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OF ACLU, INC.

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**Via email**

**Re: Free Speech on Campus and Recent Treatment of Student Protestors**

Dear Administrators:

Our organization has closely monitored the controversies surrounding student protests of various universities' investments in the State of Israel, including the protests and encampment at the University of Illinois at Urbana-Champaign ("UIUC") in April and May of 2024. As the involved students were engaged in the time-honored tradition of campus protest on an issue of widespread public concern, we [urged](#) universities to respect students' rights and show restraint in any efforts to direct and control protestors.

As a public university, the University of Illinois is legally required to protect the First Amendment rights of its students, including their right to protest on controversial issues without censorship or retaliation from the administration. The University has professed a commitment to "[a]n unyielding allegiance to freedom of speech – even controversial, contentious, and unpopular speech," recognizing that robust support of free speech is "not always costless," and that "expression that is protected under the First Amendment can sometimes cause ill will and harm...That is a price to be paid for a steadfast loyalty to free speech." *See* University of Illinois System Guiding Principles, "Freedom of Speech on Campus". [https://www.uillinois.edu/about/guiding\\_principles](https://www.uillinois.edu/about/guiding_principles). We hoped the largely peaceful conclusion of the spring protests of the war in Gaza, reached after communication with student leadership,

signaled the administration's willingness to make space for student activism in a manner consistent with these principles. However, the new school year has brought onerous changes to the policies governing free expression on campus, harsh *post-hoc* discipline of the spring protestors months after the encampment ended, and what students have reported as an accelerating trend of intolerance of student protest.

We request that the University abide by its stated free speech principles and reverse the recent policy changes discussed below, and reconsider its disciplinary action against Students for Justice in Palestine ("SJP") and Students for Environmental Concerns ("SECS") and their respective members. With more political protest sure to come in the 2024-2025 school year and beyond, we also suggest that the University affirm its commitment to free speech on campus by exercising greater restraint in enforcing policies restricting student activism.

### ***Revisions to Student Code***

The University's overhaul of its Campus Administrative Manual, in particular its Expressive Activity on Campus policies governing protests and other First Amendment activity at UIUC, is deeply concerning, both as to its timing and underlying circumstances. Implementing major free speech policy changes in the immediate wake of the spring Gaza protests raised the stakes of the revision and created the potential appearance of a retaliatory motive. In these circumstances, maximum transparency and a full opportunity for student and faculty input were essential. The University, however, rushed the changes through over the summer break when most students were away from campus, rejecting student demands for modest extensions of the notice and comment period on the policies into the school year.

The substance of the revisions are also problematic. The University has added several vague and arbitrary requirements and set violation thresholds that are far too low. As a result, student protestors have and will continue to be subjected to an unpredictable disciplinary regime that effectively puts their academic careers at risk for engaging in protected speech.

For example, the addition of a "Noise Disturbance" provision that creates a presumption of violation for expressive activity at or above 85 decibels (measured 50 feet away from the source), or lower sound levels at the discretion of the administration, makes it nearly impossible to use normal amplified speech to lead an effective protest of any size – 85 decibels being the level of a loud restaurant or hotel lobby. *See* Campus Administrative Manual, Expressive Activity on Campus, Section 2(h), Definitions. The new prohibition on sound from "amplified sound devices for personal use" (a vague and undefined term) above 50-75 decibels – the volume of normal conversation – adds yet another layer of confusion and risk for any protest or other First Amendment activity involving a video, music, or other amplified sound audible above the sound of the crowd. *See id.* Section 2(i)(iv). Particularly when combined with existing rules requiring that bullhorns remain 50 feet or more away from almost any university building, while simultaneously remaining "pointed away from" the closest such building, (Section 2(i)(i)), these create a confusing and impractical web of noise restrictions that almost any traditional on-campus protest is likely to violate, particularly a moving protest or march.

New restrictions on “posting materials,” handheld signs, and chalk writing also create a thicket of overbroad restrictions likely to ensnare most on-campus protest activity. New prohibitions on postings larger than 11 by 17 inches (Section 3(e)), multiple or duplicate postings in a single location (Section 3(e)), the use of so-called “damaging adhesives” to affix postings (Section 3(f)), leaving handheld signs “unattended” (Section 4), and drawing with chalk “within twenty (20) feet of any entrance or exit of a university building” (Section 6(a)(iii)) encompass a broad range of protected expression common to student protests. These overbroad restrictions do not appear animated by any countervailing interest important enough to justify obstruction of a cherished tradition of student activism. To the contrary, they seem designed to prevent mild inconvenience to the University at the direct expense of a free expression principle to which the University claims “undying allegiance.”<sup>1</sup>

An Expressive Activity Policy shot through with arbitrary and onerous bureaucratic obstacles to student protest invites unlawful, selective enforcement and threatens to chill expressive activity from students who feel powerless to avoid retribution if they dare exercise their rights. In a current national environment in which student and faculty activists are facing devastating consequences for violation of guidelines governing minor logistical minutiae, the University has moved in exactly the wrong direction with its own policy. *See, e.g.,* <https://www.insidehighered.com/news/faculty-issues/shared-governance/2024/01/11/indiana-u-sanctions-professor-supporting-pro>. The University should change course and work to create ample space for student protest to flourish, not erect a punitive minefield that makes protest a high-risk activity.

### ***Recent Discipline of Student Protestors under Expressive Activity Policy***

We have also been in touch with current UIUC student protestors who report that overzealous enforcement of university regulations have subjected students to unpredictable and onerous discipline for the kinds of protests that the University recently embraced as appropriate exercise of free speech.

The September 27, 2024 SECS Climate March provides an instructive example. This event has proceeded with essentially the same agenda, and along the same route, since 2008 without any university intervention. This year the organization even took extra steps to scale back its familiar program in fear of the new restrictions in the Student Code. Nevertheless, a university official approached SECS speakers during the protest, demanded they identify themselves, and informed them that “the university was watching on camera.” Three SECS members subsequently received disciplinary notices for multiple violations of the Expressive Activity policy and Student Code. Unsurprisingly, the protest was alleged to violate the noise restrictions discussed above. By merely gathering in front of Foellinger Auditorium, the traditional starting point of the Climate March, SECS and several members were charged with “obstructing” the building (as well as a second campus building), even though photographs and video of the event show ample space for students

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<sup>1</sup> The new “General Use of and Access to University Property” Policy likewise creates a climate inhospitable to free expression by empowering any “authorized agent of the university” to demand identification from protestors (and other students and campus visitors) in a wide variety of circumstances. *See* Campus Administrative Manual, General Use of and Access to University Property, Section 6.

and faculty to enter and exit the buildings. Although they were ultimately not found liable for each and every alleged violation, these students were subjected to an intimidating and time-consuming disciplinary process, and faced serious consequences that threaten to balloon in the event students are tripped up by the same policies in future protests. Two students were even placed on disruptive “academic hold” prior to any finding of wrongdoing due to apparent clerical errors in the disciplinary notice process.

The chilling impact of SECS’s disciplinary ordeal was substantial. Students have told us that they are afraid to proceed with the First Amendment activity they have planned for the rest of the school year (including other regular annual events) because they fear further inadvertent violation of University restrictions. And they report that other student group leaders feel similarly chilled, with groups already scaling back long-planned First Amendment activity out of fear of reprisal. Students’ sense of unease has been heightened by the University’s apparent policy of sending student organizers private notes in advance of their planned events copying University police – an ominous message that (whatever its intention) threatens rather than promotes student expression. It is a serious problem for a University that professes a “steadfast loyalty to free speech” when students fear that merely gathering and directing a normal protest crowd around the UIUC campus will subject participants to serious discipline that threatens their academic careers.

### ***Removal of Students for Justice in Palestine’s Registered Student Group Status, and Further Collective Punishment of its Members***

The University’s treatment of the pro-Palestine protestors from Spring 2024 in the new school year has been more aggressive still, as the University seems intent on collectively punishing students associated with Students for Justice in Palestine – whether they were personally involved with the Spring protests or not.

Students for Justice in Palestine is the largest Palestinian student group at UIUC and has existed at the University for well over a decade. It offers cultural activities, fellowship, lectures, and opportunities for political activism to hundreds of students, many of Palestinian descent. Over the past year it has served as the primary institutional gathering place and voice for students to express their outrage at what they see as the University’s complicity in genocide and the deaths of tens of thousands of Palestinians – an issue of unquestionable global importance that personally impacts many SJP members and their families.

We understand that the University alleges that certain protestors (some of whom are alleged to be members of SJP) resisted police attempts to remove an encampment from campus in the Spring. However, even assuming some students were involved in the incident, the decision to revoke SJP’s status as a registered student group is a disproportionate response that leaves a massive hole in its members’ ability to effectively advocate in support of an important cause, and flies in the face of the University’s publicly stated values. The term of the revocation – which does not even allow SJP to *seek* reinstatement until 2027 (with reinstatement impossible until 2028) – makes it even more excessive.

The University’s targeting of a single student group engaged in speech that has proven highly provocative and controversial, and the delayed imposition of this punishment, also create

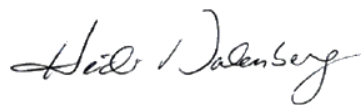
the appearance that the University is motivated by pressure to “crack down” on pro-Palestinian protest based on its content. Any punishment of SJP based on its views – or on others’ reaction to those views – would violate the First Amendment’s protection of students groups’ right to associate and speak out on matters of public concern free from censorship by public university officials, including where student groups are associated with other groups or messages that are unpopular or provocative. *See Healy v. James*, 408 U.S. 169 (1972) (refusal to recognize local chapter of Students for a Democratic Society amounted to a prior restraint unjustified by any specific intent to further illegal aims.)

Moreover, the University’s demand that SJP’s entire leadership, and two-thirds of its members, participate in a compulsory “training” is both excessive and unconstitutional. The University’s discipline necessarily punishes students who were not present at SJP’s protests or the pro-Palestine encampment, much less involved in any conflict with police. The Supreme Court has consistently held that students cannot be punished for reason of association alone. *See Claiborne Hardware*, 458 U.S. at 920, 102 S.Ct. 3409 (1982). Subjecting students multiple steps removed from the controversy at issue to compulsory “training” violates this principle.

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Based on our independent interactions with multiple groups of students and faculty, the actions discussed above have contributed to a climate of fear and uncertainty surrounding student activism at the University of Illinois. This comes amid a drumbeat of broader concern over a stifling of free expression on campuses across the country in the wake of the Gaza protests.<sup>2</sup> We believe the administration could dramatically increase goodwill between the University and its students – and create an environment that fosters free speech – by reversing the policy changes and disciplinary actions discussed above, and by enforcing university policies in a manner that generously accommodates the kind of student activism that has been a cornerstone of academic freedom and university life for generations.

Sincerely,



Heidi Dalenberg

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<sup>2</sup> *See, e.g.*, <https://www.nytimes.com/2024/11/25/us/university-crackdowns-protests-israel-hamas-war.html>; <https://www.aaup.org/news/aaup-condemns-wave-administrative-policies-intended-crack-down-peaceful-campus-protest>; <https://www.politico.com/news/2024/10/10/college-campuses-protests-israel-hamas-war-00183338>; <https://www.motherjones.com/politics/2024/09/new-university-rules-crack-down-on-gaza-protests/>; <https://www.typeinvestigations.org/investigation/2024/06/20/the-crackdown-on-campus-protests-is-just-beginning/>