



June 16, 2025

E. Gordon Gee  
Office of the President  
West Virginia University  
P.O. Box 6201  
1500 University Avenue  
Stewart Hall  
Morgantown, West Virginia 26506-6201

*Sent via U.S. Mail and Electronic Mail (presidentsoffice@mail.wvu.edu)*

Dear President Gee:

FIRE, a nonpartisan nonprofit that defends free speech,<sup>1</sup> is concerned by West Virginia University's issuance of a no-contact order and investigation of student Eliyahu Itkowitz for religious discrimination and harassment based on allegations that he handed an "anti-Muslim" book to a Muslim dining hall employee, called the employee "anti-Jewish," and referred to the employee as a "terrorist" in a private conversation with a friend. Itkowitz denies ever calling the employee anti-Jewish or a terrorist, but even if these allegations were true, they fall far short of the applicable legal standard for discriminatory harassment that needs to be met to justify WVU's investigation. Because conducting unwarranted investigations with the threat of discipline chills students' speech, we urge WVU to lift the no-contact order and refrain from investigating protected expression going forward. This case aptly demonstrates that WVU's policy of investigating wholly protected expression has allowed students and staff to weaponize the complaint process to silence their ideological opponents. This is an unacceptable and unlawful outcome.

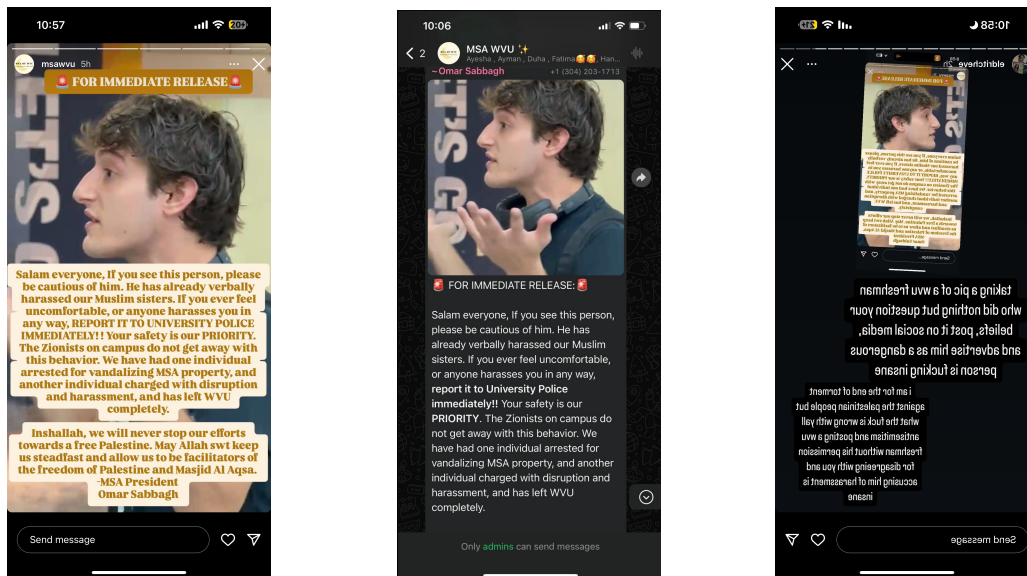
**I. WVU Investigates Complaints Filed Against Itkowitz**

In January, WVU launched an investigation into Itkowitz based on two complaints filed by campus dining hall employee Hannah Harper. The first complaint arose from a December 13, 2024, incident in which Itkowitz handed Harper a book, "The Ten Big Anti-Israel Lies: And How to Refute Them with Truth," by Alan Dershowitz. Itkowitz was handing out copies of the book on campus as mandated community service. Harper accepted the book, but reported Itkowitz

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<sup>1</sup> For more than 25 years, FIRE has defended freedom of expression and other individual rights on America's university campuses. You can learn more about our mission and activities at [thefire.org](https://thefire.org).

to campus police<sup>2</sup> and WVU's Division of Diversity, Equity, and Inclusion<sup>3</sup> for giving her an "anti-muslim [sic] book."<sup>4</sup> Harper said she recognized Itkowitz because the Muslim Students Association had warned her about him,<sup>5</sup> likely referring to MSA's October 2024 social media posts warning students to stay away from Itkowitz after he expressed disagreement with the slogans MSA members were painting on signs.<sup>6</sup>



The second complaint against Itkowitz arose from a January 11, 2025, incident in which he visited the dining hall for the first time since returning from winter break. Upon seeing Itkowitz enter the dining hall, Harper informed her manager, Brad Dobson, that Itkowitz was barred from the dining hall. (Itkowitz was not, in fact, barred from the dining hall.)<sup>7</sup> Dobson approached Itkowitz and told him he needed to leave because he was not allowed to be there. Itkowitz objected and began recording the encounter, eventually sitting down to eat with his friends as dining hall staff contacted supervisors and Harper called campus police.

<sup>2</sup> WVU University Police Incident/Offense Report re Case 24-03819, Primary Narrative by Officer Jonathan Moll (Dec. 13, 2024, 4:33 PM) (on file with author). Police closed the case without an investigation. *Id.* (noting the case "will be report only unless a pattern of harassment occurs"). The recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

<sup>3</sup> Notice of Allegations re Case No. 02518-2025 from James Goins, Jr., Director of Equity Assurance, to Eliyahu Itkowitz, student (Jan. 27, 2025) (on file with author). Harper filed the complaint with DDE on December 17, 2024.

<sup>4</sup> *Police Report re Case 24-03819, supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> See WVU Muslim Students Ass'n (@wvu\_msa), INSTAGRAM (Oct. 14, 2024) (screenshot on file with author); WVU MSA, GROUPME (Oct. 15, 2024) (screenshot on file with author). The posts also cited previous incidents in which MSA had reported other students: "The Zionists on campus do not get away with this behavior. We have had one individual arrested for vandalizing MSA property, and another individual charged with disruption and harassment, and has left WVU completely." *Id.*

<sup>7</sup> See WVU University Police Incident/Offense Report re case 25-00055, Primary Narrative by Officer Bryce Conner (Jan. 11, 2025, 5:49 PM) (on file with author) (noting that officers were unable to find any documentation indicating Itkowitz was banned from the dining hall).

In her reports to the police and DDEI, Harper claimed Itkowitz entered the dining hall even though he is not allowed in, told Harper she was “anti-Jewish” and said other “racially inappropriate things to her while she was working,” recorded Harper and other dining hall employees, told Harper to “do [her] fucking job,” and told other staff that Harper did not want Itkowitz in the dining hall because she was uncomfortable with him.<sup>8</sup> None of the witnesses present heard Itkowitz say any of the comments Harper attributed to him or could even recall seeing Itkowitz interact with Harper at all.

In her January complaint, Harper also alleged for the first time that, in November 2024, she overheard Itkowitz say to his friend while walking past her in the dining hall, “I didn’t know they let fucking terrorists work here.”<sup>9</sup>

On January 16, WVU issued a no-contact directive ordering Itkowitz to avoid all contact with Harper.<sup>10</sup> On January 27, Director of Equity Assurance James Goins notified Itkowitz that DDEI was investigating him for religious discrimination and harassment causing a hostile environment based on Harper’s December and January complaints.<sup>11</sup>

## **II. Itkowitz’s Alleged Expression is Protected by the First Amendment**

The allegations against Itkowitz that he handed out books and made anti-Muslim comments describe conduct clearly protected by the First Amendment. While we appreciate that WVU has completed its investigation and determined it will not pursue further action against Itkowitz, WVU’s investigation and no-contact order were unnecessary and chilling given that the allegations against Itkowitz were limited to protected expression.

While Itkowitz denies making the alleged comments, even offensive expression is protected unless it meets the standard for discriminatory harassment articulated in *Davis v. Monroe County Board of Education*.<sup>12</sup> The allegations against Itkowitz fall well short of this bar, constitute fully protected expression under the First Amendment, and simply cannot justify a speech-chilling investigation and no-contact order. Giving a university employee a book they perceive as anti-Muslim and referring to them in a manner they find hurtful does not qualify as

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<sup>8</sup> *Id.*; Notice of Allegations re Case No. 02518-2025, *supra* note 3; Notice of Allegations re Case No. 00025-2025 from Goins to Itkowitz (Jan. 27, 2025) (on file with author).

<sup>9</sup> *Police Report re case 25-00055*, *supra* note 7.

<sup>10</sup> Letter from Emily Wojciechowski, Title IX Case Manager, to Itkowitz (Jan. 16, 2025) (on file with author).

<sup>11</sup> Notice of Allegations re Case No. 02518-2025, *supra* note 3; Notice of Allegations re Case No. 00025-2025, *supra* note 8; *see also* Email from Courtney Klus, Internal Investigator, to Itkowitz (Jan. 31, 2025, 11:27 AM) (on file with author); *cf.* *BOG Rule 1.6 – Rule Regarding Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, Retaliation, and Relations*, § 3.2 Discrimination, W. VA. UNIV., <https://policies.wvu.edu/finalized-bog-rules/bog-governance-rule-1-6-rule> [<https://perma.cc/RBC5-8XYL>]; *id.* at § 3.3 Harassment; *id.* at § 3.5 Hostile Environment.

<sup>12</sup> 526 U.S. 629, 650 (1999) (expression must be unwelcome, discriminatory on the basis of a protected status, and “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school”). Student speech may also be unprotected if it falls into any of the “historic and traditional categories of unprotected speech, such as obscenity, defamation, incitement, or fighting words. *United States v. Stevens*, 559 U.S. 460, 468–69 (2010). Itkowitz’s alleged expression also does not meet the criteria for any of these categories.

so severe, pervasive, and objectively offensive as to deprive anyone of the educational opportunities or benefits WVU provides.<sup>13</sup>

### **III. WVU's Investigation Process Chills Protected Expression**

WVU has a responsibility to prevent discriminatory harassment, but in doing so it must not sacrifice its constitutional obligation to protect free speech. An investigation and no-contact order based on protected expression is likely to chill student speech—even when, like here, the process ultimately concludes in favor of the speaker—because such a process implicitly threatens punishment for that speech.<sup>14</sup> The question is not whether the institution actually imposes formal sanctions in a particular case, but whether its actions would “chill or silence a person of ordinary firmness from future First Amendment activities.”<sup>15</sup> WVU's actions in this case would most certainly do so.

Instead, where—as here—a complaint appears to allege no more than protected speech, the correct approach is to have administrators conduct a preliminary internal review. If the review confirms the alleged speech is protected, WVU should close the matter without ever notifying the speaker—thereby avoiding a chilling effect—while offering support to the complainant.<sup>16</sup>

Similarly, to avoid the chilling effect of no-contact orders issued solely on the basis of a complaint, NCOs should be issued only when (1) a student is found responsible for misconduct; (2) during an investigation when there is a concern for the complainant's safety; or (3) on a short-term emergency basis until proper review or adjudication of the complaint can occur.<sup>17</sup>

### **IV. Conclusion**

Itkowitz's case is not the first of its kind at WVU. By launching investigations and issuing no-contact orders based on complaints solely alleging protected expression, WVU is allowing students and staff with ideological disagreements to use its complaint process as a cudgel to

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<sup>13</sup> To deprive a student of educational opportunities or benefits, the speech needs to create a concrete, negative effect, such as a change of study habits, school transfer, a drop in grades, or being diagnosed with a behavioral or anxiety disorder. *See Davis*, 526 U.S. at 654; *Nungesser v. Columbia Univ.*, 169 F.Supp.3d 353, 368 (S.D.N.Y. 2016) (“Examples of such negative effects include a drop in grades, missing school, being forced to transfer schools, or mental health issues requiring therapy or medicine.”); *Mandel v. Bd. of Trustees of Cal. State Univ.*, 2018 WL 1242067, at \*20 (N.D. Cal. Mar. 9, 2018).

<sup>14</sup> *See, e.g., Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (threat of discipline implicit in college president's creation of ad hoc committee to study whether professor's outside speech could be considered misconduct “was sufficient to create a judicially cognizable chilling effect on [the professor's] First Amendment rights”); *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).

<sup>15</sup> *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999) (institutional response short of formal punishment can be unconstitutional if it “would chill or silence a person of ordinary firmness from future First Amendment activities”).

<sup>16</sup> *See* Graham Piro & Alex Morey, *Report: Stanford student may need to ‘take accountability,’ ‘acknowledge harm’ for reading Hitler’s ‘Mein Kampf’*, FIRE (Jan. 25, 2023), <https://www.thefire.org/news/report-stanford-student-may-need-take-accountability-acknowledge-harm-reading-hitlers-mein>; Haley Gluhanich, *VICTORY: Stanford adopts FIRE recommendation, will no longer notify students accused of engaging in protected speech*, FIRE (Apr. 18, 2023), <https://www.thefire.org/news/victory-stanford-adopts-fire-recommendation-will-no-longer-notify-students-accused-engaging>.

<sup>17</sup> *See* Jessie Appleby, *VICTORY: Princeton amends no-contact order policy after FIRE/ADL letter*, FIRE (Jan. 30, 2024), <https://www.thefire.org/news/victory-princeton-amends-no-contact-order-policy-after-fireadl-letter>.

silence opponents. In fall 2023, WVU conducted a ten-month investigation of a student for counterprotesting at pro-Palestinian demonstrations based on a complaint from MSA, ending its investigation only when the student left WVU. MSA celebrated the departure on social media: “The Zionists on campus do not get away with this behavior. We have had ... another individual charged with disruption and harassment, and has left WVU completely.”<sup>18</sup>

We request a substantive response to this letter no later than June 30, confirming WVU will lift the no-contact order and revise its process for handling student complaints to forego further investigation when a complaint solely alleges protected expression.

Sincerely,



Jessie Appleby  
Program Counsel, Campus Rights Advocacy

Cc:     Stephania D. Taylor, Vice President and General Counsel  
          Jill Gibson, Director of the Office of Student Rights and Responsibilities  
          Marion Holmes, Associate Director of the Office of Student Rights and Responsibilities  
          Courtney Klus, Internal Investigator  
          James Goins, Jr., Director of Equity Assurance

Encl.

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<sup>18</sup> See screenshots of MSA’s Instagram and GroupMe posts, *supra* note 6.