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Briefings sent to court back U. of I. in records dispute

Tribune seeks more information in 'Clout Goes to College' investigation

By Antonio Olivo, Tribune reporter

July 21, 2011

The U.S. Department of Justice and a group of higher education organizations each filed briefs in federal court Wednesday arguing that the University of Illinois was prohibited by a federal privacy law from releasing information about hundreds of well-connected college applicants.

The briefs back the university's position in an ongoing legal dispute with the Chicago Tribune over student records stemming from the newspaper's 2009 "Clout Goes to College" investigation.

In its brief, the Justice Department argues that federal Judge Joan Gottschall misinterpreted a congressional spending clause governing the Family Educational Rights and Privacy Act of 1994, or FERPA, when she ruled that the university was not specifically prohibited from releasing personal details on applicants. The Tribune is seeking information on well-connected applicants put on a school clout list it called Category I.

The U. of I. has appealed Gottschall's ruling, which it argues exposes the school to a potential loss of \$594 million in federal funding.

The Justice Department brief states that, "Although no state is required to participate in a federal spending program, a state that chooses to participate must comply with the conditions on receipt of federal funds."

In a separate brief, a group of higher-learning organizations including the American Council on Education argues that Gottschall's ruling "ignores the reality of the nation's diverse higher education landscape."

Public universities, especially, rely on federal funds for student financial aid, making their budgets more subject to FERPA's privacy requirements, the group states in its brief.

The dispute, also under way in a Sangamon County court, began after U. of I. denied several Freedom of Information Act requests from the Tribune that sought grade-point averages, standardized test scores and parents' names of Category I applicants.

The U. of I. had released more than 5,200 pages of documents that fueled the Tribune's "Clout Goes to College" series, which exposed special treatment given to some applicants to the school.

U of I to appeal privacy ruling

CHICAGO • The University of Illinois said Tuesday that it would appeal a federal court ruling that a federal privacy act does not prevent the release of information about hundreds of college applicants who appeared on a list of well-connected students.

The Tribune sought those records as part of its 2009 "Clout Goes to College" investigation, eventually filing a state lawsuit against the university that year when officials denied several Freedom of Information Act requests under a privacy law that controls federal funds for financial aid and other purposes.

As part of the ongoing legal dispute, the two sides asked a federal judge to weigh in on whether the Family Education Rights and Privacy Act of 1974 specifically prohibited the university from releasing the records. The university had turned over 5,200 pages of documents that fueled the Tribune series about the university's "Category I" list of well-connected applicants. Principally citing the privacy act, the school refused to provide parents' names, addresses and applicants' standardized test scores and grade-point averages.

The judge, Joan Gottschall, sided with the Tribune. The ruling did not determine the outcome of the state lawsuit, which also hinges on privacy exemptions under the state FOIA cited by the university.

In a motion filed Tuesday, the university argued that Gottschall's order exposes the university to irreparable harm, potentially violating the privacy of thousands more students and placing at risk roughly \$594 million in federal funds.

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THE CHRONICLE

of Higher Education

Higher-Education Groups Seek to Protect Student-Privacy Law

July 20, 2011, 5:14 pm

The American Council on Education and nine other higher-education groups filed a legal brief today arguing that the **University of Illinois** does not, as a federal judge ruled in March, have a choice to reject federal funds and release students' records. The federal law known as Ferpa protects the privacy of those records at institutions that receive federal funds, and when the *Chicago Tribune* sued the university for information on applicants possibly involved in an admissions scandal, the judge ruled that Ferpa didn't technically prohibit its release (the university appealed the decision and can legally withhold the records until the case is resolved). Reversing the ruling is the only way to resolve it, according to ACE and the other groups. In the 2010 fiscal year, their brief said, the University of Illinois received more than \$594-million in federal aid, including \$521-million in student loans and financial assistance. "The district court's conclusion that the university has a 'choice' to reject federal education funding misunderstands the realities of higher education," ignores a federal appellate ruling involving Miami University, and destroys privacy protections for students at public colleges, it says.

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The Chronicle of Higher Education 1255 Twenty-Third St, N.W. Washington, D.C. 20037

US files brief supporting **University of Illinois** in case over names in admissions scandal

THE ASSOCIATED PRESS

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CHICAGO — The U.S. Department of Justice is supporting the University of Illinois' appeal of a court ruling in a case involving the release of names in an admissions scandal.

The Justice Department filed an amicus brief Wednesday, joining colleges and other groups in supporting the university's appeal to the 7th U.S. Circuit Court of Appeals in Chicago.

The case turns on legal protections under the federal Family Educational Rights and Privacy Act.

In March, a federal judge found the school was wrong to use the law to withhold the names of college applicants involved in the scandal, which involved the admission of well-connected, under-qualified students. The university is appealing that ruling.

The Chicago Tribune sued to get the names last year, after the university denied two Freedom of Information Requests.

Decatur Tribune

ONLINE EDITION

July 21, 2011

DEPARTMENT OF JUSTICE FILES AMICUS BRIEF SUPPORTING U OF I STUDENT PRIVACY CASE VS. CHICAGO TRIBUNE

\$630 million a year in federal student aid to state's public universities at risk

07/21/11

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CHICAGO – The Department of Justice, on behalf of the United States government, today joined Illinois public universities and national higher education and privacy rights advocates in supporting the University of Illinois' appeal of a federal court ruling that threatens to undermine a nearly 40-year-old law to protect student records, puts hundreds of millions in federal student financial aid at risk and establishes a two-tier hierarchy that favors private colleges over public universities.

Support for the University of Illinois came in the form of amicus briefs in the case – due today – urging a federal appellate court to protect four decades of privacy safeguards for students and funding for the colleges that serve them.

In separate amicus briefs, the federal government joined eight Illinois public universities, the American Council on Education (ACE), nine other national higher education organizations and EPIC – the Electronic Privacy Information Center – in strongly supporting the University of Illinois appeal, which asks the Seventh Circuit court in Chicago to overturn a March 2011 ruling by U.S. District Judge Joan Gottschall that federal privacy laws do not "prohibit" the release of identifiable educational records about students and their families. The University of Illinois and those supporters that filed briefs today consider that ruling to be contrary to both the intent as well as the letter of federal privacy regulations for students and their families that have been in force since 1974.

In arguing against the district court's ruling, the federal government stated: "Although no state is required to participate in a federal spending program, a state that chooses to participate must comply with the conditions on receipt of federal funds. The University of Illinois receives funds under federal education programs. Accordingly, federal law prohibits the University from making disclosures of education records that are inconsistent with FERPA."

Writing for itself and nine other organizations that represent the administrations, counselors and professors of the nation's education system, ACE's brief warns that the District Court's decision threatens the "vital role" that public colleges and universities fulfill: "The District Court's suggestion that public educational institutions subject to state open records laws should simply choose not to accept federal education funds and thereby free themselves from FERPA's privacy requirements is not only unrealistic, but also, harmful to Amici's member institutions and our nation's outstanding system of public universities." The brief argues that the District Court's decision, left undisturbed, "would invade important established privacy rights and expectations to education records," and "also would deprive Amici's members of the funding that opens their doors to students who otherwise do not have the means to attend one of the nation's colleges or universities."

The brief by the Illinois public universities brings the issue closer to home by describing the threat to Illinois colleges and universities, which receive more than \$1.2 billion dollars from the U.S. Department of Education (DOE) each year. The universities argue: "The district court's ruling in this case places the Illinois Public Universities at risk of losing these vital funds. It also exposes the Illinois Public Universities to further lawsuits that seek to characterize their compliance with FERPA as a mere 'choice.'"

The case hinges on the legal protections afforded by the federal Family Educational Rights and Privacy Act (FERPA) and originates in a 2010 Chicago Tribune lawsuit against the University of Illinois.

In late 2009, the University cited FERPA in denying two Tribune Freedom of Information Act (FOIA) requests demanding parents' names and addresses for certain University of Illinois at Urbana-Champaign applicants who subsequently enrolled. The University had already complied with 13 Tribune FOIA requests about admissions, providing the newspaper with over 5,000 pages of

information. The Tribune sued the University in federal court.

In ruling for the Tribune, Judge Gottschall held that it was unclear that FERPA specifically prohibited the information's release, and that the University could choose to forgo federal funding to comply with the Tribune's FOIA requests.

Together, the eight Illinois public universities who filed today to support the University of Illinois – Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Southern Illinois University and Western Illinois University – administered more than \$630 million in federal student financial aid in 2010 alone. Their brief raises the concern that these funds could be jeopardized if the Tribune prevails in federal court.

The public universities argue that FERPA prohibits the recipients of federal funds from disclosing protected education records, and that the legislative history of FOIA in Illinois clearly shows that the Illinois legislature intended to protect the privacy of student information, in contravention to the court's March 2011 ruling. They argue that the ruling, if left to stand, significantly weakens the ability of Illinois' public universities to protect the privacy of student records while putting students and schools in danger of losing more than half a billion dollars in federal funding each year.

"With each unlawful disclosure, the Illinois Public Universities would not only risk losing critical federal funding, but also risk breaching contracts with the federal government that expressly prohibit universities from disclosing this kind of information," the schools argued in their brief. "These risks are simply too great for the Illinois Public Universities to stand idly by without making their position known to the Court."

ACE's brief similarly warns that the court's decision would create a two-tiered system of higher educational institutions – the first comprised of private schools that are not subject to state open records laws, and thus could comply with FERPA's obligations and continue to accept federal educational funding, and the second comprised of public institutions subject to state open records laws who could not accept federal funds because they could not comply with FERPA. Public colleges and universities, ACE argues in its brief, "would become second class citizens, undermining their educational missions."

EPIC, a leading public interest research center established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values, argues in its brief that Congress passed FERPA in 1974 out of a growing concern for students' privacy, and that contrary to the March ruling, educational institutions do not have a "real choice in deciding to forgo federal funding," because public universities are dependent on federal funds for "a wide range of university and academic and athletic programs, direct funding to states that is then directed to universities, as well as funding to individual students that make enrollment possible."

The dollars at stake for public academic institutions are staggering. EPIC notes that the DOE provides grant, loan, and work-study assistance to more than 15 million post-secondary students every year, and that the DOE allocated over \$38 billion for all postsecondary education programs in 2010 – including more than \$1.6 billion for the past three years to the State of Illinois alone.

The American Council on Education brief is filed on behalf of the American Council of Education and the 1800 University presidents it represents, along with nine other national higher education organizations: the American Association of State Colleges and Universities, representing more than 400 institutions; the American Association of University Professors; the Association of Public and Land Grant Universities, the nation's oldest association of higher educational institutions; the American Association of Community Colleges, representing more than 1,200 institutions; the American Association of College Registrars and Admissions Officers, representing more than 2,600 institutions and 10,000 enrollment officials; the American College Personnel Association, representing more than 1,500 institutions; NASPA - Student Affairs Officers in Higher Education, representing 12,000 members on 1,400 campuses; the 11,000 member National Association of College Admissions Counseling; and the Association of American Universities, comprised of more than 60 leading public and private research universities in the United States and Canada.

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CATEGORY 'I' SCANDAL

U.S. files brief supporting **UI** in privacy case

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appeal of a court ruling in a case involving the release of names in an admissions scandal.

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involved in the scandal, which involved the admission of well-connected, under-qualified students. The university is appealing that ruling.

The Chicago Tribune sued to get the names last year, after the university denied two Freedom of Information requests.

It's wrong to name UI job applicants

The News-Gazette, over the years, has given strong support to the University of Illinois. You report and discuss campus activities and issues, and you often publish full accounts of important research carried out on this campus.

Why, then, are you now hindering the UI's efforts to find the best administrative officers?

In the July 17 issue, The News-Gazette explained how it has insisted on exposing the names of candidates for president or chancellor, by using the Freedom of Information Act to the utmost extent possible. You are patting yourselves on the back for these efforts. You claim to be acting in the public interest.

But what is the likely result?

People who want to change their jobs don't normally tell their bosses when they apply elsewhere, until they get a definite offer and need a recommendation. Quite properly, they think it will damage their relationship with their current employers.

But if administrators apply to the UI, they will now know that the fact may become public knowledge. So, of course, many promising candidates will decide not to seek top jobs here because the inappropriate publicity will embarrass them at home and also spoil their chances of securing posts elsewhere.

Thanks to this effort, the UI may well lose out on getting the best available administrators.

Could you kindly explain to your readers how this result will serve the public interest, and more specifically, the interests of the community that you claim to serve?

NICHOLAS TEMPERLEY
Urbana

UIC Plans Internet Portal to 14 Chicago Institutions' Archives

Published: July 20, 2011

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Newswise - The University of Illinois at Chicago Library is leading a project to plan a portal to the historical collections of 14 museums, universities and libraries that make up the Chicago Collections Consortium.

The portal will offer a one-click search of the special collections of the Art Institute of Chicago, the Chicago History Museum, the Chicago Park District, the Chicago Public Library, Columbia College Chicago, DePaul University, the Illinois Institute of Technology, Loyola University Chicago, the Newberry Library, Northeastern Illinois University, Northwestern University, Roosevelt University, the University of Chicago and UIC. Users will find detailed lists of each archive's contents and digitized materials that may be viewed online.

The planning is funded with a grant from the Andrew W. Mellon Foundation to the University of Illinois Board of Trustees on behalf of the library.

"We recognize that our individual efforts to preserve special materials can complicate researchers' access to them. This grant will help us coordinate efforts and leverage resources - the keys to making Chicago history easily available to college students, seasoned researchers, school children, amateur historians, and the general public," said Mary M. Case, UIC university librarian and an organizer of the consortium.

"All the institutions have primary resource materials in multiple formats that tell the political, cultural, and economic history of the Chicago area -- personal papers of politicians, artists, activists, folk heroes, and prominent citizens; records of churches, community organizations, social clubs; corporate and institutional archives; in formats including photographs, audio-visual materials, maps and digital files," she said.

Case said with thousands of shelves and boxes of materials of value to researchers scattered across the city, researchers may examine materials at one library or museum without realizing that nearby repositories hold materials from the same individual or organization.

Dick Simpson, professor and head of the political science department at UIC, has written in support of the portal and said it will help researchers "make unexpected connections.

"When I wrote my book 'Rogues, Rebels, and Rubber Stamps: The Story of the Chicago City Council from 1863-present,' I had to search four different library collections in person," Simpson said. "This will accelerate our knowledge of our history for everyone. I expect to see many more books, magazine articles, and video documentaries using these resources."

The portal project will include the formation of a governance structure to ensure that the Chicago Collections Consortium can sustain and expand its activities in the future.

UIC ranks among the nation's leading research universities and is Chicago's largest university with 27,000 students, 12,000 faculty and staff, 15 colleges and the state's major public medical center. A hallmark of the campus is the Great Cities Commitment, through which UIC faculty, students and staff engage with community, corporate, foundation and government partners in hundreds of programs to improve the quality of life in metropolitan areas around the world. For more information about UIC, please visit www.uic.edu.

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