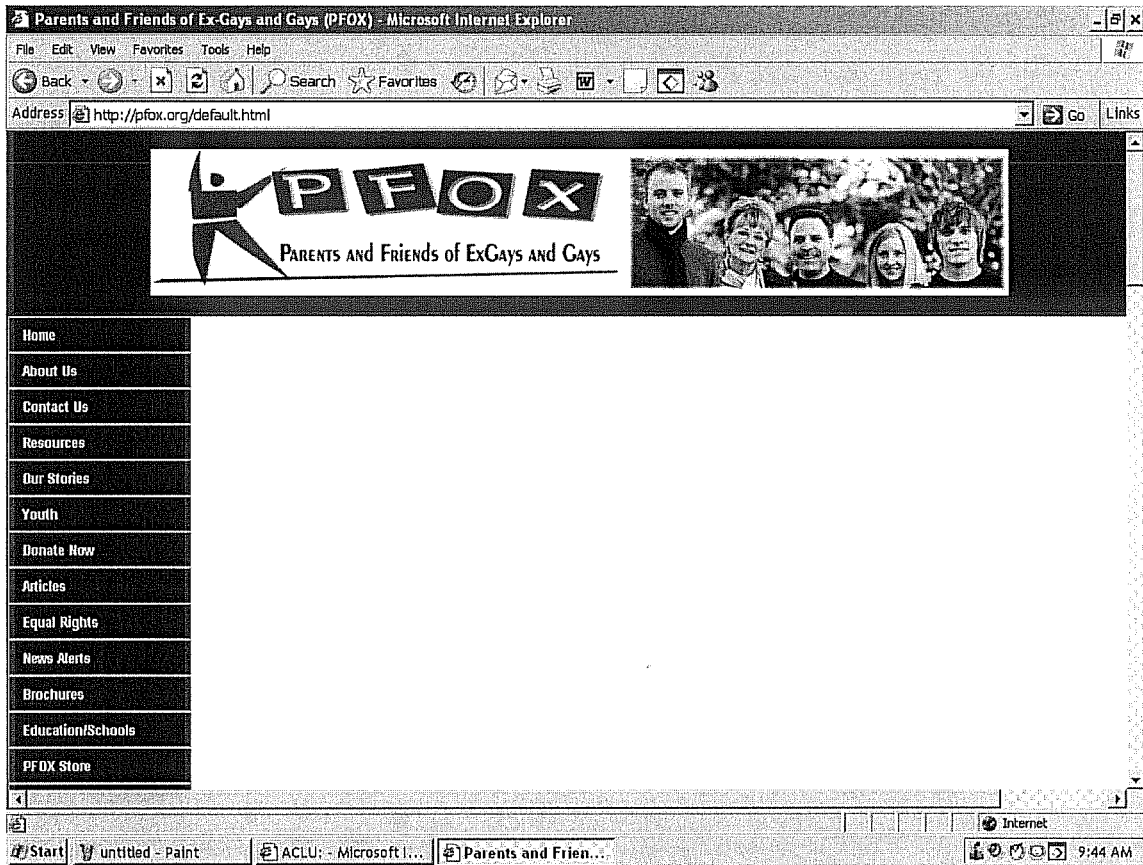
Be in compliance with the Federal Home Privacy Act for SSA

Opening page <http://narth.com/>...

Start | Paint | ACU: - Microsoft I... | NARTH - Microsoft ... | Internet | 9:45 AM



# EXHIBIT E



# EXHIBIT F

The screenshot shows a Windows Internet Explorer browser window displaying the SADD website. The address bar shows <http://sadd.org/>. The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The website's navigation menu at the top includes ABOUT SADD, SADD EVENTS, FOR SADD CHAPTERS, SADD BY STATE, RESOURCES, and MEDIA. A secondary navigation bar 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 "SADD" in a stylized font and "Students Against Destructive Decisions" below it. To the right of the logo is the heading "Welcome to SADD" and the tagline "Students Against Destructive Decisions (founded as Students Against Driving Drunk)".

Below the heading is a section for the "2011 SADD National Conference June 26-29, 2011, 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!" It lists several links: "General Information", "Registration and pricing information", "Sponsorship Opportunities", "Call for Workshops", "Exhibitor Prospectus", 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 text input field, a "GO" button, and a "Privacy by SafeSubscribe!" notice. Below this is a "View Past Issues" button.

Further down 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 support SADD. There's no cost to you, it's easy to arrange, and you'll receive a tax deduction for your donation. To donate your car, call 1-888-243-9272 or visit".

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, Twitter, and YouTube, with the text "Join SADD's Facebook, MySpace and Twitter pages and check us out on".

The browser's status bar at the bottom shows "Done, but with errors on page." and a taskbar with several open applications: Start, Document1 - Microsoft..., Search on... (Roxio), Welcome to SADD..., and Louisville Shopper (Rec...).

# EXHIBIT G

The screenshot shows a web browser window with the following elements:

- Browser Title Bar:** IDEA: International Debate Education Association - Debate Resources & Debate Tools
- Address Bar:** http://www.idebate.org/
- Page Header:** **idea** international debate education association. Search: [input field].
- Navigation Bar:** About IDEA | About Debate | Teaching Tools | Publications | Store | Events | Join IDEA | Programs and Projects | Donate | Contact Us. [login](#) [Need help?](#) [Register Now](#)
- Main Content Area:**
  - Events:** Slovak Debate Association Bratislava Schools' Competition. The Slovak Debate Association would like to invite you to the International Bratislava Schools Debating Competition. The tournament will take place from 7th to 11th April 2011 in Slovakia's capital city (yep, you guessed it) Bratislava. [More about this event](#)
  - Global Debates:** **idea** UNITED NATIONS FOUNDATION **YOUTH FORUM ISTANBUL** powered by IDEA & Daqa Schools
  - Welcome to IDEA**  
Focusing on young people and their communities, the mission of the International Debate Education Association is to promote mutual understanding and democracy globally by supporting discussion and active citizenship locally.
  - Service Icons:** IDEA News, Discussion Boards, Debate Tracker, IDEA Portal, Support IDEA.
  - Registration Form:** Username: [input], Password: [input], [LOGIN](#). [Forgot username or password?](#) Not a Registered User? Join Now! It's Fast, Easy and Free! Signing up is easy, just a few simple steps. There is no fee to participate so what are you waiting for, there is nothing to debate here - just do it! [Sign Up Today!](#)
  - Footer:** **debatewise** Where Great Minds Debate.

The browser's taskbar at the bottom shows the Start button, the active window "IDEA: International...", and the system tray with the Internet icon and the time "9:29 AM".