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FOR IMMEDIATE RELEASE: July 13, 2017

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Marion County Attorney Forced to Drop “Sexting” Charges Against Teen Girl and to Pay Attorney Fees

Knoxville, Iowa – The ACLU of Iowa is pleased to announce an agreement with Marion County Attorney Ed Bull not to prosecute a 14-year-old Knoxville girl, who he threatened with criminal charges after she texted two photos of herself – that depicted no nudity – to a boy.

As part of the legal settlement agreement, the county must also pay \$40,000 in attorney fees to the ACLU and its cooperating attorneys, who represented the girl and her parents in the lawsuit. The ACLU of Iowa today filed papers in federal court dismissing its lawsuit after securing the agreement.

Bull had threatened the girl with charges of sexual exploitation of a minor – herself – for taking the two photographs of herself in the mirror. In one of the photographs, she is wearing a sports bra and boy shorts. In the other, she’s in boy shorts with her hair covering her breasts.

In the lawsuit, the girl is identified as Nancy Doe, and her parents are identified as Jane and John Doe. A criminal conviction of the threatened charges came with extremely serious potential consequences, including removal from the home, prison time and placement on the sex offender registry.

To avoid prosecution, he told the girl, she would have to sign an admission of guilt; enroll in a pre-trial diversion program involving community service; attend classes intended to teach teens not to engage in “sexting,” the content of which her parents objected to; and have no access to her phone or laptop for a set period of time. It also carried with it consequences to the teen’s ability to engage in extracurricular activities, such as having to sit out of sports games.

The girls’ parents, like the girl, are keeping their names as confidential as possible in order to protect their daughter, now and in the future as she becomes an adult and moves on with her life.

The girls' parents prepared the following joint statement: "We're glad to see this matter put to rest. It's appalling that a county attorney would presume to discipline our daughter by threatening her with the bizarre and terrifying serious criminal charges of sexually exploiting a minor – even when the minor he accused her of 'exploiting' is herself. He threatened our daughter with removal from our home, time in prison, and placement on the sex offender list. All this for texting photos that didn't show any more skin than many swimsuit ads.

"It's frightening to see the government step in with this sort of dangerous overreach and presume to play the role of parent. As her parents, we want to raise our daughter in the way we believe best protects her, including her self-esteem, without the county attorney imposing his own sexist moral standards and using dangerous scare tactics on a teenage girl," the parents said.

"We feel the county attorney misused his position of authority to bully our daughter. As a result, this has adversely affected every aspect of our lives. We tried to work with him, but he wouldn't budge and insisted that our daughter admit guilt to a crime that she didn't commit. We hope our situation serves as a cautionary tale for other county attorneys when dealing with teens and their families."

Rita Bettis, ACLU of Iowa legal director, said, "It's important to note that we challenged the county attorney's actions not only on free speech grounds, but also as an equal protection violation. Our client was punished for engaging in behavior – taking photos of her chest, even with no nudity depicted – which, had she been a boy, would not have resulted in any penalty at all."

In addition, the lawsuit asked the court to affirm the Does' fundamental right to raise their child without undue interference by the state, in the way that they think is appropriate.

The ACLU became involved in the case, in part, to protect Nancy Doe's right to free speech and expression. Bettis said, "It is a violation of the First Amendment for a prosecutor to threaten to bring criminal charges for protected speech and expression. As a policy matter, it's bewildering that a county attorney would threaten to put a child in jail or prison or place her on the sex offender registry for taking a picture of herself."

Des Moines civil rights attorney Glen Downey of Downey and Mundy Law Offices, ACLU cooperating attorney in the case, pointed out that the county prosecutor went after the girl even though she hadn't engaged in any criminal behavior. "The Constitution protects both adults and children. And certainly, child pornography laws were never meant to be applied to prosecute the children themselves," said Downey.

In addition to Downey, Des Moines defense attorneys Robert Rehkemper and Matt Lindolm of Gourley Rehkemper & Lindhold PLC worked with the ACLU to protect the Does from the threatened prosecution in this case.

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