

February 17, 2025

Jack Wade Nowlin
Office of the Dean
Texas Tech University School of Law
3311 18th Street
Lubbock, Texas 79409-0004

URGENT

Sent via Next Day Delivery and Electronic Mail (jack.nowlin@ttu.edu)

Dear Dean Nowlin:

FIRE, a nonpartisan nonprofit that defends free speech,¹ is concerned by Texas Tech University School of Law's investigation into student Ellie Fisher for her reaction to the assassination of Charlie Kirk. While some may have been offended by her reaction, her speech is nonetheless protected by the First Amendment. TTU must therefore cease the investigation into Fisher and clear her file of any matters relating to this incident.

On September 10, 2025, Fisher verbally notified Texas Tech Law Criminal Defense Clinic Co-Supervisor Joe Stephens that Charlie Kirk had been shot.² When Stephens characterized Kirk as a "piece of shit," Fisher said nothing and headed to Co-Supervisor Patrick Metze's office for a meeting with three other clinic students. During that meeting, Professor Terri Morgeson entered and announced that Kirk had died. When one of the students asked who Kirk was, Metze said Kirk was a racist and misogynist, and Fisher said nothing. After the meeting, Fisher returned to the clinic suite and saw students playing a video of Kirk's assassination. She briefly discussed it with one of these students, saying that it was bad and no one could survive such a shot. She otherwise did not discuss the assassination.

On September 13, Fisher posted the following on Facebook about Kirk's assassination:³

It's not about the First Amendment. It has never been about the Second.

¹ For more than 25 years, FIRE has defended free expression and other individual rights on America's university campuses. You can learn more about our mission and activities at fire.org.

² The recitation of facts reflects our understanding of the pertinent information based on Fisher's narrative. We appreciate that you may have additional information and invite you to share it. To these ends, please see the enclosed privacy waiver.

³ Screenshots of Facebook post on file with author.

Domestically, what do you say when a kindergartener takes a round to the neck? Did you say anything at all?

You watch Gaza and are silent.

You support capital punishment. Do you believe in retribution or not?

He was a Nazi.

On September 16, Director of Criminal Defense Clinics Dwight McDonald requested Fisher meet with him and Associate Dean for Student Life Sofia Chapman to discuss “an incident that occurred in the Clinic Suite last week.”⁴ At this meeting, Professor McDonald and Dean Chapman alleged that Fisher “announced” the assassination in an “overexuberant” manner and discussed rumors that she celebrated the assassination with her mother. They did not mention the Facebook post.

On October 14, Texas Tech Law formally informed Fisher by email that she was under a preliminary investigation for a possible honor code violation.⁵ The email did not specify what conduct gave rise to the investigation.⁶ Fisher met with Honor Code investigator William Keffer and TTU’s general counsel on October 21, and asked about rumors that she will be expelled.⁷ The investigator and general counsel did not confirm or deny those rumors.

On January 23, Texas Tech Law notified Fisher that she may have violated the “professional duties” section of Texas Tech Law’s Honor Code by “failing to uphold professional or fiduciary obligations, including but not limited to, performance related to clinical programs, student-bar association activities, leadership in student organizations, maintenance of financial records, and pro bono activities.”⁸ Although this letter said administrators had probable cause to believe that Fisher violated this honor code provision, the letter still did not specify what specific conduct of Fisher’s allegedly violated the Honor Code.⁹

As a public institution bound by the First Amendment,¹⁰ Texas Tech Law’s actions and decisions—including its pursuit of disciplinary sanctions—must not violate students’ free speech rights. The Supreme Court has repeatedly, consistently, and clearly held that the First

⁴ Email from Dwight McDonald, Director of Criminal Defense Clinics, to Ellie Fisher, student (Sept. 16, 2025, 12:12 PM) (on file with author).

⁵ Email from William Keffer, professor, to Fisher (Oct. 14, 2025, 6:01 PM) (on file with author).

⁶ *Id.*

⁷ Fisher’s Facebook post got engagement from TTU community members and spurred campus-wide discussion.

⁸ Letter and email from Keffer to Fisher (Jan. 23, 2026, 12:13 PM) (on file with author).

⁹ *Id.*

¹⁰ *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

Amendment protects speech others may deem offensive or even hateful,¹¹ including critical expression about individuals that some may deem derisive or tasteless.¹² When such expression amounts to “core political speech,” the First Amendment’s protection is “at its zenith.”¹³

Fisher’s comments about Charlie Kirk, a prominent national political activist whose assassination occurred at an event held on an American university campus, unquestionably amount to core political speech. Fisher’s Facebook post similarly touched on others matters of public import, including constitutional law, school shootings, the war in Gaza, and capital punishment. The First Amendment thus gives Fisher’s speech the highest protection, regardless of how unsavory university administrators or others may find it.¹⁴

These Honor Code proceedings also raise serious due process concerns, as the investigation is based on amorphous allegations.¹⁵ This violates the most elemental principles of procedural due process, which require sufficient notice of the allegations so that the recipient can understand the nature of the charges against them and prepare to respond.¹⁶ After all, “fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights.”¹⁷ To these ends, TTU’s own Student Code requires “proper notice” of such investigations in writing.¹⁸ Similarly, the American Bar Association requires accredited schools like Texas Tech Law to “adhere to written due process policies with regard to taking any action that adversely affects the good standing or graduation of a student.”¹⁹

¹¹ See *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag is protected by First Amendment, the “bedrock principle underlying” the holding being that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”); see also *Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (fears that “muttering” and “grumbling” white onlookers might resort to violence did not justify dispersal of civil rights marchers); the Court has refused to find a limitation on speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground.” *Matal v. Tam*, 582 U.S. 218, 246 (2017).

¹² See *Rankin v. McPherson*, 483 U.S. 378, 381 (1987) (police officer said regarding an assassination attempt on then-President Ronald Reagan: “Shoot, if they go for him again, I hope they get him.”); *Snyder v. Phelps*, 562 U.S. 443, 448 (2011) (church members picketing a soldier’s funeral with signs saying “Thank God for IEDs” and “Thank God for Dead Soldiers”).

¹³ *Buckley v. Am. Const. Law Found.*, 525 U.S. 182, 183 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414, 422 (1988)).

¹⁴ See *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667, 667–68 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”).

¹⁵ Most of the specific factual allegations involve her somehow displaying disfavored subjective feelings in the eyes of other witnesses. There is no explanation for why these statements violated the Honor Code or amounted to professional misconduct.

¹⁶ *Goss v. Lopez*, 419 U.S. 565, 583–84 (1975).

¹⁷ *Id.* at 580 (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring)).

¹⁸ *Student Code*, Conduct Procedures for Students and Student Organizations, Notice, TEX. TECH UNIV., 16–17 (2025–2026), <https://www.depts.ttu.edu/dos/20252026StudentCodeoConduct.pdf> [<https://perma.cc/YNR9-J6B9>].

¹⁹ *Standards and Rules of Procedure for Approval of Law Schools*, Program of Legal Education, Academic Standards, AM. BAR ASS’N, 28 (2025–2026), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the

Fisher is in academic jeopardy of the highest order: her entire legal career and education are at stake. Yet TTU has failed to give her sufficient notice or information about her alleged conduct—and why it amounts to an Honor Code violation. This notice is required for her to properly defend herself. Despite multiple meetings and correspondence with administrators, Fisher has still been left to guess what, specifically, she did to warrant investigation and potential punishment. She did not even affirmatively say anything about Kirk's assassination in the clinic as it was a developing story (aside from simply noting that the shooting happened and looked fatal), yet administrators told her in the preliminary phase of the investigation that she was "over-exuberant" about it without fully explaining their basis for that claim.²⁰

Lastly, although administrators did not mention Fisher's Facebook post, the temporal proximity between the post (September 13) and the day Professor McDonald first initiated contact with her (September 16), combined with administrators' comments about her supposed "overexuberance" about his killing, suggests that the post may have prompted the investigation. If this post was, indeed, a factor in this Honor Code investigation, then these proceedings unconstitutionally chill student extramural expression, regardless of whether the investigation results in formal discipline.²¹ That she still does not know exactly what prompted the investigation only compounds the chilling effect.

We request a substantive response to this letter no later than the close of business on February 20, confirming Texas Tech Law will end its investigation into Fisher and clear her file of any matters relating to her protected speech.

Sincerely,



Garrett Gravley
Program Counsel, Campus Rights Advocacy

Cc: Brandon Creighton, Chancellor, Texas Tech University System
Sofia Chapman, Associate Dean for Student Life
Dwight McDonald, Director of Criminal Defense Clinics
William Keffer, Professor of Energy Law

Encl.

<https://perma.cc/25M2-MQCG>].

²⁰ Administrators mentioned rumors about her celebrating with her mother but did not give any indication that these rumors were investigated or substantiated. They also seemingly relied on how other witnesses interpreted her subjective feelings, effectively using the hunch of others to improperly establish probable cause. *See Navarette v. California*, 572 U.S. 393, 397 (2014) ("[A] mere 'hunch' does not create reasonable suspicion," a more relaxed evidentiary standard than probable cause) (quoting *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968)).

²¹ *See Mendocino Env't Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300 (9th Cir. 1999); *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992).