



November 7, 2024

Kelly Damphousse  
Office of the President  
Texas State University  
601 University Drive  
San Marcos, Texas 78666

*Sent via U.S. Mail and Electronic Mail (president@txstate.edu)*

Dear President Damphousse,

The Student Press Freedom Initiative at the Foundation for Individual Rights and Expression (FIRE)<sup>1</sup> is concerned by Texas State University's policy requiring Department of Housing and Residential Life student employees to notify their supervisors before speaking to the media. This policy unlawfully restricts these student employees' constitutional right to speak with the media in their personal capacities about matters of public importance.<sup>2</sup> The university must promptly clarify that DHRL employees may speak to the media, including Texas State student reporters, on these issues, even when identified by their titles.

Our concerns arise from an October 8 report in Texas State's student newspaper, *The University Star*, that the university requires resident assistants to notify their supervisors before speaking to reporters for stories that mention their affiliation with the university.<sup>3</sup> DHRL further instructs supervisors to punish employees who give unauthorized interviews to the media.<sup>4</sup>

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<sup>1</sup> FIRE is a nonpartisan nonprofit dedicated to defending freedom of speech and of the press on and off campus. You can learn more about our recently expanded mission and activities at [thefire.org](https://thefire.org). FIRE's Student Press Freedom Initiative (SPFI) defends free press on campus by advocating for the rights of student journalists at colleges and universities across the country.

<sup>2</sup> See generally *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968).

<sup>3</sup> Jacquelyn Burrer, *RAs speak out against media policy*, THE UNIVERSITY STAR, (Oct. 8, 2024), <https://universitystar.com/27424/news/ras-speak-out-against-media-policy/>. While university policy says that employees "should follow" the listed procedures, the fact employees are punished for not doing so suggests the policy is in fact mandatory. This recitation reflects our understanding of the pertinent facts. We appreciate that you may have additional information and invite you to share it with us.

<sup>4</sup> *Student Employee Performance Management Response Grid*, All student employees, TEX. STATE UNIV., (on file with author).

This directive and its attendant practices chill the constitutionally protected speech of university employees who may wish to speak with the media in their personal capacities.

As a threshold matter, expressing an opinion on the policies and practices of a government body—even one by whom the speaker is employed—is not inherently speech on behalf of the employer. State institutions may only regulate employee speech when made *pursuant to* their job duties.<sup>5</sup> Government employees retain their right to speak as private citizens on issues that concern the public.<sup>6</sup> While an internal memo produced at the direction of the employee’s supervisor may be grounds for sanction,<sup>7</sup> a comment made at a school board meeting that uses the employee’s title to establish credibility may not be.<sup>8</sup> Because DHRL student employees’ duties generally do not include representing the office or university in an official capacity, their speech to the media is commonly understood as that of private citizens rather than government spokespeople.

Here, the speech that gave rise to the university’s notice to resident assistants that they must obtain permission to speak to the media clearly represented speech on a public concern. In the *University Star* article, employees discuss how “chaotic” their jobs have been due to overcrowding, an issue that clearly concerns the broader community,<sup>9</sup> but on which nobody would mistake them as official spokespeople for Texas State. While Texas State can restrict which employees may speak to the media *on behalf of* the university and when they may do so, it cannot claim jurisdiction to restrict any statement by its employees to the press.

By requiring employees to obtain approval before sharing their opinions publicly, Texas State imposes an unconstitutional prior restraint,<sup>10</sup> “the most serious and the least tolerable infringement on” freedom of expression.<sup>11</sup> These restraints present a risk so great that the “chief purpose” in adopting the First Amendment was to prevent their use.<sup>12</sup> They are valid only in the most extreme circumstances to satisfy compelling government interests.<sup>13</sup> Texas State has not met this exacting standard because it has not stated *any* interest in restricting its employees’ ability to speak to the media.<sup>14</sup> In fact, the Supreme Court has struck down prior restraints preventing the publication of personal attacks on a local business owner<sup>15</sup> and even

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<sup>5</sup> *Garcetti v. Ceballos*, 547 U.S. at 410, 421 (2006).

<sup>6</sup> *Pickering*, 391 U.S. at 574.

<sup>7</sup> *Id.*

<sup>8</sup> *Pickering*, 391 U.S. at 569.

<sup>9</sup> *Burrer*, *supra* note 3.

<sup>10</sup> *Garcetti*, 547 U.S. at 421.

<sup>11</sup> *Neb. Press Ass’n. v. Stuart*, 427 U.S. 539, 559 (1976).

<sup>12</sup> *Near v. Minnesota*, 283 U.S. 697, 713 (1931).

<sup>13</sup> *Id.* at 716

<sup>14</sup> It is hard to imagine Texas State could state an interest more compelling than national security, which the Supreme Court has already held could not justify a prior restraint on publishing classified information about the war in Vietnam. *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971).

<sup>15</sup> *Org. for a Better Austin v. Keefe*, 402 U.S. 415 (1971)

the release of government documents classified for national security purposes.<sup>16</sup> Protecting administrators' or the university's reputation is hardly the type of weighty government interest that Texas State might use to overcome the heavy presumption against constitutionality—especially when even national security interests fall short of the high threshold needed.<sup>17</sup>

Texas State's practices also amount to an undue burden on the student press by forcing student journalists to indirectly alert administrators to the subject matter of their work to comport with the DHRL directive. Student journalists often conduct interviews and develop stories before reaching out to institutions for comment to ensure their stories are as accurate as possible and to discover new issues worth covering. Having to inform institutional administrators about the nature of stories before requesting official comment could chill student journalists, including those who may wish to include personal perspectives from students and employees familiar with DHRL, from publishing their stories at all.

Courts have recognized that members of the press act as “surrogates for the public” in keeping a watchful eye on the operations of powerful institutions.<sup>18</sup> As members of their campus communities, student journalists play an important part in informing the public of their universities' undertakings and ensuring transparency. Texas State's requirement that employees notify their supervisors or university media officials—and the threat of punishment if they do not—hampers student journalists' ability to serve as watchdogs.

Reporting from *The University Star* illuminates the chilling effects of this practice. For example, housing employees have reported that they refrained from speaking to reporters about overcrowding in the dormitories for fear of losing their jobs.<sup>19</sup> DHRL employees—particularly student employees who also live in campus residences—are the constituency most likely to have informed opinions about housing at Texas State. Students, parents, and Texas taxpayers who ought to know about these newsworthy issues thus cannot hear from these informed community members because the university is muzzling them.<sup>20</sup>

We also note that FIRE wrote you in 2022 about a similar attempt to sanction RAs for violating this very same policy.<sup>21</sup> We are disappointed that despite knowing such attempts violate the First Amendment, Texas State is again using this policy to quash housing employees' speech and hinder student journalists' efforts to report on campus affairs.

Given the ongoing chill to Texas State employees' expression, we request a substantive response to this letter no later than the close of business on November 21, 2024, confirming the

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<sup>16</sup> *N.Y. Times Co.*, 403 U.S. at 714.

<sup>17</sup> *Id.*

<sup>18</sup> *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980).

<sup>19</sup> Burrer, *supra* note 3.

<sup>20</sup> *See Pickering*, 391 U.S. at 572 (1968).

<sup>21</sup> James P. Jordan, *FIRE Letter to Texas State University, December 28, 2022*, FIRE, (Dec. 28, 2022), <https://www.thefire.org/research-learn/fire-letter-texas-state-university-december-28-2022-redacted>.

university will honor its binding legal obligations to protect the expressive freedoms of its employees, including student employees, and student journalists.

Sincerely,

A handwritten signature in black ink, appearing to read "Dominic Coletti", written in a cursive style.

Dominic Coletti  
Program Officer, Campus Rights Advocacy

Cc: Bill Mattera, Executive Director – Housing and Residential Life  
Cynthia Hernandez, Vice President for Student Success