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Tazukia University
Disciplinary Committee
123 University Blvd.
Tazukia, AL 12345

April 7, 2016

RE: Whether Tazukia University should discipline Chuck Heston for his online comments

Dear Committee Members:

You requested my legal advice on whether Tazukia University's disciplinary committee should take disciplinary action against student Chuck Heston for his online comments advocating for concealed carry on campus. This advice is limited solely to the facts contained in the letter and the law as of the date of the letter, and it is intended solely for your benefit.

Facts

Chuck Heston is a student at Tazukia University. Mr. Heston is a gun owner and subscribes to a blog dedicated to Second Amendment issues. He recently posted a comment stating he was a student at Tazukia University and he supported changing the school's firearm policy to allow him to carry his pistol on campus. In his comment, he argued that allowing students to concealed carry would help stop mass shootings. The school's student handbook prohibits students from possessing firearms on campus and provides that students may be subject to discipline for making threatening statements or statements likely to disrupt the operation of the school. The school was notified of Mr. Heston's comment through its monitoring software, and the disciplinary committee met to discuss

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whether his comment could be considered threatening or disruptive, and if they should take disciplinary action against him. The disciplinary committee decided to write to me requesting further guidance.

Answer

The disciplinary committee should not take disciplinary action against Chuck Heston for his blog comments. If the committee decides to suspend, expel, or otherwise discipline Chuck Heston, the student will have grounds to sue the school alleging a violation of his First Amendment right to free speech. If Mr. Heston decides to sue the school, and the issue goes before a court, the administration is unlikely to prevail on the argument that Mr. Heston's comment was threatening or disruptive and their decision to discipline him was to protect student safety. Mr. Heston's attorneys are likely to convince the court his comments were constitutionally protected speech, leading the court to rule in his favor.

Explanation for the student's argument

The First Amendment of the Constitution protects freedom of speech and expression and these protections are extended to students on college campuses. However, the First Amendment is not absolute. There are several categories of speech and expression which are not entitled to protection. One such category is "true threats." True threats are statements made with the intent to cause harm to another person or group of people. When courts evaluate whether a statement is a true threat, they consider the speaker's intent and whether a reasonable person would consider the statement to be a threat.

In our case, it is unlikely a court would find Chuck Heston's comment threatening. First, Mr. Heston's comment expressed an opinion on the school's firearm policy. He did not violate the school's policy by bringing his pistol on campus, or urge other students to do so. Second, he did not say he would use his pistol to harm other students or faculty if allowed to carry it on campus, rather he would use it to defend himself and protect others. These facts makes it unlikely another student or a school faculty member would find his comment threatening. The administration's fear of mass shootings is not enough to warrant discipline against the student.

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The Supreme Court has decided four landmark cases on student speech: *Tinker v. Des Moines Independent Community School Dist.*, *Bethel School Dist. No. 403 v. Fraser*, *Hazelwood v. Kuhlmeier* and *Morse v. Frederick*. Each case introduced a new standard for school discipline of student speech. School authorities may discipline students for speech that causes a substantial disruption (*Tinker*), is vulgar, lewd, obscene, and plainly offensive (*Fraser*), is school-sponsored (*Hazelwood*), or promotes illegal drug use (*Morse*).

The standard most applicable to our case is *Tinker*. Under *Tinker*, school authorities may discipline students for speech that has caused, or is likely to cause, a substantial disruption to the school's activities. However, the school must not base its decision to discipline a student on an unreasonable fear of a disruption or to suppress a viewpoint that is unpopular.

In applying the *Tinker* standard to our case, Mr. Heston's comment is unlikely to have caused, or will cause, a substantial disruption to the school's activities. Mr. Heston's comment was posted from a computer located off campus. His comment was intended to be read by other subscribers to the blog, not the student body or school faculty at large. While the administration may take precautions to prevent school shootings, to discipline Mr. Heston based on fear alone is not permissible under the First Amendment.

Based on the above facts and information, I strongly advise the University to not take disciplinary action against Chuck Heston for his online comment.

Respectfully submitted,

Alabama Attorney, Esq.
Attorney at Law