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University responds to appellate court request for clarification of jurisdictional issues in student privacy case

CHICAGO – The University of Illinois filed a supplemental brief in the Seventh Circuit Court of Appeals today asserting that a federal privacy law protecting student records is the main issue at stake in the case, *Chicago Tribune Company v. University of Illinois Board of Trustees*. The appellate panel had requested that both sides explain why federal rather than state courts should decide the issue.

The University contends that the federal Family Educational Rights and Privacy Act of 1974 (FERPA) specifically prohibits the University from disclosing education records and personally identifiable information without express permission from students.

“The phrase ‘education records’ means what FERPA says it means, ‘those records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency or institution or its agent’,” attorneys asserted in the University’s 22-page brief.

The brief argues that “the federal question before this Court implicates the University’s enforceable, affirmative obligations and rights under FERPA, including its duty to protect student privacy and its right to receive federal funding...Resolving the correct interpretation of FERPA is a substantial issue. Congress has identified the privacy rights of the students whose records are at risk as important rights meriting a high level of federal protection, and has continued to hold schools to FERPA’s high standards for more than 35 years.”

If the three-judge appellate panel determines that the case is not within the jurisdiction of the federal courts, an earlier ruling would be vacated and students’ existing privacy protections would remain intact.

On September 30 the appellate court asked the University and the Tribune to outline the legal basis for considering the case at the federal level, which is where it landed as a result of a lawsuit filed in federal district court by the Tribune. The Tribune also has sued the University in state court.

The case grew out of a 2009 Tribune series of articles about external influence in the admission of some students into the University’s Urbana-Champaign campus. The University provided more than 5,200 pages of documents in complying with 13 of 15 Tribune requests filed under the Illinois Freedom of Information Act (FOIA), but did not disclose students’ personal

family information demanded by the Tribune in two other FOIA requests, citing FERPA. The Tribune then sued in federal court. U.S. District Judge Joan Gottschall ruled in favor of the Tribune in March, but stayed her order in April, calling the consequences of her ruling potentially “catastrophic,” and saying the appellate court “ought to opine on this before lots of people are irreparably injured, which they will be.” The case was appealed by the University to the Seventh Circuit Court, where it is being heard by Judges Frank Easterbrook, Richard Posner and Ann Williams.

At stake is four decades of federal protection of student privacy rights under FERPA, which protects the privacy rights of students. Gottschall’s March ruling asserted that FERPA did not prevent the University from disclosing student records, but only barred the University from accepting federal funding if it violated the strictures of FERPA by disclosing student and family information protected by the law.

The University was joined by the U.S. Department of Justice in presenting oral arguments in the case on September 30. In addition, amicus briefs supporting the University’s efforts to safeguard student privacy protections were filed by the other eight public universities in Illinois as well as the American Council on Education, and EPIC – the Electronic Privacy Information Center.

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The University of Illinois is a world leader in research and discovery, the largest educational institution in the state with more than 79,000 students, 24,000 faculty and staff, and campuses in Urbana-Champaign, Chicago and Springfield. The U of I awards more than 19,000 undergraduate, graduate and professional degrees annually.