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OF ACLU, INC.

Illinois

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Via Email:

Board of Trustees
University of Illinois
352 Henry Administration Building, MC-350
506 S. Wright St.
Urbana, IL 61801
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Dear Board Members:

As advocates for both gender equality and free speech principles, the ACLU of Illinois and the ACLU Women's Rights Project were dismayed to learn that the University of Illinois is requiring NPR Illinois reporters to disclose to the University's Title IX office confidential discussions that they have, as journalists, with survivors of sexual assault or others discussing sexual violence and harassment on campus. That is the import of the University deeming NPR Illinois reporters "responsible employees" under its Sexual Misconduct Policy. We write to call on the Board, as the holder of the radio station's license, to reverse this requirement.

I. Requiring NPR Illinois reporters to disclose confidential discussions of sexual misconduct that they receive in their roles as journalists does not serve the objective of protecting students, faculty, or staff from gender-based violence or harassment on campus.

The ACLU supports rigorous and fair enforcement of Title IX at schools and universities. A key element of addressing sexual misconduct is to create avenues for disclosing such misconduct so that the university can take immediate and appropriate steps to investigate and address issues. One such avenue is the designation of "responsible employees" who must disclose any misconduct they learn of to the University's Title IX office. The ACLU agrees that designating a broad range of staff and faculty as responsible employees enhances effective enforcement of Title IX.

It is crucial, however, to preserve the ability of those who have experienced harassment or assault to seek help and accountability confidentially, without setting off an investigation. Accordingly, many institutions, including the University of Illinois, exempt counselors and similar professionals from mandatory disclosures to ensure that survivors may seek confidential advice and support without triggering formal proceedings if they choose to do so.

Journalists, like counselors, provide an opportunity for survivors to make confidential disclosures. A survivor of sexual misconduct may choose to confide in a reporter for any number of reasons. They may want their story to help others in similar circumstances but do not want to be further identified for fear of retaliation. They may know that their experience is representative of a larger issue that should be more widely known. They may simply be uncomfortable invoking the University's formal accountability mechanisms. In any case, the University should not close off this option for confidential disclosure.

Allowing NPR Illinois journalists to protect the confidential sources who contribute to their newsgathering will not undermine the University's ability to address gender-based violence. Students who disclose their experiences to news media do not expect reporters to initiate corrective actions on behalf of the University, and do not approach them for that purpose. Perversely, under the University's policy, survivors discussing sexual misconduct are the *only* students on campus not entitled to the same confidentiality protection that NPR Illinois reporters extend to other sources. Rather than encouraging students to come forward with reports, the policy chills students from discussing their experiences of sexual misconduct. Confidential lines of communication between journalists and members of the University community would abate that chill and would support and enhance the University's ability to respond to and reduce sexual misconduct by bringing the problems to light.¹

II. The University's treatment of NPR Illinois reporters is antithetical to the values of academic freedom, the free exchange of ideas, freedom of the press, and freedom of speech.

When the University prohibited NPR Illinois reporters from offering confidentiality to sources who have experienced or are disclosing sexual misconduct on campus, it hobbled their ability to gather information and report on the issue. This is bad policy, and it is contrary to the University's own principles.

The University has repeatedly insisted upon its commitment to the freedom of speech. In its "Guiding Principles,"² the University proclaims:

An unyielding allegiance to freedom of speech – even controversial, contentious, and unpopular speech – is indispensable to developing the analytical and communication skills of our students and empowering all members of our university communities to be active and informed citizens. . . . We will create conditions for a safe and robust exchange of viewpoints. . . .

President Killeen recently invoked the Guiding Principles in his response to a White House Executive Order on campus free speech: "The principles . . . help ensure that each of our

¹ Indeed, journalism regarding sexual assault on campuses has led universities to improve their policies and practices addressing gender-based violence. Gabriel Greschler, *Criticized, Sued, and Overcharged: Are Barriers to Reporting on Sexual Assault Surmountable for Student Journalists?*, STUDENT PRESS L. CTR. (May 8, 2018), <https://splc.org/2018/05/barriers-to-reporting-on-sexual-assault-on-campus>.

² *University of Illinois System Guiding Principles* (Dec. 8, 2017), https://www.uillinois.edu/about/guiding_principles.

universities fosters an inclusive, welcoming campus climate that promotes an open exchange of divergent ideas and develops new generations of leaders.”³ To achieve such a climate, people on campus, including NPR Illinois reporters, must be able to discuss the critical issue of sexual misconduct on campus.

The University also professes to value the editorial independence of the news media and to impart that value to its students. Under the Student Code, “campus press and media are to be free of censorship,” and “editors and managers shall not be arbitrarily suspended because of student, faculty, administration, alumni, or community disapproval of editorial policy or content.”⁴ The University’s Department of Journalism is accredited by the Accrediting Council on Education in Journalism and Mass Communications (ACEJMC), which expects “the professional education offered by accredited programs to encourage inquiry, dissent and free expression”⁵ and graduating students to have “an understanding of professional ethical principles and work ethically in pursuit of truth, accuracy, fairness and diversity.”⁶

In short, the University avowedly values the free exchange of ideas, the pursuit of truth, and a free and independent press for its faculty and students. It is baffling, then, that it declines to extend those principles to its journalist employees, whose profession embodies them.

Information from confidential sources is a crucial tool for gathering and disseminating news.⁷ A reporter’s assurance of confidentiality is essential to creating and sustaining relationships with their sources, and increases the overall flow of knowledge to the public. This is particularly important in the context of systemic issues such as sexual misconduct. Requiring a reporter to reveal their confidential sources has a chilling effect, forcing sources to choose between risking exposure and remaining silent. This burdens newsgathering, impedes the free flow of information, and obstructs the functioning of a robust and independent press.

The University’s policy has thus diminished the ability of NPR Illinois to report on the issue of sexual misconduct on campus. Perhaps that is the point. The Title IX coordinator at the University’s Springfield campus notified NPR Illinois that its reporters were “responsible employees” just days after the media outlet published stories about the University’s failure to hold faculty accountable after repeated allegations of sexual harassment.⁸

The timing raises questions about administrators’ motives, as does the Administration’s refusal to reconsider its policy even though, as discussed above, the policy does not advance the

³ Tim Killeen, *Statement on Executive Order* (March 21, 2019), <https://today.uic.edu/statement-on-executive-order>.

⁴ University of Illinois at Urbana-Champaign, *Student Code* (2019-20), <https://studentcode.illinois.edu>.

⁵ ACEJMC, *Mission Statement* (Aug. 23, 2013), <http://www.acejmc.org/about/mission/>.

⁶ ACEJMC, *Principles of Accreditation*, <http://www.acejmc.org/policies-process/principles/> (last visited Nov. 6, 2019).

⁷ The General Assembly has recognized the importance of this tool. See 735 ILL. COMP. STAT. 5/8-901 to 8-909.

⁸ See Rachel Otwell and Alex Mierjeski, *At the University of Illinois at Urbana-Champaign, Preserving the Reputations of Sexual Harassers*, PROPUBLICA (Aug. 27, 2019), <https://www.propublica.org/article/university-of-illinois-urbana-champaign-sexual-harassment-professor-faculty>. Rachel Otwell and Alex Mierjeski, *One Campus. Seven Professors Facing Harassment Accusations. Few Consequences.*, PROPUBLICA (Aug. 27, 2019), <https://www.propublica.org/article/university-of-illinois-urbana-champaign-professors-sexual-harassment-accusations>.

stated goal of public safety on campus. Regardless of the Administration's intent, the mere suspicion that campus officials are suppressing journalism that is critical of them should be embarrassing to an institution that values the pursuit of the truth.

Finally, we urge the Board to consider the lessons students learn from all of this. For survivors of sexual misconduct, the lesson may be that the University respects its own procedures more than it respects their decisions about whether, how, and to whom they discuss their experience. For journalism majors and student journalists, the lesson may be that journalistic standards and ethics are not very important. For others, the lesson may be that the powerful support a free and independent press, until the press speaks truth to power.

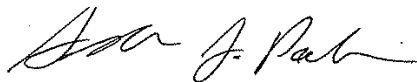
In recent years, revelations of sexual misconduct have roiled many major news outlets. The journalists who work for those outlets have not hesitated to report on these revelations on their own shows, interview individuals who made allegations against the network, and conduct hard-hitting interviews of their own bosses.⁹ If the journalists on the University's campus have the courage, persistence, and commitment to the truth necessary to hold their own organization to account, they are acting in the best traditions of the profession. The University should be proud of them and should not interfere with their ability to do their job independently, thoroughly, and ethically.

Should you wish to discuss this matter, please do not hesitate to contact Rebecca Glenberg at rglenberg@aclu-il.org or at (312) 201-9740 ext. 316. Thank you for your attention to this matter.

Sincerely,



Rebecca K. Glenberg, Senior Staff Attorney
Emily Werth, Staff Attorney
ACLU of Illinois



Sandra S. Park, Senior Staff Attorney
Rebecca Ojserkis, Legal Fellow
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⁹ See, e.g., Daniel Arkin, *NBCUniversal releases former staffers from confidentiality agreements about sexual harassment*, NBC NEWS (Oct. 26, 2019), <https://www.nbcnews.com/news/all/nbcuniversal-releases-former-staffers-confidentiality-agreements-about-sexual-harassment-n1072411>; David Folkenflik, *Report Detailing Harassment At NPR Cites 'High Level Of Distrust' Of Management*, NPR NEWS (Feb. 20, 2018), <https://www.npr.org/sections/thetwo-way/2018/02/20/587284377/report-detailing-harassment-at-npr-cites-high-level-of-distrust-of-management>.