



June 20, 2023

Mr. Randall Dawson  
Vice President for Academic Success  
St. Philip's College  
1801 Martin Luther King Dr.  
San Antonio, TX 78203

Ms. Nina Sosa  
Director of Employee Relations, Advocacy and Civil Rights  
Alamo Colleges District  
2222 N. Alamo Street, 230A-West Wing  
San Antonio, TX 78215

Ms. Roxella T. Cavazos  
Associate General Counsel  
Alamo Community College District  
2222 N. Alamo Street, Suite 304  
San Antonio, Texas 78215

***Sent via email and U.S. Mail***

[REDACTED]

**Re: Unlawful Religious Discrimination in Employment**

Dear Mr. Dawson, Ms. Sosa and Ms. Cavazos:

First Liberty is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent Dr. Johnson Varkey in this matter. Please direct all further communications to us.

In January 2023, St. Philip's College fired Dr. Varkey for teaching human biology just as he did in his previous twenty-year career as a professor. His statements are not only supported by his extensive education and experience, but they also reflect his sincerely held religious beliefs. We write to request that St. Philip's College reinstate Dr. Varkey to his position as Adjunct Professor and acknowledge that his termination was not for cause, but that it violated federal and state law, including the First Amendment of the

United States Constitution, the Texas Religious Freedom Restoration Act,<sup>1</sup> and Title VII of the Civil Rights Act of 1964.<sup>2</sup>

### **Factual Background**

During Dr. Varkey's twenty-year employment as a biology professor at St. Philip's College, he consistently received exemplary performance reviews and was never once subject to discipline. *See, e.g.*, Ex. A (Fall 2021 performance review). In his role as an adjunct professor, he taught Human Anatomy and Physiology to more than 1,500 students since 2003. As his stellar performance reviews suggest, Dr. Varkey gladly taught students of all beliefs and backgrounds. Throughout his employment, he never discussed with any student his personal views—religious or otherwise—on human gender or sexuality.

Dr. Varkey is a devout Christian. He and his wife, Rachel Varkey, are volunteer associate pastors at International Bible Church in San Antonio. Dr. Varkey also hosts a Bible teaching radio ministry called Rehoboth Voice. As an evangelical Christian, Dr. Varkey believes that God created humankind male and female, that one's sex is ordained by God, that one should love and care for the body that God gave him or her, and that one should not attempt to erase or alter his or her sex, especially through drugs or surgical means. As a Christian, he also believes that God has ordained the sexual function for procreation, that children are a gift from God, and that, absent a compelling reason, one should not sterilize oneself. Although these are Dr. Varkey's religious beliefs, he never mentioned them in class. He did not preach any of his beliefs in class. Thus, the allegation that he conducted "religious preaching" is unsubstantiated. Ex. D.

Separately, Dr. Varkey's faith—as well as his integrity as an academic—forbids him from teaching or affirming statements that he believes are false. He believes that he is obligated as a Christian and as a professor to teach accurate, true concepts that comport with his many years of research and study in the field of human biology.

Dr. Varkey's extensive study of human biology has consistently shown that life begins at conception. Specifically, during classroom lectures on human reproduction, he would explain that when a sperm (which has 23 chromosomes) joins with an egg (which also has 23 chromosomes), a zygote (which has 46 chromosomes) is formed, and it begins to divide, and after 38 weeks a baby is born. Because no information is added or deleted in those 38 weeks, life starts when the zygote begins to divide, not when the baby is born.

When teaching the human reproductive system, Dr. Varkey also stated that human sex is determined by chromosomes X and Y, and that reproduction must occur between a

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<sup>1</sup> Tex. Civ. Prac. & Rem. Code § 110.

<sup>2</sup> 42 U.S.C. § 2000e.

male and a female to continue the human species. In the course of teaching Human Anatomy and Physiology, he made these statements in every class for 20 years, without any incident or complaint. The slides that Dr. Varkey used to teach these concepts in class, which are from the textbook he uses, are attached as Exhibit B.

On November 28, 2022, four of Dr. Varkey's students walked out of his class when he stated, consistent with his study of human biology and his religious beliefs, that sex was determined by chromosomes X and Y. Although St. Philip's College refused to explain any details about the "complaints" directed toward Dr. Varkey, he presumes that the complaints came from these students. In two decades of teaching these basic, unremarkable concepts, no other students have ever complained.

On January 12, 2023, Dr. Varkey received the following email from Randall Dawson, Vice President for Academic Success at St. Philip's College, enclosed as Exhibit C.

I am sending you notification that Alamo Colleges District Human Resources department is in receipt of an ethics violation complaint from JBSA-Lackland, related to your facilitation of the BIOL 2402 class, during the Flex II Fall 2022 term. On January 10, 2023, JBSA-Lackland's Chief, Education & Training and the Installation Commander Delegate for Education Oversight revoked your access to all JBSA installations, pending the outcome of the investigation.

Dr. Varkey responded promptly and respectfully, asking, "What was the complaint? I am not aware of any violations that I committed. Please clarify. Thank you." He received no substantive response, only a statement that "[a]ny further communication regarding this matter will be addressed through our Human Resources department."

On January 27, 2023, Dr. Varkey received a Notice of Discipline and Termination of Employment and Contract letter. The letter, which is enclosed as Exhibit D, claimed:

St. Philip's College has received numerous complaints that were submitted to Joint Base San Antonio Training and Education regarding your classroom behavior while facilitating in an official teaching capacity on JBSA-Lackland last semester, which is found to be unacceptable. The complaint contained several reports of "religious preaching, discriminatory comments about homosexuals and transgender individuals, anti-abortion rhetoric, and misogynistic banter." While some of the subject matter may be connected to class content, it was very clear, from the complaints, that you pushed beyond the bounds of academic freedom with your personal opinions that were offensive to many individuals in the classroom.

In addition, the letter claimed that Dr. Varkey had violated Section D.4.10.1 of the Faculty Code of Professional Ethics, thus accusing him of violating “the highest standards of **academic honesty and integrity**.” Ex. D (emphasis in original). St. Philip’s College provided no explanation or reasoning for its accusation.

### Legal Analysis

When St. Philip’s College terminated Dr. Varkey, it violated the Free Speech Clause and Free Exercise Clause of the First Amendment, Title VII of the Civil Rights Act of 1964, the Texas Religious Freedom Restoration Act, among multiple other statutory provisions.

### Free Speech Violations

St. Philip’s College violated the Free Speech Clause of the First Amendment, and Article I, § 8 of the Texas Constitution,<sup>3</sup> by punishing Dr. Varkey for his classroom statements. As a professor, Dr. Varkey’s speech is not only protected by academic freedom,<sup>4</sup> but the First Amendment prohibits a speech code for professors, especially regarding classroom speech. Public universities may not deny employment “to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (upholding terminated professor’s First Amendment free speech claim and Fourteenth Amendment procedural due process claim); *see also Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021) (holding that a public university violated a professor’s freedom of speech when it compelled him to speak against his conscience by addressing students with gender-identity-based pronouns). Public colleges violate the First Amendment when professors establish that “(1) they were disciplined or fired for speech that is a matter of public concern, and (2) their interest in the speech outweighed the university’s interest in regulating the speech.” *Buchanan v. Alexander*, 919 F.3d 847, 853 (5th Cir. 2019).

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<sup>3</sup> “Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.” Tex. Const. Art. I, § 8; *see also Ward v. Lamar Univ.*, 484 S.W.3d 440, 450 (2016) (“Because this provision expressly guarantees an affirmative right to speak, the supreme court has held that it provides greater rights than the First Amendment[.]”) (citing *Davenport v. Garcia*, 834 S.W.2d 4 (Tex. 1992)).

<sup>4</sup> Section 4.10.1 of the Faculty Code of Professional Ethics requires that “the Professional Educator shall by example and action encourage and defend the unfettered pursuit of truth by both colleagues and students supporting the free exchange of ideas, observing the highest standards of academic honesty and integrity, and seeking always an attitude of scholarly objectivity and tolerance of other viewpoints.” Ex. D. Dr. Varkey followed this code faithfully during his many years of excellent teaching at St. Philip’s College.

St. Philip's College violated the Free Speech Clause when it terminated Dr. Varkey because of his academic statements in the classroom setting. Under *Buchanan*, Dr. Varkey's speech was a matter of public concern, because it had a clear academic purpose. As his biology slides demonstrate, he was teaching standard principles about human life and reproduction. Ex. B. As the Faculty Code of Professional Ethics states, Dr. Varkey promoted "the unfettered pursuit of truth" by teaching human biology in a way that aligned with scientific consensus and observations for thousands of years. Ex. D. It is St. Philip's College, not Dr. Varkey, who has stymied "the free exchange of ideas" by terminating him for his protected speech in the classroom. Ex. D.

St. Philip's College also violated the Free Speech Clause when it discriminated against Dr. Varkey based on his viewpoint. Government attempts to regulate speech based on the "specific motivating ideology or the opinion or perspective of the speaker" is a "blatant" and "egregious" form of impermissible speech restriction. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995); *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 106 (2001). St. Philip's College decisionmakers discriminated against Dr. Varkey based on viewpoint when they terminated him for making statements that aligned with his study of biology and his religious beliefs. St. Philip's College had no compelling interest in discriminating against Dr. Varkey's viewpoint, nor has it shown that its actions were the least restrictive means of achieving that interest.

### **Free Exercise Violations**

St. Philip's College violated the Free Exercise Clause of the First Amendment when it fired Dr. Varkey because of his religious beliefs. As the Supreme Court has repeatedly held, when "official expressions of hostility" to religion accompany laws or policies burdening religious exercise, the Court has "set aside" such policies without further inquiry." *Kennedy v. Bremerton Sch. Dist.* 142 S. Ct. 2407, 2422 n.1 (2022) (quoting *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1732 (2018)); see also *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) ("Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.").

Mr. Dawson and Ms. Sosa expressed unconstitutional religious animus against Dr. Varkey when they subjected him to an "investigation" due to an "ethics violation complaint" which was no more than an attack on his protected speech. Instead of allowing Dr. Varkey an opportunity to explain or respond, St. Philip's College decisionmakers assumed that alleged reports of "religious preaching, discriminatory comments about homosexuals and transgender individuals, anti-abortion rhetoric, and misogynistic banter" were true. Ex. D. The termination letter also called his "personal opinions" "unacceptable" and "offensive to many individuals in the classroom." Ex. D. Furthermore,

St. Philip's College decisionmakers expressed animus toward Dr. Varkey when they tarnished his reputation by finding him in violation of the Faculty Code of Professional Ethics. Based on nothing but unsubstantiated complaints, Mr. Dawson and Ms. Sosa accused Dr. Varkey of an ethics violation and acted with animus toward Dr. Varkey's religious beliefs. Ex. D. This conclusory finding, without any due process, evidence, or opportunity to respond, demonstrates the hostility of St. Philip's College toward Dr. Varkey because of his religious beliefs.

### **Title VII Violations**

St. Philip's College violated Title VII of the Civil Rights Act when it, *inter alia*, terminated Dr. Varkey because of his sincerely held religious beliefs and protected speech. Title VII provides that it is "an unlawful employment practice for an employer . . . to discharge any individual . . . because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1). Religion is broadly defined to include "all aspects of religious observance and practice, as well as belief." *Id.* at § 2000e(j). In a disparate treatment case, a Title VII plaintiff may prove liability either by establishing that discrimination was a but-for cause of the adverse employment action or that discrimination was a "motivating factor" in the employment decision, even though other factors also motivated the decision. 42 U.S.C. § 2000e-2(m); *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1739 (2020) ("So long as the plaintiff's [religion] was one but-for cause of that decision, that is enough to trigger the law.").

St. Philip's College violated Title VII when it terminated Dr. Varkey because of his religious beliefs and protected speech. The only reason the College gave for firing him was the student complaint(s) of "religious preaching, discriminatory comments about homosexuals and transgender individuals, anti-abortion rhetoric, and misogynistic banter." Ex D. While Dr. Varkey never preached or proselytized in class, the accusation of religious preaching was clearly in connection with the fact that he serves as an associate pastor. He would mention this by way of introduction at the beginning of each semester, so his students were aware. If not for Dr. Varkey's beliefs about gender, sexuality, and human life, he would not have been fired. Thus, religion was a but-for cause—and a substantial motivating factor—of his termination. *Bostock*, 140 S. Ct. at 1739; *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 343 (2013); *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773 (2015).

### **Texas Religious Freedom Restoration Act Violation**

St. Philip's College also violated the Texas Religious Freedom Restoration Act (TRFRA) when it terminated Dr. Varkey because of his religious beliefs and protected speech. When a government action substantially burdens a claimant's religious exercise,

TRFRA requires the government to pass the most difficult test in constitutional law.<sup>5</sup> As the Texas Supreme Court held in *Barr v. City of Sinton*, TRFRA “requires the government to tread carefully and lightly when its actions substantially burden religious exercise.” 295 S.W.3d 287, 289 (Tex. 2009). If government action “truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs,” that triggers the law. *Id.* at 301; *see also Merced v. Kasson*, 577 F.3d 578, 588 (5th Cir. 2009). Government actors cannot assert “broadly formulated interests” but must “demonstrate that the compelling interest test is satisfied through application of the challenged law ‘to the person’—the particular claimant whose sincere exercise of religion is being substantially burdened.” *Merced*, 577 F.3d at 592 (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006)).

Here, St. Philip’s College substantially burdened Dr. Varkey’s faith when it fired him because of his religious beliefs and protected speech. St. Philip’s College has not demonstrated a compelling interest in terminating Dr. Varkey but claimed only that his comments were “offensive” or “unacceptable.” Ex. D. Such broadly formulated interests cannot satisfy strict scrutiny. On the contrary, the College’s denigrating statements about Dr. Varkey, accusing and finding him guilty of an ethics violation without any evidence or opportunity to respond, further burdened his religious exercise. Nor was firing Dr. Varkey the least restrictive means in pursuing the College’s purported interest. Dr. Varkey’s actions did not warrant chastisement, but nonetheless, College decisionmakers could have met with Dr. Varkey, given him a chance to meet with the students who complained, or taken a range of actions less punitive than termination. Thus, St. Philip’s College violated TRFRA, and unless he is reinstated, he may pursue all available remedies, including but not limited to declaratory and injunctive relief, compensatory damages, attorney fees and costs.

### **Conclusion**

Dr. Varkey’s termination violated federal and state law. Dr. Varkey is confident this matter can be resolved without resort to legal action. He asks that St. Philip’s College reinstate him to his prior position as Adjunct Professor so that he can resume teaching students this fall, and that other professors and employees of the Alamo Colleges District be spared from experiencing similar discrimination.

This is a time-sensitive matter. Not later than July 5, 2023, please provide to us your written assurances that St. Philip’s College will reinstate Dr. Varkey as an Adjunct Professor for the fall semester, along with a written acknowledgement that his

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<sup>5</sup> Tex. Civ. Prac. & Rem. Code § 110.003 (“a government agency may not substantially burden a person’s free exercise of religion [unless it] demonstrates that the application of the burden to the person ... is in furtherance of a compelling governmental interest [and] is the least restrictive means of furthering that interest.”)

termination was not for cause but in fact violated federal and state law. If we do not hear from you and receive those assurances by that time, we will proceed as Dr. Varkey directs, which likely will include seeking redress in federal court against St. Philip's College, the Alamo Colleges District, and any other responsible parties.

We can be reached at the phone number and e-mail addresses indicated below.

Sincerely,



Keisha T. Russell  
Holly M. Randall  
FIRST LIBERTY INSTITUTE  
2001 W. Plano Pkwy. #1600  
Plano, TX 75075  
Tel. (972) 941-4444

[REDACTED]

Kayla Toney  
FIRST LIBERTY INSTITUTE  
1331 Pennsylvania Ave. NW, Suite 1410  
Washington, DC 20004  
Tel. 202-921-4105

[REDACTED]



# EXHIBIT A

D.7.1.2.Ex Exhibit A

**ALAMO COLLEGES  
CLASSROOM OBSERVATION**

Name: Dr. Johnson Varkey	Evaluation Period: Fall 2021 to Fall 2022
Banner ID: _____	Department: <u>Natural Sciences</u>
Rank: Instructor Assistant Professor Associate Professor Professor Full-time Temporary <b>Non-Tenure Track (Adjunct)</b>	Date of Employment: __
Tenure: Yes <b>No</b>	Dept Chair/Supervisor: <u>Dr. Shane Kendell</u>
College: SAC <input checked="" type="checkbox"/> SPC PAC NVC NLC	Date/Time: <u>11/16/2021 6.30PM-8.30PM</u>
Course-Section: BIOL 2401-106	

**PERFORMANCE CHARACTERISTICS**

- E** = **Exceeds Expectations:** Faculty Member's performance is clearly above average. Accomplishments are significant and above the standard of the job responsibilities.
- M** = **Meets Expectations:** Faculty Member's performance meets all essential job requirements. Accomplishments are in accordance with the standards of the position.
- D** = **Does Not Meet Expectations:** Faculty Member's performance is well below the expectation of the job and requires a specific plan of action to improve noted deficiencies.

**RESPOND IN EACH CATEGORY**

1. <b>Organization of subject matter</b>	<u>E</u>	M	D	
Comments: Dr. Varkey used the lecture slides. Logical flow of information.				
2. <b>Mastery of subject matter</b>	<u>E</u>	M	D	
Comments: Dr. Varkey has excellence in the mastery of subject. Gave clear explanations.				
3. <b>Presentation of Ideas, Concepts, and Assignments</b>	<u>E</u>	M	D	
Comments: Dr. Varkey related concepts to common examples. Dr. Varkey used examples to help students with understanding and explanations.				
4. <b>Encouragement of Student Participation</b>	<u>E</u>	M	D	
Comments: Dr. Varkey frequently asked questions. Encouraged questions from students and answered them.				
5. <b>Interaction with Students</b>	<u>E</u>	M	D	
Comments: Dr. Varkey is very respectful to everyone. Comfortable rapport with students.				
<b>OVERALL APPRAISAL:</b>	<u>E</u>	M	D	
Comments/Examples: Dr. Varkey is an asset to the department. He works well with the students and is well liked by them.				

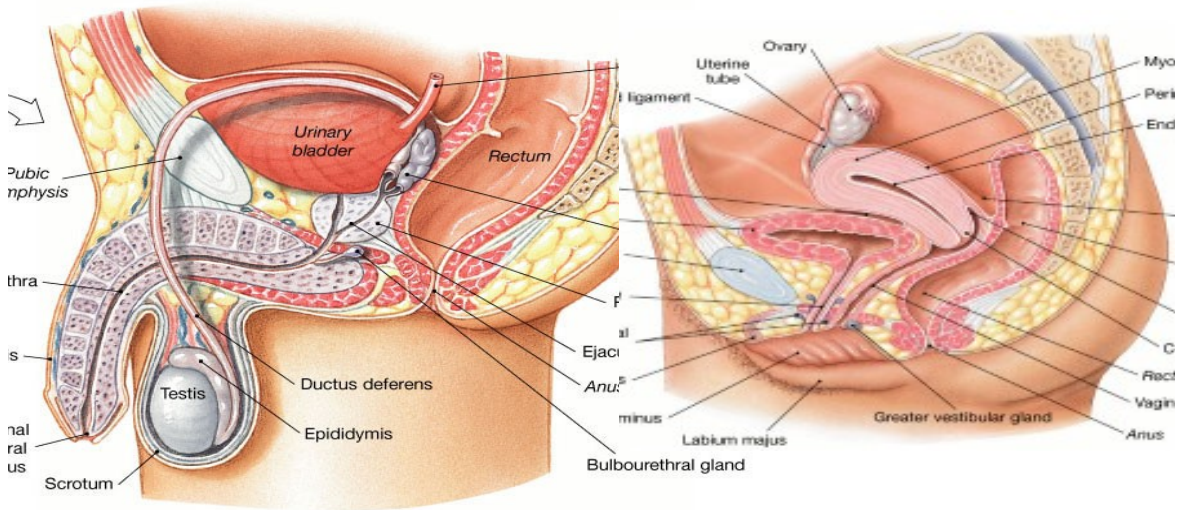
**RECOMMENDATIONS/SUGGESTIONS FOR IMPROVEMENT: N/A**

**SIGNATURES**

FACULTY MEMBER	DATE: 11/18/2021
EVALUATOR	DATE:

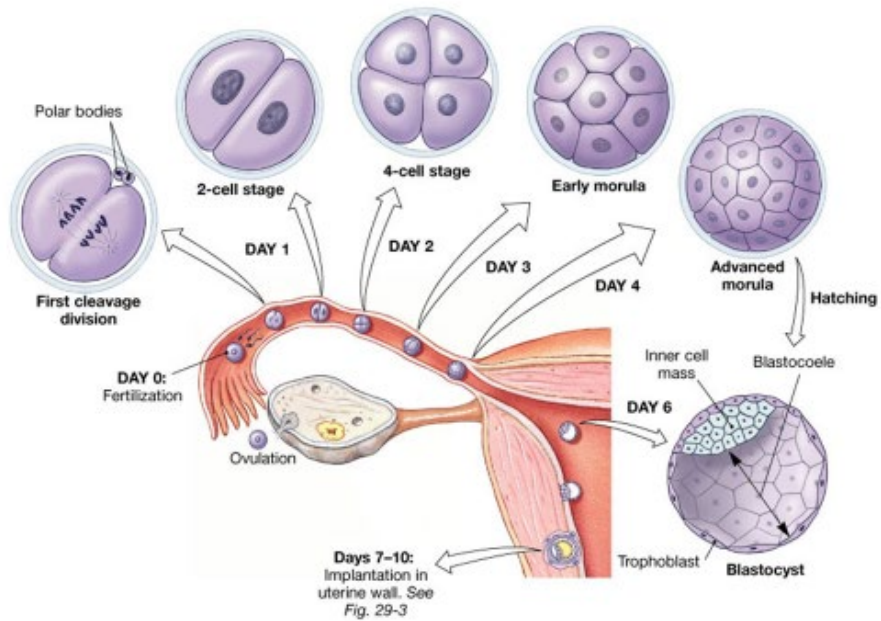
# EXHIBIT B

# Perpetuation of Human species



19

# Prenatal Development



27

# EXHIBIT C

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**From:** Dawson, Randall N  
**Sent:** Thursday, January 12, 2023 6:44 PM  
**To:** Varkey, Johnson  
**Subject:** RE: Alamo Colleges District Human Resources Ethics Violation Investigation

Dr. Johnson Varkey,  
Any further communication regarding this matter will be addressed through our  
Human Resources department.

Respectfully,

Randall Dawson

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Randall Dawson, M.S.  
*Vice President for Academic Success*  
*St. Philip's College*  
1801 Martin Luther King Dr., San Antonio TX, 78203  
[REDACTED]

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*St. Philip's College---Founded 1898*  
*A Point of Pride in the Community*

Connect with SPC: #goSPC, @goSPC



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**From:** Varkey, Johnson [REDACTED] >  
**Sent:** Thursday, January 12, 2023 1:18 PM

**To:** Dawson, Randall N <[REDACTED]>  
**Subject:** Re: Alamo Colleges District Human Resources Ethics Violation Investigation

Dear Dr. Dawson,  
What was the complaint? I am not aware of any violations that I committed.  
Please clarify  
Thank you

Johnson Varkey Ph.D.  
Biology Instructor  
St. Philip's College,  
San Antonio, TX

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**From:** Dawson, Randall N  
**Sent:** Thursday, January 12, 2023 9:34:42 AM  
**To:** Varkey, Johnson  
**Subject:** Alamo Colleges District Human Resources Ethics Violation Investigation

Dr. Johnson Varkey,  
I am sending you notification that Alamo Colleges District Human Resources department is in receipt of an ethics violation complaint from JBSA-Lackland, related to your facilitation of the BIOL 2402 class, during the Flex II Fall 2022 term. On January 10, 2023, JBSA-Lackland's Chief, Education & Training and the Installation Commander Delegate for Education Oversight revoked your access to all JBSA installations, pending the outcome of the investigation.

Any further communication regarding this matter will be addressed through our Human Resources department.

Respectfully,

Randall Dawson

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Randall Dawson, M.S.  
*Vice President for Academic Success*  
*St. Philip's College*

1801 Martin Luther King Dr., San Antonio TX, 78203

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# EXHIBIT D



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# ALAMO COLLEGES

ST. PHILIP'S COLLEGE

*Office of the Vice President of Academic Success*

## CONFIDENTIAL MEMORANDUM

To: Dr. Johnson Varkey, Adjunct Instructor, Biology

From: Randall Dawson, Vice President for Academic Success *Randall Dawson*

CC: Nina Sosa, Director of Employee Relations, Advocacy and Civil Rights on behalf of

Date: January 27, 2023

Re: Notice of Discipline – Termination of Employment and Contract

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St. Philip's College has received numerous complaints that were submitted to Joint Base San Antonio Training and Education regarding your classroom behavior while facilitating in an official teaching capacity on JBSA-Lackland last semester, which is found to be unacceptable. The complaint contained several reports of "religious preaching, discriminatory comments about homosexuals and transgender individuals, anti-abortion rhetoric, and misogynistic banter." While some of the subject matter may be connected to class content, it was very clear, from the complaints, that you pushed beyond the bounds of academic freedom with your personal opinions that were offensive to many individuals in the classroom.

Your conduct and behavior stated above violate the following procedures:

➤ **D.4.10.1 (Procedure) Faculty Code of Professional Ethics**

1. The Professional Educator shall treat all persons with respect, dignity, and justice, discriminating against no one on any arbitrary basis such as ethnicity, creed, gender, disability, or age.
2. The Professional Educator shall strive to help each student realize his or her full potential as a learner and as a human being.
3. The Professional Educator shall by example and action encourage and defend the unfettered pursuit of truth by both colleagues\* and students supporting the free exchange of ideas, observing the highest standards of **academic honesty and integrity**, and seeking always an attitude of scholarly objectivity and tolerance of other viewpoints.

You are already not scheduled for Spring 2023 classes, but the seriousness of your behavior warrants the prohibition of any further employment with the College District. In addition, your access to all Joint Base San Antonio (JBSA) installations has been

revoked, until further notice.

Please sign below to acknowledge your receipt of this memorandum. Please **return the signed copy to Randall Dawson, Vice President for Academic Success, St. Philip's College.**

\_\_\_\_\_  
Johnson Varkey

\_\_\_\_\_  
Date