



February 24, 2022

Chief of Police Jill Lees  
Indiana University Police Department  
1469 E 17th St.  
Bloomington, Indiana 47408

**URGENT**

*Sent via Electronic Mail (jmlees@iu.edu)*

Dear Chief Lees:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned by reports<sup>1</sup> that the Indiana University (IU) Police Department is seeking to obtain the IP address of an anonymous internet user who made antisemitic comments on an online message board.<sup>2</sup> However offensive those posts may be to others, even purposely offensive or hateful speech—without more—is protected by the First Amendment. As a government entity, the IUPD may not seek identifying information of those whose anonymous online speech—however offensive to others—is nonetheless legally protected under the First Amendment.

Accordingly, we call on the IUPD to immediately cease efforts to identify the speaker and clarify that it will not investigate clearly protected speech in the future.

**I. IU, IUPD Promise to Investigate Anonymous Antisemitic Posts**

On February 20, 2022, an anonymous person, using the username “The truth,” posted at least two messages in a forum on greekrank.com, a website that allows users to rate and review fraternity and sorority chapters.<sup>3</sup>

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<sup>1</sup> Jennie Runevich, ‘Cowardly, horrific and unacceptable’ | *Police investigate antisemitic comments on online Greek forum at IU*, WTHR (Feb. 22, 2022), <https://www.wthr.com/article/news/local/police-investigate-antisemitic-messages-targeting-indiana-university-jewish-fraternities-students/531-b02b3dda-728d-4af6-bac8-5dfbc4f92e07>.

<sup>2</sup> Rahul Shrivastav, *Statement Condemning Antisemitic Comments*, Office of the Provost & Executive Vice President, INDIANA UNIV. BLOOMINGTON (Feb. 21, 2022), <https://provost.indiana.edu/statements/index.html>. [<https://perma.cc/2AM8-RP6T>].

<sup>3</sup> *About us*. GREEKRANK.COM, <https://www.greekrank.com/about> (last visited Feb. 23, 2022) [<https://perma.cc/QVN3-9C5T>].

The first of the two messages, both of which have since been deleted, read:<sup>4</sup>

Get em off our campus. It's about damn time. Once the east coast Jews found their way to this school, this was bound to happen.

As a community we need to come together and be aware of everything that these kids are about Money, greed, and sexually assaulting women, the truth is that their huge noses, afros, and smelliness prevent them from being attractive so they rape and justify it with their Sick way of looking at the world. Their families are in positions of power therefore they get away with everything and are not scared. And then Ofc our women go to them to take their alcohol and that's when the Jews capitalize on their victims. IU women you need to stay where you belong, with the people you belong with, for your own safety. These are dangerous humans

The second read:<sup>5</sup>

This isn't just coming from me. The Jewish people have been some of the worst ever to walk this planet. Get em off our campus you disgusting smelly rapist greedbag slime balls we all hate you. F the Jews. F ZBT. F Sammy. And especially F YOU AEPI. GET THEM BECK [*sic*] IN THE GAS CHAMBERS WHERE THEY ALL BELONG

On Monday, Provost and Executive Vice President Rahul Shrivastav released a statement condemning the posts, asserting that a “police investigation is underway” and that “the person or people who made these posts who can be identified will be held accountable.”<sup>6</sup> News reports later confirmed that IU’s police department is seeking the IP address from which the posts were made.<sup>7</sup>

## II. The First Amendment Bars IU and IUPD from Investigating or Punishing Protected Student Speech

IUPD is a public law enforcement agency bound by the First Amendment, which protects the right to engage in anonymous expression, including expression that others find deeply offensive. The posts here do not rise to the level of unprotected true threats. Accordingly, IUPD’s attempt to identify the anonymous speaker(s) transgresses the constitutional limits on its authority.

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<sup>4</sup> Jewish on Campus (@JewishonCampus\_), TWITTER (Feb. 20, 2022, 10:11 PM), [https://twitter.com/JewishonCampus\\_/status/1495596893421854722](https://twitter.com/JewishonCampus_/status/1495596893421854722).

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

<sup>6</sup> Shrivastav, *supra* note 2.

<sup>7</sup> Runevich, *supra* note 1.

*A. The First Amendment protects anonymous speech on and off campus.*

It has long been settled law that the First Amendment is binding on law enforcement, particularly at public universities like IU.<sup>8</sup> As the Supreme Court has explained, “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.”<sup>9</sup>

The First Amendment also protects the right to anonymous speech against compelled disclosure.<sup>10</sup> The Supreme Court explained that anonymous speakers may have a variety of motivations for maintaining their anonymity:

[A]n author generally is free to decide whether or not to disclose his or her true identity. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one’s privacy as possible.<sup>11</sup>

Anonymous communication, the Court explained, “is not a pernicious, fraudulent practice,” but a right founded in the “tradition of advocacy and of dissent.”<sup>12</sup> Its roots can be traced through the competing pamphlets distributed by Federalists like James Madison, Alexander Hamilton, and John Jay—who jointly published *The Federalist Papers* under the pseudonym “Publius”—and the Anti-Federalists, who also published under pseudonyms like “Brutus,” “Centinel,” and “The Federal Farmer.”<sup>13</sup> Thomas Paine, fearing prosecution for seditious libel against King George III, published “Common Sense” anonymously in 1776.<sup>14</sup> These same principles were formally enshrined 15 years later in the First Amendment.

Today, internet users follow in that tradition, continuing to use pseudonyms in the forms of handles and usernames. Although the internet’s advent and ubiquity are, in context, recent innovations, the legal analysis remains the same, as the right to remain anonymous extends “beyond the literary realm.”<sup>15</sup> It extends to unsigned handbills,<sup>16</sup> association with political

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<sup>8</sup> See, e.g., *Doe v. Univ. of Mich.*, 721 F.Supp. 852, 862–63 (E.D. Mich. 1989) (University of Michigan could not regulate “pure speech” through an “anti-discrimination policy which had the effect of prohibiting certain speech because it disagreed with ideas or messages sought to be conveyed”).

<sup>9</sup> *Healy v. James*, 408 U.S. 169, 180 (1972). “Quite to the contrary, the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Id.* (cleaned up).

<sup>10</sup> *Watchtower Bible & Tract Soc’y of N.Y. v. Vill. of Stratton*, 536 U.S. 150, 166–67 (2002) (striking down ordinance that, among other things, required canvassers to identify themselves to mayor’s office); *Justice for All v. Faulkner*, 410 F.3d 760, 764–65 (5th Cir. 2005) (striking down college policy requiring leaflets distributed on campus to identify their authors).

<sup>11</sup> *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341–42 (1995).

<sup>12</sup> *Id.* at 357.

<sup>13</sup> *Id.* at 344 n.6.

<sup>14</sup> *State v. North Dakota Educ. Ass’n*, 262 N.W.2d 731, 735 (N.D. 1978).

<sup>15</sup> *Id.* at 342.

<sup>16</sup> *Talley v. California*, 362 U.S. 60, 64 (1960).

organizations,<sup>17</sup> purchasing books,<sup>18</sup> receiving political mailings viewed as subversive,<sup>19</sup> and—for decades now—to online speech.<sup>20</sup>

Where investigators’ action “collides with First Amendment rights,” the government must satisfy “strict scrutiny” or “exacting scrutiny,” which is a “heightened standard” that, in the context of seeking to identify anonymous speakers, requires the government to first demonstrate (1) a “compelling interest in . . . the information sought”; and (2) a “sufficient connection between the information sought and the criminal investigation.”<sup>21</sup>

There is no compelling legal basis here to justify the efforts to unmask the anonymous greekrank.com user(s) at issue. The subjectively offensive nature of the comments is not a cognizable rationale for law enforcement inquiry that invades protected First Amendment rights, nor do the comments as publicly reported amount to unprotected “true threats.”

***B. Speech does not lose its protection on the basis that it is subjectively offensive.***

The principle of freedom of speech does not exist to protect only non-controversial expression. Rather, it exists precisely to protect speech that some or even most members of a community may find controversial or offensive. Speech cannot be restricted simply because it offends others, on or off campus.<sup>22</sup> For example, in holding that a student newspaper’s political cartoon depicting the Statue of Liberty being raped by police officers was protected speech, the Supreme Court explained that “the 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.’”<sup>23</sup> The Court reiterated this fundamental principle in *Snyder v. Phelps*, proclaiming that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”<sup>24</sup>

That principle does not waver with respect to offensive or “hateful” speech that “demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground.”<sup>25</sup> Such a justification is not a sufficient basis to remove the speech from the protection of the First Amendment.

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<sup>17</sup> *NAACP v. Alabama*, 357 U.S. 449, 462 (1958).

<sup>18</sup> *Tattered Cover v. City of Thornton*, 44 P.3d 1044, 1051 (Colo. 2002).

<sup>19</sup> *Lamont v. Postmaster General*, 381 U.S. 301, 307 (1965).

<sup>20</sup> See, e.g., *Doe v. Harris*, 772 F.3d 563, 574 (9th Cir. 2014) (First Amendment scrutiny “warranted” where statute burdened “sex offenders’ ability to engage in *anonymous* online speech.”) (emphasis in original); *Doe v. 2themart.com Inc.* 140 F.Supp. 2d 1088, 1092 (W.D. Wash. 2001) (the “right to speak anonymously extends to speech via the Internet”).

<sup>21</sup> *Tattered Cover*, 44 P.3d at 1056–57 (citing *In re Grand Jury Subpoena to Kramerbooks & Afterwords, Inc.*, 26 Med. L. Rptr. 1599 (D.D.C. 1998)).

<sup>22</sup> See, e.g., *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”).

<sup>23</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973).

<sup>24</sup> *Snyder v. Phelps*, 562 U.S. 443, 461 (2011).

<sup>25</sup> *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017).

***C. The comments do not amount to unprotected “true threats” or “incitement.”***

Certain well-defined categories of speech are excluded from First Amendment protection, including “true threats” and incitement to imminent lawless action. The comments, as reported, do not approach either of these exceptions.

First, the posts do not rise to the level of unprotected true threats, an exception to the First Amendment that applies only where “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals,”<sup>26</sup> because they do not express an intent to commit any unlawful act of violence. While the writer makes numerous disparaging comments about Jewish people, at no time does the writer express any *intention* to commit violence against them. While one post references the horrific history of the Holocaust (“GET THEM BECK [*sic*] IN THE GAS CHAMBERS WHERE THEY ALL BELONG”), it amounts to advocacy of genocide, not a serious statement of a personal intent to commit violence.

Second, the “mere advocacy of the use of force or violence does not remove speech from the protection of the First Amendment,”<sup>27</sup> unless it meets the First Amendment test for unprotected incitement. That test leaves speech unprotected only where the speech is “directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action.”<sup>28</sup> Accordingly, the assertion of the “moral propriety or even moral necessity for a resort to force or violence” remains protected speech.<sup>29</sup> Additionally, where speech is “not directed to any person or group of persons” in particular, it cannot be said to be an attempt at commanding or urging any person to take imminent action.<sup>30</sup>

There is no reasonable likelihood the anonymous GreekRank post, made to an indeterminate group presumably comprised of other IU students interested in IU Greek life, would lead those readers to immediately leave the website and undertake acts of violence. The posts are understandably unsettling, particularly to Jewish students at IU, but also unlikely to convince another to take action of any sort—it is an understatement to say that the posts are not models of persuasive advocacy—much less undertake *imminent* unlawful action. As such, they do not amount to unprotected incitement under the law.

**III. IUPD Must Disclaim or End Any Investigation**

FIRE strongly urges the IUPD to publicly clarify its involvement in this matter. If the department has taken any steps to investigate this matter, we call upon it to cease any further action and to publicly commit that it will not share any information it has received.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business tomorrow, Friday, February 25, confirming whether the IUPD has

<sup>26</sup> *Virginia v. Black*, 538 U.S. 343, 359 (2003).

<sup>27</sup> *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 926–27 (1982).

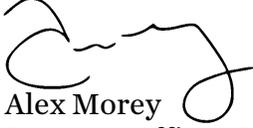
<sup>28</sup> *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

<sup>29</sup> *Noto v. United States*, 367 U.S. 290, 297–98 (1961).

<sup>30</sup> *Hess v. Indiana*, 414 U.S. 105, 108–09 (1973).

conducted any investigation into the comments at issue here and whether the department will otherwise comply with our requests herein.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Morey', with a large, stylized flourish at the end.

Alex Morey  
Program Officer, Individual Rights Defense Program

Cc: Rahul Shrivastav, Provost & Executive Vice President, Indiana University  
Bloomingtonx  
Joseph Scodro, Interim Vice President and General Counsel, Indiana University  
Blake Shuert, Owner, Greekrank.com