UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

Parents, Families, and Friends of Lesbians and Gays, Inc., et al.,	)	
Plaintiffs,	)	
v.	)	No. 2:11-cv-04212-NKL
Camdenton R-III School District, et al.,	)	
Defendants.	)	

SUPPLEMENTAL SUGGESTIONS IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

This action was originally brought by organizations that wish to communicate with students through Internet websites that are blocked by Defendant Camdenton R-III School District's ("the District's" or "Camdenton R-III's") viewpoint-discriminatory filter for "sexuality." In the Amended Complaint, Plaintiff Jane Doe also asserts that the District's viewpoint-discriminatory filter violates her own First Amendment rights as a student at Camdenton High School. Plaintiffs submit the following Supplemental Suggestions in Support of Plaintiffs' Motion for Preliminary Injunction to explain Jane Doe's standing to bring her own constitutional claims and the independent First Amendment harm she suffers as a result of Camdenton R-III's viewpoint-based filtering of websites supportive of lesbian, gay, bisexual, and transgender ("LGBT") individuals and their rights in the school library.

I. Jane Doe Has Standing To Challenge Camdenton R-III's Viewpoint-Based Censorship of Internet Materials.

As a student at Camdenton High School, Doe has standing to challenge the district's restriction of Internet resources and other library materials. *See, e.g.*, *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 856 (1982) (plurality) (noting that plaintiffs were students in the district's high school and junior high school); *Pratt v. Indep. Sch. Dist. No. 831, Forest Lake, Minn.*, 670 F.2d 771, 773 (8th Cir. 1982) (same); *Case v. Unified Sch. Dist. No. 233, Johnson County, Kan.*, 895 F. Supp. 1463, 1468 (D. Kan. 1995) (finding standing for students enrolled in schools in which library materials were removed).

Doe has used and plans to continue to use computers in the Camdenton High School library to access information on the Internet. Doe Decl. ¶ 4. Although Doe is straight, she has several friends who are gay or bi-sexual students. *Id.* at ¶ 6. Doe has witnessed her friends being teased, taunted, and called names because other kids think they might be gay, and she also has been taunted herself just for being supportive of her gay friends. *Id.* at ¶ 8. Doe would like to be able to use computers in the library to access information on the Internet that would help her support her friends, but many websites that are supportive of gay and lesbian people are blocked at her school. *Id.* at ¶ 10. More generally, Doe wants to be able to access information on diverse ideas and issues, including information about lesbian, gay, bi-sexual, and transgender people, but is prevented from doing so by the District's software blocking sites on the Internet. *Id.* at ¶ 11.

II. The Viewpoint-Discriminatory "Sexuality" Filter Violates Jane Doe's Right to Receive Ideas.

By discriminatorily blocking access to Internet websites based on viewpoint, Camdenton R-III has unconstitutionally burdened the right of Doe and other Camdenton R-III students to receive ideas. In *Pico*, the Supreme Court held that students have a First Amendment right to receive ideas and that those rights are "directly and sharply implicated by the removal of books from the shelves of a school library." *Pico*, 457 U.S. at 867 (plurality). Even before *Pico* was decided, students' rights to receive information had already been recognized by the Eighth Circuit in *Pratt*. The court in *Pratt* held that a school district violated students' First Amendment rights by censoring a film adaptation of Shirley Jackson's short story, "The Lottery." The court explained: ""The Lottery" is not a comforting film. But there is more at issue here than the sensibilities of those viewing the films. What is at stake is the right to receive information and to be exposed to controversial ideas -- a fundamental First Amendment right." *Pratt*, 670 F.2d at 779.

Students' First Amendment rights to receive ideas on a nondiscriminatory basis are at their peak in the context of a school library. "[T]he special characteristics of the school *library* make that environment especially appropriate for the recognition of the First Amendment rights of students." *Pico*, 457 U.S. at 868. The school library is "the principal locus" of students' freedom "'to inquire, to study and to evaluate, to gain new maturity and understanding.'" *Id.* at 869 (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967)); *accord Minarcini v. Strongsville City School Dist.*, 541 F.2d 577, 583 (6th Cir. 1976) (a school library "is a mighty resource in the free marketplace of ideas"). Although public schools have wide discretion in deciding what ideas to communicate to students as part of the school curriculum, that discretion does not extent "beyond the

compulsory environment of the classroom, into the school library and the regime of voluntary inquiry that there holds sway." *Pico*, 457 U.S. at 869.

Students' rights to access ideas in a school library apply with full force even if those viewpoints are about "sexuality." Indeed, courts have repeatedly invalidated attempts to restrict students and minors' access to library materials simply because those materials express support for LGBT people. *See Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 549 (N.D. Tex. 2000) (city sought to restrict access to *Heather Has Two Mommies* and *Daddy's Roommate*); *Case*, 895 F. Supp. at 1468 (school district sought to remove *Annie on My Mind*, a book about a romantic relationship between two 17-year-old girls). The First Amendment protects the right of Doe and other students to access LGBT-supportive viewpoints just as strongly as it protects their right to access information about other issues in the marketplace of ideas.

III. The "Sexuality" Filter Unconstitutionally Burdens Jane Doe's First Amendment Rights Even if the District Unblocks Individual Websites Upon Request.

In order to justify its viewpoint-based censorship of LGBT-supportive websites, Camdenton R-III must "establish that a substantial and reasonable governmental interest exists for interfering with the students' right to receive information. Bare allegations that such a basis existed are not sufficient." *Pratt*, 670 F.2d at 777 (citations omitted); *see also Minarcini*, 541 F.2d at 582 (explanation for removal must be "neutral in First Amendment terms"). For the reasons set forth in Plaintiffs' Suggestions in Support of Plaintiffs' Motion for Preliminary Injunction, there is no legitimate interest -- much less a substantial and reasonable one -- served by Camdenton R-III's filtering system, which

discriminates on the basis of viewpoint and is inconsistent with the traditional role of school libraries.

Camdenton R-III has indicated a willingness to unblock individual LGBT-supportive websites upon request. Doc. # 7-7, Letter of June 6, 2011, from B. Helfrich to A. Rothert. But requiring Doe and other students to specifically request access to particular viewpoints substantially burdens their First Amendment rights. The First Amendment requires courts to apply "the most exacting scrutiny," not only to outright bans, but also "to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content." *Turner Broadcasting, Inc. v. FCC*, 512 U.S. 622, 641 (1994); *see also Denver Area Educ. Tel. Consortium, Inc. v. FCC*, 518 U.S. 727, 819 (1996) (Kennedy, J., concurring in part and dissenting in part) ("[F]ew of our First Amendment cases involve outright bans on speech.").

Courts have therefore repeatedly found that students' right to receive information is unconstitutionally burdened by partial restrictions on access as well as complete bans. For example, in *Sund*, the court explained why removing children's books with certain objectionable viewpoints from the children section to the adult section of a library unconstitutionally burdened minors' First Amendments rights:

> By authorizing the forced removal of children's books to the adult section of the Library, the [city's resolution] places a significant burden on Library patrons' ability to gain access to those books. Children searching specifically for those books in the designated children's areas of the Library will be unable to locate them. In addition, children who simply wish to browse in the children's sections of the Library will never find the censored books.

Sund, 121 F. Supp. 2d at 550. Similarly, in *Counts v. Cedarville School Dist.*, 295 F. Supp. 2d 996, 999 (W.D. Ark. 2003), the court held that the school district violated

students' First Amendment rights by requiring that students obtain parental permission before accessing copies of Harry Potter books in the school library.

Even more importantly, restricting access to library materials based on viewpoint imposes a stigma on the disfavored viewpoints and chills students from accessing those materials. As the Eighth Circuit explained in *Pratt*, the "symbolic effect" of removing materials can be just as effective as an outright ban: "The board has used its official power to perform an act clearly indicating that the ideas contained in the films are unacceptable and should not be discussed or considered. This message is not lost on students and teachers, and its chilling effect is obvious." *Pratt*, 670 F.2d at 779; *accord Sund*, 121 F. Supp. 2d at 551 (restriction on access "attaches unconstitutional stigma to the receipt of fully-protected expressive materials"); *Counts*, 295 F. Supp. 2d at 999 (restriction on access sends stigmatizing message that Harry Potter is "a 'bad' book").

The chilling effect of this stigma is especially severe in the context of LGBT-supportive materials. Students have a constitutionally protected privacy interest in not being forced to disclose information about their sexual orientation: "It is difficult to imagine a more private matter than one's sexuality and a less likely probability that the government would have a legitimate interest in disclosure of sexual identity." *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000). Yet, by requiring students to specifically request access to LGBT-supportive websites, Camdenton R-III effectively requires students to surrender that privacy interest in order to access information they are already entitled to receive. Students could reasonably fear that requesting access to an

LGBT-supportive website would effectively "out" them as LGBT to school administrators -- and possibly to their peers as well.

Indeed, even Jane Doe, who is straight, states that she would not feel comfortable requesting access to a website that is supportive of LGBT people to be unblocked because she is afraid doing so will draw attention to her and make her the subject of further taunting. Doe Decl. ¶ 12. By declaring "sexuality" websites to be presumptively off-limits, Camdenton R-III marginalizes students like Jane Doe who wish to access LGBT-supportive viewpoints and makes it more likely that such bullying or teasing will take place. *Cf. Denver Area Educ. Tel. Consortium, Inc. v. FCC*, 518 U.S. 727, 754 (1996) (explaining in the context of access to cable television that requiring customers to submit "written notice" in order to access certain channels "will further restrict viewing by subscribers who fear for their reputations should the operator, advertently or inadvertently, disclose the list of those who wish to watch the 'patently offensive' channel"). Imposing these unequal burdens and stigma on selected viewpoints is just as invidious as complete ban.

CONCLUSION

For all these reasons, and for the reasons set forth in Plaintiffs' Suggestions in Support of Plaintiffs' Motion for Preliminary Injunction, this Court should issue a preliminary injunction to prevent the irreparable harm that Camdenton R-III's discriminatory filtering system is causing to the First Amendment rights of Jane Doe and the other plaintiffs in this action.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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