

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

KEILA FRANKS, by and through her next
friend and mother Pamela Auble;
BRYANNA SHELTON, by and through her
next friend and mother, Angie Wright;
EMILY LOGAN, by and through
her next friend and father, Andy Logan;
and KARYN STORTS-BRINKS,
Plaintiffs,

v.

CIVIL ACTION NO.

METROPOLITAN BOARD OF PUBLIC
EDUCATION; JESSIE REGISTER, in his
official capacity as Director of Schools for
Metropolitan Nashville Public Schools; KNOX
COUNTY SCHOOLS BOARD
OF EDUCATION; and JAMES MCINTYRE, in
his official capacity as Superintendent of
Knox County Schools,
Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The plaintiffs, who are high school students and a librarian, challenge the legality of defendants' policy of blocking access to websites advocating the fair treatment of lesbian, gay, bisexual and transgender ("LGBT") persons. Metropolitan Nashville Public Schools and Knox County Schools use Internet filtering software to block access to websites categorized as "LGBT." That category has been defined as "Sites that provide information regarding, support, promote, or cater to one's sexual orientation or gender identity including but not limited to lesbian, gay, bi-sexual, and transgender sites. This category does not include sites that are sexually gratuitous in nature which would typically fall under the Pornography category."

2. Not only does defendants' blocking policy discriminate on the basis of content in violation of the First Amendment, the policy further constitutes unlawful viewpoint discrimination. Under the defendants' policy, students may access websites that promote anti-gay views and that advocate that persons should change their sexual orientation through so-called "reparative therapy," but not the websites of organizations such as the Human Rights Campaign, which is one of the largest civil rights organizations in the United States working to achieve equality under the law for LGBT persons.

3. The policy also violates the Equal Access Act, 20 U.S.C. § 4071 et seq., which grants all non-curriculum related student groups equal access to school resources, by blocking access to websites of the most prominent organizations that provide assistance and resources to students in Gay-Straight Alliance clubs.

4. Plaintiffs seek permanent injunctive and declaratory relief that will end this unlawful form of censorship and deprivation of equal access.

JURISDICTION AND VENUE

5. The Court has original jurisdiction over the subject matter of this dispute pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), as this is an action to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States. Plaintiffs seek remedies under 20 U.S.C. § 4071, 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. §§ 1983 and 1988, and Federal Rule of Civil Procedure 65.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b). Defendant Metropolitan Board of Public Education resides, is found, has agents and transacts business in this judicial district, and its acts in violation of the Constitution and laws of the United States have arisen and continue to arise in this judicial district.

Plaintiffs Franks and Logan reside in this judicial district. All other defendants reside in Tennessee.

PARTIES

7. Keila Franks is currently a student attending Hume-Fogg High School. Hume-Fogg is a part of Metropolitan Nashville Public Schools (“MNPS”). Keila, who will be a senior at Hume-Fogg next year, is a member of the Gay-Straight Alliance (“GSA”) club at her school. The GSA club is a non-curricular club open to all students, regardless of their sexual orientation or gender identity. The GSA club supports students who have been bullied or harassed because of their sexual orientation or gender identity, and helps educate the school community about respecting diversity and improving school safety for all students. Keila also participates in the Hume-Fogg delegation, which is advised by a faculty member, to the Youth in Government (“YIG”) program sponsored by the Tennessee YMCA. As part of the YIG program, wherein students participate in a simulated session of the state legislature, students draft proposed bills regarding current political, social, and economic issues. Keila is under the age of eighteen. She sues here by and through her next friend, her mother Pamela Auble.

8. Emily Logan is currently a student attending Hume-Fogg High School. Emily, who will be a junior at Hume-Fogg next year, participates in GSA club activities at her school, such as the Day of Silence and the annual AIDS Walk in Nashville. Emily also participates in the Hume-Fogg delegation to the YIG program. Emily is under the age of eighteen. She sues here by and through her next friend, her father Andy Logan.

9. Plaintiff Bryanna Shelton is currently a student attending Fulton High School. Fulton High School is a part of Knox County Schools. Bryanna, who will be a sophomore at Fulton High School next year, is a member of the GSA club. She is under the age of eighteen. She sues here by and through her next friend and mother, Angie Wright.

10. Plaintiff Karyn Storts-Brinks is a librarian at Fulton High School. Storts-Brinks is the advisor of the GSA club for Fulton High School.

11. Defendant Metropolitan Board of Public Education is the school board for Metropolitan Nashville Public Schools ("MNPS"), a consolidated city-county school district that provides public education to school-aged pupils within Davidson County. MNPS is a public school system organized and maintained under the laws of the State of Tennessee and Davidson County and is a "person" within the meaning of 42 U.S.C. § 1983. Upon information and belief, MNPS is a public school system that receives federal financial assistance.

12. Defendant Dr. Jesse Register is, and at all times relevant hereto was, a resident of the State of Tennessee, residing within this judicial district and is the Director of Schools of MNPS. Defendant Register is sued in his official capacity.

13. Defendant Knox County Schools Board of Education is the board of education for Knox County Schools ("KCS"), a school district that provides public education to school-aged pupils within Knox County. KCS is a public school system organized and maintained under the laws of the State of Tennessee and Knox County and is a "person" within the meaning of 42 U.S.C. § 1983. Upon information and belief, KCS is a public school system that receives federal financial assistance.

14. Defendant Dr. James McIntyre, Jr., is and at all times relevant hereto was, a resident of the State of Tennessee and is the Superintendent of the KCS. Defendant McIntyre is sued in his official capacity.

FACTUAL ALLEGATIONS

The Internet

15. The Internet is a decentralized, global medium of communications that links people, institutions, corporations and governments around the world. It is a giant computer network that interconnects innumerable smaller groups of linked computer networks and individual computers. While estimates are difficult due to its constant and rapid growth, the Internet is currently believed to connect more than 180 countries and over 800 million users.

16. The World Wide Web (the “Web”) is the most popular way to provide and retrieve information on the Internet. Anyone with access to the Internet can post content on the Web, which may contain many different types of digital information—text, images, sound, and video. The Web is comprised of millions of separate but interconnected “websites,” which in turn may have hundreds of separate “web pages,” that display content provided by particular persons or organizations. Any Internet user anywhere in the world with the proper software can create her own web page, view web pages posted by others, and then read text, look at images and video, and listen to sounds posted at these sites.

5. To gain access to the information available on the Web, a person uses a Web “browser” – software like Internet Explorer – to display, print and download documents. Each document on the Web has an address that allows users to find and retrieve it. Most

Web documents also contain “links.” These are short sections of text or images that refer and link to another document. Through the use of these links from one computer to another, and from one document to another, the Web for the first time unifies the diverse and voluminous information made available by millions of users on the Internet into a single body of knowledge that can be easily searched and accessed.

17. An enormous amount of information is available on the Web—including art, literature, medical and scientific information, humor, news, political commentary, and government information.

18. Although home Internet access is increasingly common, only 54 % of households in Tennessee have home Internet access. National Telecommunications and Information Administration, Households using the Internet in and outside the home, by selected characteristics: Total, Urban, Rural, Principal City, October 2007 (available at <http://www.ntia.doc.gov/reports/2008/NetworkedNation.html>). Internet access through school is therefore a particularly important way for today’s young people to access the Internet.

Internet Filtering

19. Internet filters are computer programs designed to restrict access to certain types of material on the Internet. Internet content filters can be configured in a variety of different ways. They can be set up to restrict access to materials based on the type of content they contain (information about being gay, information about religion, etc.), the presence of particular words, the address of the website (i.e., www.tnmd.uscourts.gov), or the Internet protocol or application that they use (Web, email, instant message, etc.).

Some filters can also restrict access based on the time of day, day of week, how long the computer has been connected to the Internet, or which user is logged onto a computer.

20. The primary functionality of filtering software is to divide online content into categories. Common filtering categories include Political Organizations, Violence, Alcohol, Gambling, Sex Education, Pornography, Religion, Medicine, and Personal Relationships.

21. Filtering companies utilize a number of techniques to categorize websites. Some filters use “black lists” to filter out content. Black lists are lists of website addresses (URLs) or Internet Protocol (IP) addresses that a filtering company has determined point to content that fits into a particular category.

22. Some filters use “white lists” of content that should never be blocked. White lists are lists of URLs or IP addresses that the company has checked and has determined do not point to any content their filter is designed to block.

23. In addition to their own white or black lists, many filtering companies give administrators the option of creating customized black or white lists.

24. Some filters also use “key words” or other real-time dynamic filtering techniques to limit access to websites. Filtering companies may compile lists of words and phrases associated with content that should be blocked, even if the page has not previously been categorized. Some filters also use artificial intelligence or machine learning techniques to determine whether content should be blocked. Typically a filtering company will compile hundreds or thousands of examples of acceptable and unacceptable text. They then “teach” their software to block content that is similar to the

unacceptable examples, but not to block content that is similar to the acceptable examples.

25. Filtering companies do not decide which categories of websites their customers will block. Instead, they sort websites into numerous categories, and then permit their customers to choose which categories to block, and which to allow. Some filters allow Internet administrators who purchase their product to establish different filtering rules for different customers. For example, an Internet administrator could block access to sexual health information for very young children, but permit older children to access these websites.

Filtering at MNPS and KCS

26. Internet access at MNPS and KCS is filtered. MNPS and KCS participate in the federal “E-Rate program”, which offers discounts on Internet access to eligible schools. 47 U.S.C. § 254. Under the Children’s Internet Protection Act (“CIPA”), Pub. L. 106-554, public schools that receive E-Rate funding are required to install a “technology protection measure” to block access to “visual depictions” that are “obscene; child pornography; or harmful to minors.” 47 U.S.C. § 254(h)(5)(B)(i).

27. “Technology protection measure” is defined as “a specific technology that blocks or filters Internet access . . .” 47 U.S.C. § 254(h)(7)(I).

28. “Harmful to minors” is defined as “any picture, image, graphic image file, or other visual depiction that--(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a

lewd exhibition of the genitals; and (iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.” 47 U.S.C. § 254(h)(7)(G).

29. Thus, while MNPS and KCS are obligated by CIPA to install Internet filtering software, their only obligation is to block “visual depictions”—not written words—that fall into the constitutionally unprotected categories of obscenity and child pornography, or that meet the narrowly circumscribed definition of “harmful to minors.”

30. In January 2007, the Greenville City School District negotiated a contract for the provision of Internet filtering software with ENA Services, LLC (“ENA”). In the contract, ENA agreed to provide Greenville City School District “and other K-12 public schools of Tennessee which have executed a cooperative agreement based on TCA Title 12, Chapter 3, Part 10” with ENA’s filtering service. Both MNPS and KCS executed a cooperative agreement and therefore contract for filtering with ENA.

31. MNPS and KCS are responsible for deciding what filtering technology to use and which websites and categories of websites to block. According to the Tennessee Department of Education, “The Greenville City Schools Consortium (“GCS Consortium”) was formed in late 2006 for the purpose of creating a contract from which school districts could purchase Internet services. GCS was an alternative to the [Tennessee] Department [of Education]’s contract that was being competitively rebid in November of 2006. ENA was awarded the GCS contract and AT&T was awarded the Department’s contract. Most school districts have chosen to purchase their Internet service from the GCS contract with ENA.” Email From Christy Ballard, General Counsel, Tennessee Department Of Education To Tricia Herzfeld dated 4/8/2009 (emphasis added).

32. ENA does not decide which categories of information or specific sites that school districts will block. According to ENA, “The decisions on whether to block certain websites are made solely by school districts. ENA does not participate in these decisions in any way and is instead told which categories to block.” Letter From Jason W. Callen, Counsel to ENA, To Tricia Herzfeld dated 4/6/2009. Its software allows “local ownership” by permitting its customers to “decide which requests are blocked and which are allowed.” ENA, Content Filtering Services, available at http://www.ena.com/files/PDF/Content_Filtering_Low_Res.pdf (last viewed 5/14/2009). ENA’s filtering software “allow[s] administrators to customize the Web-browsing experience for districts, schools, or even individual computers.” *Id.* “Using differentiated local content filtering from ENA, administrators can specify individual filtering rules for as many exclusive locations as desired, or specify unique filtering rules for different groups of people.” *Id.*

33. On its website, ENA states that “[t]he database of ENA’s content filtering solution, Blue Coat, contains fifteen million website ratings representing billions of web pages, published in more than 50 languages, and organized into 61 useful categories.” By accessing a database created and maintained by another company, Blue Coat, ENA’s filter classifies websites by the following list of categories. The categories designated with an asterisk are those that school districts in the GCS Consortium, including MNPS and KCS, have chosen to block: Abortion, Adult/Mature Content*, Alcohol*, Alternative Sexuality/Lifestyles*, Alternative Spirituality/Occult*, Arts/Entertainment, Auctions, Blogs/Personal Pages, Brokerage/Trading, Business/Economy, Chat/Instant Messaging*, Computers/Internet, Content Servers, Cultural/Charitable Organization, Education, E-

mail, Extreme*, Financial Services, For Kids, Gambling*, Games, Government/Legal, Hacking*, Health, Humor/Jokes, Illegal Drugs*, Illegal/Questionable*, Intimate Apparel/Swimsuit*, Job Search/Careers, LGBT*, Military, News/Media, Newsgroups/Forums, Non-viewable, Nudity*, Online Storage, Open Image/Media Servers*, Pay to Surf, Peer-to-Peer (P2P)*, Personals/Dating*, Phishing*, Placeholders, Political/Activist Groups, Pornography*, Proxy Avoidance*, Real Estate, Reference, Religion, Remote Access Tools, Restaurants/Dining/Food, Search Engines/Portals, Sex Education, Shopping, Social Networking*, Society/Daily Living, Software Downloads, Sports/Recreation, Spyware Effects/Privacy Concerns*, Spyware/Malware Sources*, Streaming Media/MP3s, Suspicious, Tobacco*, Travel, Vehicles, Violence/Hate/Racism*, and Weapons*. ENA, Content Filtering URL Categories, Tennessee Schools Cooperative, available at <http://www.ena.com/help/BlueCoat/TN/> (as viewed on May 11, 2009).

34. By letter dated February 10, 2009, counsel for plaintiffs informed KCS that the district was unlawfully blocking websites under the LGBT category, which on that date was defined as follows:

Sites that provide information regarding, support, promote, or cater to one's sexual orientation or gender identity including but not limited to lesbian, gay, bi-sexual, and transgender sites. This category does not include sites that are sexually gratuitous in nature which would typically fall under the Pornography category. Examples: glsen.org, gsanetwork.org, hrc.org.

35. Glsen.org is the website of an organization named the Gay, Lesbian and Straight Education Network. GLSEN's mission is to promote a world in which every child learns to respect and accept all people, regardless of sexual orientation or gender

identity/expression. GLSEN expresses a pro-LGBT viewpoint. The GLSEN website does not contain content that schools are obligated to block under CIPA, nor has it contained such content in the past.

36. Gsanetwork.org is the website of an organization named the Gay Straight Alliance Network. GSA Network was founded in 1998 to empower youth activists to start Gay-Straight Alliance clubs and fight homophobia and transphobia in schools. The Gay Straight Alliance Network expresses a pro-LGBT viewpoint. The Gay Straight Alliance Network website does not contain content that schools are obligated to block under CIPA, nor has it contained such content in the past.

37. Hrc.org is the website of the Human Rights Campaign. HRC represents a grassroots force of over 750,000 members and supporters, is the largest national lesbian, gay, bisexual and transgender civil rights organization, and envisions an America where LGBT people are ensured of their basic equal rights, and can be open, honest and safe at home, at work and in the community. The Human Rights Campaign expresses a pro-LGBT viewpoint. The Human Rights Campaign website does not contain content that schools are obligated to block under CIPA, nor has it contained such content in the past.

38. The February 10 letter to KCS further noted that although sites that advocate for the equal rights of LGBT people were blocked, sites with anti-gay viewpoints were not blocked, including sites that condemn homosexuality and that urge gay persons to change their sexual orientation through so-called "reparative therapy."

39. In response to a public records act request, on April 6, 2009, ENA confirmed that the LGBT category, as defined above, was blocked under its contract with the GCS

Consortium. Public records act requests confirmed that, in addition to KCS, MNPS was also blocking the LGBT category.

40. Because the ENA software used by KCS and MNPS continued to block the LGBT category as defined above, by letter dated April 15, 2009, plaintiffs' counsel sent a demand letter requesting that KCS and MNPS stop blocking the LGBT category or "any other category blocking non-sexual websites advocating the fair treatment of LGBT persons" by the beginning of the school year 2009-2010. The letter further stated "[p]lease let us know by April 29, 2009 in writing whether you will agree to end this unlawful censorship or we will have no choice but to seek other remedies, including filing a lawsuit for injunctive and declaratory relief and attorneys fees and costs."

41. Subsequent to plaintiffs' April 15, 2009 demand letter, ENA revised its definition of the LGBT category to read as follows:

Sites that provide information regarding, support, promote, or cater to one's sexual orientation or gender identity including but not limited to lesbian, gay, bi-sexual, and transgender sites. **Sites under this category may include adult content, chat capabilities and personals.**

42. ENA also amended its examples of which websites it blocks as follows:
gsanetwork.org, hrc.org, gay.com, outinnashville.com.

43. Thus, whereas prior to plaintiffs' April 15 demand letter the ENA category expressly disclaimed that the LGBT category blocked "adult content," ("This category does not include sites that are sexually gratuitous in nature which would typically fall under the Pornography category."), ENA now claims that it is possible the category blocks adult content ("Sites under this category may include adult content, chat capabilities and personals.").

44. Upon information and belief, this change is mere litigation posturing that does not reflect any actual change in which websites the category blocks and/or constitutes a pretext for continuing to unlawfully censor websites that advocate for the fair treatment for LGBT persons. The change did not occur until after defendants received the demand letter. The selection of outinnashville.com as one of the blocked sites suggests that ENA had Nashville, one of the jurisdictions mentioned in plaintiffs' counsel's letter, specifically in mind when it edited its category description.

45. Upon information and belief, ENA is not even capable of altering what websites the various categories block. While ENA is the direct vendor of filtering services to districts, it relies on another company, Blue Coat, to review and categorize websites. ENA Website, Content Filtering URL Categories, Tennessee Schools Cooperative, available at <http://www.ena.com/help/BlueCoat/TN/> (viewed 5/14/2009) ("The database of ENA's content filtering solution, Blue Coat, contains fifteen million website ratings representing billions of web pages, published in more than 50 languages, and organized into 61 useful categories.").

46. Furthermore, ENA already has other filtering categories dedicated to blocking "adult content," "chat capabilities" and "personals," so it is not necessary to block the LGBT category to block LGBT-focused materials of this type. In any event, ENA does not claim that the category does block "adult content," "chat capabilities," and "personals," only that it "may."

47. ENA already allows the defendants to block access to Adult/Mature content. ENA defines this category as "Sites that contain material of adult nature that does not

necessarily contain excessive violence, sexual content, or nudity. These sites include very profane or vulgar content and sites that are not appropriate for children.”

48. In fact, the defendants already do block access to sites that fall into the Adult/Mature category.

49. ENA also already allows the defendants to block access to Pornography content. ENA defines the Pornography category as “Sites that contain sexually explicit material for the purpose of arousing a sexual or prurient interest.”

50. In fact, the defendants already do block access to sites that fall into the Pornography category.

51. ENA also already allows the defendants to block access to “chat capabilities.” Defendants can block access to the Chat/Instant Messaging category. ENA defines the Chat/Instant message category as “Sites that provide chat, text messaging (SMS), instant messaging, voice/telephony (VoIP) capabilities or client downloads that facilitate these types of communication.”

52. In fact, the defendants already do block access to sites that fall into the Chat/Instant Messaging category.

53. ENA also allows the Defendants to block access to personals. ENA allows the defendants to block access to the Personals/Dating category. ENA defines this category as “Sites that promote interpersonal relationships.”

54. In fact, the defendants already do block access to the Personals/Dating category.

55. Because the defendants have already elected to block access to Adult/Mature, Pornography, Chat/Instant Message, and Personals, they do not need to block access to the LGBT category to block access to content in those areas. The only content blocked

by the LGBT category that would not otherwise be blocked are websites that “provide information regarding, support, promote, or cater to one’s sexual orientation or gender identity,” in other words, non-sexual pro-LGBT content, such as glsen.org, gsanetwork.org, hrc.org. In addition to these websites, defendants’ filter additionally blocks the websites of Parents, Family, and Friends of Lesbians And Gays (PFLAG), Marriage Equality USA, the Gay and Lesbian Alliance Against Defamation (GLAAD), and Dignity USA (an organization for LGBT Catholics).

56. Moreover, the defendants’ policy blocks pro-LGBT but not anti-LGBT speech. While the ENA software utilized by the defendants blocks the pro-LGBT sites listed above, it allows access to anti-LGBT websites that condemn homosexuality and sites that promote “reparative therapy.” “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, the American Medical Association, and the American Academy of Pediatrics.

57. Websites that are not blocked by the defendants include www.narth.com, www.peoplecanchange.com, www.americansfortruth.com, and www.traditionalvalues.org. Upon information and belief and as recently as May 13, 2009, these websites continue to be accessible to students at MNPS and KCS.

58. Traditionalvalues.org is the website of The Traditional Values Coalition. As part of its general commitment to “traditional values,” the Coalition “oppose[s] the normalization of sodomy as well as cross-dressing and other deviant sexual behaviors in our culture.” The Traditional Values Coalition expresses an anti-LGBT viewpoint. It

accordingly does not “support, promote, or cater to one’s sexual orientation or gender identity,” does not fall into the LGBT category and is not blocked by defendants’ filter.

59. Peoplecanchange.com is the website of People Can Change. People Can Change is “is a non-profit educational, outreach and support organization of men who have successfully transitioned out of unwanted homosexual attractions and increased their heterosexual identify, feelings and behaviors.” According to its website, “The mission of People Can Change is to offer other men who seek similar transformation a pathway of healing, by providing information, training, coaching and support.” People Can Change expresses an anti-LGBT viewpoint. It accordingly does not “support, promote, or cater to one’s sexual orientation or gender identity,” does not fall into the LGBT category and is not blocked by defendants’ filter.

60. Americansfortruth.com is the website of The Americans For Truth Against Homosexuality. According to its website, AFTAH is “a group dedicated to exposing the homosexual activist agenda. Founded as a part-time venture in 1996 but newly reorganized in August 2006, AFTAH seeks to apply the same single-minded determination to opposing the radical homosexual agenda and standing for God-ordained sexuality and the natural family as countless homosexual groups do in promoting their harmful agenda.” AFTAH expresses an anti-LGBT viewpoint. It accordingly does not “support, promote, or cater to one’s sexual orientation or gender identity,” does not fall into the LGBT category and is not blocked by defendants’ filter.

61. Narth.com is the website of the National Association for Research and Therapy of Homosexuality. According to its website, NARTH “upholds the rights of individuals with unwanted homosexual attraction to receive effective psychological care and the right

of professionals to offer that care.” NARTH expresses an anti-LGBT viewpoint. It accordingly does not “support, promote, or cater to one’s sexual orientation or gender identity,” does not fall into the LGBT category and is not blocked by defendants’ filter.

62. KCS and MNPS filter Internet content as described above not only in the classroom, but also in their computer labs, in the library, and after school. The filter is therefore deployed during both curricular and non-curricular parts of the school day,

63. There is no educational basis for the defendants’ censorship. Blocking LGBT sites in fact undermines the ability of students, including the plaintiffs, to prepare for their responsibilities as citizens and voters. In the past six months, California made headlines by taking away the right of same-sex couples to wed and Vermont, Iowa, and Maine made headlines by permitting them to do so. Moreover, whether Congress will pass an employment nondiscrimination act that prohibits discriminatory hiring practices on the basis of sexual orientation and gender identity is another current political issue.

Similarly, the public debate over whether the United States should continue the “Don’t Ask, Don’t Tell” policy is another pressing issue that students—some of whom are old enough to serve in the military—may also wish to participate in. By blocking the LGBT category, defendants prevent students from fully informing themselves of these and other political and social debates concerning the rights of LGBT persons.

64. The blocking also hinders the ability of GSA clubs and their members to facilitate club activities. Both the glsen.org website and the gsanetwork.org website, for example, provide information and resources for GSA clubs, including 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 on how to address bullying and harassment at

schools. GLSEN also is the main sponsor of the “Day of Silence,” which is an annual student event that many GSA clubs participate in, including the GSA clubs at Hume-Fogg and at Fulton High School. On the glsen.org website, students can download sample flyers and order t-shirts and buttons as part of their “Day of Silence” activities. Under defendants’ blocking policy, GSA club members are prohibited from accessing the most salient and helpful information to their club at school while other non-curricular clubs are not under similar constraints.

65. Defendants’ censorship further violates the rights of students, including the plaintiffs, by blocking information that is relevant and central to the students’ concerns. The software utilized by defendants blocks, for example, information about scholarships for LGBT students, including those available at the website of the organization, Parents, Families, and Friends of Lesbians and Gays (commonly referred to as “PFLAG”). At the PFLAG website, students can obtain information about how to apply for scholarships provided by PFLAG, including three \$5,000 scholarships, three \$2,500 scholarships, and up to ten \$1,000 scholarships. Moreover, the censorship hinders the ability of students, including plaintiffs, to research information related to school assignments or school-related activities.

66. As evident from the categories of information that are not blocked by the filtering scheme, MNPS and KCS do not block the LGBT category as part of a general policy of blocking speech on topics deemed controversial or topics solely on curricular subjects. Both schools, for example, do not block access to the Abortion category, which ENA defines as “[s]ites which provide information or arguments in favor of or

against abortion, describe abortion procedures, offer help in obtaining or avoiding abortion, or provide information on the effects, or lack thereof, of abortion.”

67. Both school districts also allow students to access the Sex Education category, which is defined as “Sites that provide information (sometimes graphic) on reproduction, sexual development, safe sex practices, sexuality, birth control, tips for better sex, and sexual enhancement products.”

68. Thus, MNPS and KCS permit access to much content on topics, such as teenage sexuality and abortion, that are fairly described as controversial—except, that is, if the controversy involves LGBT topics, and only then if the speech “supports” or “promotes” LGBT persons.

69. Each of the plaintiffs has attempted to access websites covered under the LGBT category at school.

70. Plaintiffs desire and continue to desire the ability to access websites blocked under the LGBT category at school, but have been and are unable to do so because of the defendants’ unlawful censorship. The information that the plaintiffs wish to access is protected speech under the First Amendment of the United States Constitution.

CAUSES OF ACTION

Count One

(First Amendment of the United States Constitution)

(Plaintiffs Franks, Shelton and Logan against all defendants)

71. Defendants’ blocking policies and practices violate the plaintiffs’ rights as guaranteed to them under the First Amendment of the United States Constitution (which

is made applicable to state entities through the Fourteenth Amendment), by banning speech on the basis of its content and viewpoint.

72. Unless restrained by this court, the defendants will continue to violate the First Amendment rights of the plaintiffs.

73. Plaintiffs have no adequate remedy at law for this continuing denial of their constitutional rights.

Count Two
(Equal Access Act)
(All plaintiffs against all defendants)

74. 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.

75. MNPS and KSC are school districts that receive federal financial assistance that permit non-curricular student groups to meet on campus and use school resources during non-instructional time.

76. Defendants have not permitted and continue not to permit GSA clubs to access the Internet on equal terms with other clubs, because MNPS and KSC have chosen to prohibit the GSA clubs from being able to access the Internet to receive information and ideas most directly relevant to their missions, a limitation that does not apply to the other non-curricular clubs.

77. Defendants' policy of blocking the LGBT category violates the Equal Access Act, 20 U.S.C. § 4071, by denying equal resources to the GSA clubs.

78. Unless restrained by this court, the defendants will continue to violate the rights of the plaintiffs as provided under the Equal Access Act.

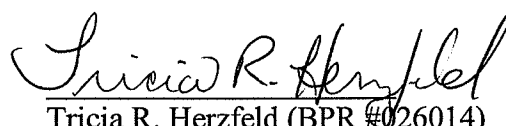
79. Plaintiffs have no adequate remedy at law for this continuing denial of their rights under the Equal Access Act.

RELIEF

WHEREFORE, plaintiffs pray for relief as follows:

- A. For a declaration that defendants' policy of blocking the LGBT category constitutes unlawful censorship on the basis of content in violation of the First Amendment of the United States Constitution;
- B. For a declaration that defendants' policy of blocking the LGBT category constitutes unlawful censorship on the basis of viewpoint in violation of the First Amendment of the United States Constitution;
- C. For a declaration that defendants' policy of blocking the LGBT category is a violation of the Equal Access Act;
- D. For an order directing defendants and their officers, agents, servants, and employees to unblock the LGBT category or any other similar category that blocks otherwise appropriate websites that provide information regarding, support, promote, or cater to one's sexual orientation or gender identity including but not limited to lesbian, gay, bi-sexual, and transgender sites;
- E. For an award of attorneys fees and costs pursuant to 42 U.S.C. § 1988;
- F. For such other relief as the Court may deem just and equitable.

Respectfully submitted this 19th day of May, 2009.



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