JOHN DOE,
Appellant,

-against-

UNIVERSITY OF ARKANSAS,
Appellee.

RECORD

Primarily prepared by
Diana Lee

THE ARKANSAS STUDENT NEWSPAPER

SCHOOL CLAMPS DOWN ON SOCIAL MEDIA

Staff Writer
September 28, 2017

FAYETTEVILLE – The University of Arkansas suspended John Doe indefinitely on Monday for failing to delete a Facebook group he started.

The Facebook group, called "UArk UBigots," was started by undergraduate student John Doe who is concerned about race relations and systemic institutional problems on the UA Campus. The Facebook Group is a closed group with the description "for the University of Arkansas Community."

Doe said, "I became more socially aware during my Freshman year, when members of the UA Razorback Women's Basketball team took a knee during the National Anthem to protest injustices in our society." Although the University supported the players right to express themselves, outside pressure intensified and as a result of the backlash, many of the student-athletes left the University. Doe said, "I doesn't want to see this happen to any other students in any other contexts."

Doe became aware of a recent offer to join the UA Political Science Department faculty that was extended after an entry-level professor search. The successful candidate received a PhD from the University of Virginia. The professor is believed to have participated last year in the white nationalist march on that campus and he is known to be a contributing author for an anti-immigration blog under a pseudonym. Doe said that the blog has racist content and uses words that he believes to be hate speech.

To protest this faculty hire, Doe created a group page on Facebook that began attracting the attention of school authorities after a few students and professors complained to the University about the webpage's increasingly offensive and inappropriate explicit content.

Doe was asked to remove the postings and delete the Facebook group after University authorities found several printouts of digital graphics posted on the website in classrooms, dorm bulletin boards and the Arkansas Student Union. When Doe refused, the University held a disciplinary hearing and suspended him. The suspension is in effect until the group webpage is taken down.

In response to the suspension, Doe formed a second Facebook group called "Arkansas Administrators are Full of Sh*t." Students, fearing further suspensions, have not joined the group nor formed any other school-related groups.

John Doe, now a senior at the University, has threatened to sue the University. "[University administrators] can't just go around suspending me just because I'm saying something they don't like. Sure, I'll take down the group. But they need to fire some professors first," said Doe. According to Doe, the purpose of his postings on the group webpage was to inform the community about the professor and to express Doe's personal views on the hiring.

Some professors at University of Arkansas support the administration. “The Facebook Group is very disruptive. The students won’t pay attention in class because they are always online with their laptops reading who posted what and adding students to the Group against their will,” said Jane Smith, a professor at the University of Arkansas. Subsequent investigations revealed that students frequently accessed Facebook on school computers in the library and dorm lounges, on their own laptops, and on their tablets and mobile phones while they were in class and logged into the University Wi-Fi network, which requires current students to use their University IDs and passwords to log in.

“John Doe is a second semester undergraduate senior and he did not have any bad intentions. The administrators are being very unfair,” said Mary Jones, John’s girlfriend.

University of Arkansas administrators have declined to comment.

IN THE DISTRICT COURT FOR WASHINGTON COUNTY
STATE OF ARKANSAS

JOHN DOE, Plaintiff,	:	
-against-	:	COMPLAINT
UNIVERSITY OF ARKANSAS, Defendant.	:	

Plaintiff, JOHN DOE, by and through his attorney, alleges the following:

PARTIES

1. Plaintiff, JOHN DOES, is a citizen of the United States of America and a resident of the city of Fayetteville, Arkansas. Plaintiff attends University of Arkansas, a public institution in the State of Arkansas.

2. Defendant, University of Arkansas, a public university as part of the University of Arkansas System and funded, in part, by state appropriations and receiving federal grant monies.

JURISDICTION AND VENUE

3. This is a civil action for equitable relief brought for a violation of Plaintiff's rights under the First Amendment of the United States Constitution, made applicable to the states by incorporation through the Fourteenth Amendment.

4. This Court has jurisdiction pursuant to Arkansas state law.

5. Venue is proper in this Court pursuant to state statute, as all events giving rise to the claim occurred in the Fayetteville, Arkansas.

6. John Doe is an outstanding student in his senior year of college with no prior disciplinary actions.

7. On or about September 9, 2017, JOHN DOE used his personal computer during his own time outside the classroom to form a Facebook group called "UArk UBigots."

8. The Facebook group members consists of University of Arkansas students, along with some staff and faculty and external community members that have been added against their will or added based on their requests to join the group.

9. On or about September 9, 2017, students began posting comments, links to webpages, digital graphics, photographs, and video clips on the Group's webpage.

10. On or about September 14, 2017, University of Arkansas administrators demanded that Plaintiff remove the online group from Facebook.

11. On September 28, 2017, Plaintiff was suspended from the University of Arkansas subject to his deletion of the group from Facebook.

CAUSE OF ACTION

12. Defendant's demands, that the group webpage be taken down, violate Plaintiff's free speech rights under the First Amendment, made applicable to the states by incorporation through the Fourteenth Amendment of the Constitution.

WHEREFORE, Plaintiff respectfully requests the following relief:

A. An order enjoining Defendant from enforcing the suspension of Plaintiff;

B. A declaration that Defendant's prohibition of Plaintiff's postings and subsequent suspension violate Plaintiff's First Amendment rights; and

C. Removal of the suspension from Plaintiff's records.

D. Any other or additional relief that the Court deems to be just and proper.

Signed: Attorney for Plaintiff

IN THE DISTRICT COURT FOR WASHINGTON COUNTY
STATE OF ARKANSAS

JOHN DOE, Plaintiff,	:	
-against-	:	PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
UNIVERISTY OF ARKANSAS, Defendant.	:	

Plaintiff, by and through his attorney, presents this motion for preliminary injunction to enjoin Defendant from continuing Plaintiff's suspension from the University

An order granting a preliminary injunction should be rendered if the moving party demonstrates (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities weighs in his favor, and (4) that the injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008).

BACKGROUND

Plaintiff is a college student nearing completion of his degree.

On September 9, 2017, shortly after starting his senior year, Plaintiff formed a closed group on a public social networking website called "Facebook." Facebook is not in any way associated with Defendant. Plaintiff formed the group to express his opinions about Defendant's hiring decisions, and to provide a forum for other concerned students, faculty, staff or community members to share their opinions as well.

Although Plaintiff did not advertise or display the group webpage as part of any of his classroom endeavors, the group became very popular. Thousands of University students joined the group or

tagged others into group membership. Members of the group began to post expressions in various forms, including written comments, links to other webpages, digital drawings, photographs, and video clips. Plaintiff occasionally accessed the site to view its contents but did not do so during class. Furthermore, Plaintiff did not have any control over other students' postings. Although some of the Plaintiff's drawings and digital content made its way to campus, he did not intend the drawing to be shown on campus and does not know who brought it to a classroom.

On September 14, 2017, the administration demanded that Plaintiff delete the group and all its contents from Facebook. This constituted a violation of Plaintiff's right to freedom of speech. When Plaintiff refused to take down the group webpage, the University further infringed on Plaintiff's First Amendment rights by suspending Plaintiff indefinitely on September 28, 2017.

DISCUSSION

I. PLAINTIFF'S FIRST AMENDMENT CLAIM IS LIKELY TO SUCCEED ON THE MERITS.

Plaintiff is likely to succeed on the merits of his claims because this case presents a clear violation of Plaintiff's free speech rights under the First Amendment, made applicable to the states by incorporation through the Fourteenth Amendment.

A. The First Amendment Protects Plaintiff's Speech.

Freedom of speech is one of the core constitutional protections of this nation. See U.S. Const. amend. I. The Supreme Court has held that the "communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes . . . are within the protection of the First Amendment."

This case presents precisely the kind of speech that is protected by the First Amendment, as Plaintiff's speech was aimed at informing the campus community of the University's hiring policies and propagating his views on those policies.

These views were undoubtedly unpopular with University administrators. However, this fact makes it all the more important that such speech is given judicial protection under the First Amendment.

The Supreme Court has stated that :

> [A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a conditions as they are, or even stirs people to anger . . . . There is no room under our Constitution for a more restrictive view.

Terminiello v. City of Chicago, 337 U.S. 1, 4 (1949).

Thus, freedom of speech is "protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Id. There is no evidence that Plaintiff's group webpage posed any sort of danger to the University, the State of Arkansas or the community at large.

The postings on the group webpage did not contain any threats, but merely the opinions of its members. Furthermore, the University has not alleged that any of the professors, administrators, or other persons even felt that they were ever in danger. Rather, Plaintiff was punished because the views posted on the group webpage were merely at odds with the administration's views. This court should accordingly find that Plaintiff is likely to succeed on the merits because Defendant violated Plaintiff's First Amendment rights when it demanded that he remove his webpage and subsequently suspended him when he did not remove it.

B. This Case Is Not a School Speech Case

This case should be governed by the regular First Amendment protections rather than the specific standard set forth in Tinker which governs school speech cases. The Tinker standard allows regulation of speech occurring on school grounds that may cause a substantial disruption of school activities. Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 507 (1969).

As subsequent cases have affirmed, what qualifies a case as a school speech case is that the speech occurred in a primary or secondary school environment. See Bethel School District Number 403 v. Fraser, 478 U.S. 675, 683 (1986) (lewd, vulgar or profane language on school property); Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 273 (1988) (a school newspaper bears the imprimatur of the school); Morse v. Frederick, 551 U.S. 393, 397 (2007) (school sanctioned activity).

The mere fact that the expressions in this case were made by a student does not turn this case into a school speech case. Unlike the Supreme Court's school speech cases, the present case concerns conduct that occurred outside the classroom in a forum that is not sponsored by the University. Thus, this case is not a school speech case. See Klein v. Smith, 635 F. Supp. 1440, 1442 (D. Me. 1986) (holding that student's conduct was protected by more robust First Amendment standards applicable outside school because the conduct occurred in a restaurant parking lot outside of campus).

Websites are generally held to have an out-of-school nature, even if they are directed towards students of a particular school. See Emmett v. Kent School District Number 415, 92 F. Supp. 2d 1088, 1090 (W.D. Wash. 2000). The Facebook.com site is not in any way affiliated with the University of the state of Arkansas. It is an independent website for members of the world community.

Furthermore, the fact that a portion of the webpage (digital graphics) was printed and posted on campus does not turn this case into a school speech case. See Thomas v. Board of Education, Granville Central School District, 607 F.2d 1043, 1050 (2d Cir. 1979) (finding activity *de minimis* where publication was printed outside school and not sold on school grounds); Porter v. Ascension Parish School Board, 393 F.3d 608 (5th Cir. 2004) (finding drawing that was not made on school grounds or directed at the school, even if it made its way to the school, did not create a Tinker case.

Even if This Case Is a School Speech Case, Plaintiff's Speech Did Not Materially and Substantially Interfere with the Operation of the School.

Even if the Court considers the relevant conduct to be "on-campus," Plaintiff is likely to prevail in his claim. When speech occurs on-campus, a school may only regulate it where the "conduct would *materially and substantially interfere* with the requirement of appropriate discipline in the operation of the school." Tinker, 393 U.S. at 509 (emphasis added).

Thus, while speech on school grounds may be subject to more stringent restrictions, the Supreme Court has long recognized that "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Tinker, 393 U.S. at 506. Speech that occurs on campus does not automatically fall within the purview of discipline by school administrators.

The amount of disruption, if any, caused by Plaintiff's posting was minimal. Digital screen shots of a webpage were brought to campus, but this alone does not constitute a material and substantial interference. Cf. Killian v. Franklin Reg'1 School District, 136 F. Supp. 2d 446, 455 (W.D. Pa. 2001) (holding that an email brought onto campus did not disrupt school activities).

There is no evidence that students' access to the website on campus caused any material and substantial disruption. Rather, it appears that Arkansas administrators suspended Plaintiff merely because they were displeased with the content of the postings.

Disliking or being upset by the content of a student's speech is not an acceptable justification for limiting student speech under Tinker."

II. PLAINTIFF WILL SUFFER IRREPARABLE HARM IF THE INJUNCTION IS DENIED.

First, the Supreme Court has recognized even minimal infringement upon First Amendment values constitutes irreparable injury." Déjà vu of Nashville, Inc. v. Metro. Gov't., 274 F. 3d 377, 400 (6th Cir. 2001). Furthermore, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976) (plurality opinion).

Plaintiff in this case has been given an ultimatum: he is to take down his page or face indefinite suspension. If Plaintiff's request for preliminary injunction is not granted, Plaintiff may be forced to take down the postings on the Facebook group webpage. Thus, he faces a loss of his First Amendment freedoms. Even removing the postings temporarily, until the matter is fully litigated, will constitute irreparable injury.

On the other hand, if Plaintiff chooses to maintain his Facebook group webpage, he faces indefinite suspension. Such suspension from school also constitutes irreparable harm. See Sullivan v. Hous. Indep. School District, 333 F. Supp. 1149, 1172 (S.D. Tex. 1971) ("suspension is a particularly humiliating punishment, evoking images of the public penitent of medieval Christendom and colonial Massachusetts, the outlaw of the American West, and the ostracized citizen of classical Athens. Suspension is an officially-sanctioned judgment that a student be for some period removed beyond the pale"), rev'd on other grounds, 475 F.2d 1071 (5th Cir. 1973); Breen v. Kahl, 296 F. Supp. 702, 707 (W.D. Wis. 1969) ("[I]t must not be forgotten, however small the community, however familiar to one another the characters in the drama, that when a school board undertakes to expel a public school student, it is undertaking to apply the terrible organized force of the state").

Furthermore, Plaintiff's indefinite suspension will cause him to miss an indefinite number of classes and perhaps jeopardize his graduation. No matter what course Plaintiff chooses, he faces irreparable harm. His request of preliminary injunction should thus be granted.

III. THE BALANCE OF EQUITIES WEIGHS IN PLAINTIFF'S FAVOR.

Plaintiff faces irreparable harm regardless of the path he chooses. The University, on the other hand, faces minimal harm. Students have continued to attend classes and observe their regular schedules. Professors will be able to do the same. While the University has had to deal with some student complaints about the contents of the website, these complaints do not go beyond the sorts of complaints Universities have to deal with on a regular basis.

To Plaintiff's knowledge, no professor or student has threatened to leave the University of Arkansas. In view of all these factors, the balance of equities weighs very strongly in Plaintiff's favor.

IV. THE INJUNCTION IS IN THE PUBLIC INTEREST.

First, "[v]indicating First Amendment freedoms is clearly in the public interest." Pac. Frontier v. Pleasant Grove City, 414, F.3d 1221, 1237 (10th Cir. 2005). In fact, "it is always in the public interest to prevent violation of a party's constitutional rights." G & V Lounge, Inc. v. Michigan Liquor Control Comm'n., 23 F.3d 1071, 1079 (6th Cir. 1994). This case is primarily aimed at vindicating Plaintiff's First Amendment rights to inform and propagate his opinions on the University's hiring policies and its handling of campus climate concerns. It furthermore indirectly seeks to protect and uphold the First Amendment rights of all students in the University, particularly the rights of those students who have also posted on the Facebook group webpage and would thus

suffer a restriction of their First Amendment rights if the webpage were taken down. A preliminary injunction is clearly in the public interest.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court to grant his motion for preliminary injunction.

/s/_____

Attorney for Plaintiff

IN THE DISTRICT COURT FOR WASHINGTON COUNTY
STATE OF ARKANSAS

JOHN DOE, Plaintiff,	:	
-against-	:	DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
UNIVERSITY OF ARKANSAS, Defendant.	:	

Defendant, the University of Arkansas by and through its attorney, respectfully opposes Plaintiff's motion for preliminary injunction.

FACTS

University of Arkansas is a public institution dedicated to the academics. As an educational institution, the University is entrusted to teach the state's citizens and prepare them for the realities of entering into the workforce. In order to do so, however, the University must be able to maintain a certain amount of discretion and authority over students' activity and student conduct.

The University's ability to provide an educational environment focuses on academic studies has been increasingly undermined by Plaintiff's actions. On September 9, 2017, Plaintiff set up a Facebook group for students called "UArk UBigtos." Over the next month or so, students began

posting various comments, photographs, links and drawings to the group webpage. Plaintiff himself posted a few derogatory and vulgar drawings, comments, and links. The page is specifically targets the UA campus community.

Some of the drawings were subsequently found on campus in printed form. These drawings caused a great disturbance on campus. Students passed the drawings around during classes, read the website during class and stopped paying attention or participating in class. Students continue to make frequent references to the posted drawings, comments, and links during class and they have added faculty, staff and students to this closed group, sometimes against their will. As a result, professors are reporting greater difficulty in maintaining control of their classrooms.

Because of the disruption caused by Plaintiff's group, the administrators asked Plaintiff to remove the offensive content from the webpage. When Plaintiff refused, Arkansas resorted to one of the few disciplinary measures available to them and suspended Plaintiff until he removed the disruptive content from the webpage.

ARGUMENT

A preliminary injunction should not be granted unless the moving party demonstrates "that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008). "Injunctive relief [is] an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (*per curiam*).

I. PLAINTIFF IS UNLIKELY TO SUCCEED ON THE MERITS.

In order to succeed on his claims, Plaintiff must show that his First Amendment rights were violated. A court is unlikely to find a violation, however, because the kind of speech engaged in by Plaintiff is not protected by the First Amendment.

Freedom of speech in a school environment does not receive the same treatment as speech outside of the school environment. The need to provide an appropriate learning environment at school requires that school speech may be subject to regulation by school authorities. As stated in Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 507 (1969), "[T]he court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools."

The Tinker Court provides the test for determining when school speech can be regulated: when certain conduct or speech "might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities." Tinker, 393 U.S. at 514. In this case, the excessively lewd, vulgar, and provocative expressions on the group page led not only to a

reasonable belief that substantial disruption would occur, but also to the actual disruption of school activities. The drawings have created distractions to students in classrooms; the comments and links invite students to post and read posts during school hours; the drawings and comments have insulted and alienated both professors and administrators at Arkansas. Plaintiff's refusal to remove the insulting contents has only created a greater uproar among students, spurring even more posts and groups that are extremely divisive to the relationships between school personnel and their students. There is no shortage of disruption.

Furthermore, the application of the Tinker standard does not rely on an on-or off-campus distinction, but rather on the effects the expression will have on the school's ability to maintain order and continue activities. Boucher v. School Board, of the School District of Greenfield, 134 F.3d 821, 827 (7th Cir. 1998) (holding that the "relevant test" for application of the Tinker standard "is whether school authorities have reason to believe that the expression will be disruptive"); J.S. v. Bethlehem Area School District, 757, A.2d 412, 421 (Pa. Comm. Ct. 2000) (holding that school officials can regulate a student's website because it materially and substantially interfered with the educational process). Thus, although Plaintiff may have created and posted his expressions on his own computer, his expressions are still subject to the restrictions imposed by Tinker.

Finally, a school may also regulate speech "that the public might reasonably perceive to bear the imprimatur of the school." Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 271 (1988) (quoting Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986)). To the extent that the group on Facebook features the school's name and consists UA students, staff and faculty, the public is highly likely to perceive the group as "bear[ing] the imprimatur" of University of Arkansas. Thus, the University should be able to regulate the contents of that group's webpage.

II. THE BALANCE OF EQUITIES AND PUBLIC INTEREST OUTWEIGH ANY HARM PLAINTIFF MIGHT SUFFER IF THE INJUNCTION IS DENIED

The Supreme Court has held that a preliminary injunction is "an extraordinary remedy," Mazurek, 520 U.S. at 972, such that even a showing of irreparable injury may be outweighed by the balance of inequities and the public interest. Winter, 555 U.S. 7.

As a result of his actions, Plaintiff was suspended. He is therefore unable to attend school and participate in student events. The harm incurred by the District, however, has been much more extensive. Professors and administrators have been, and continue to be, offended and derided by their students, which has inevitably affected their teaching. Students are constantly distracted by Plaintiff's inappropriate posts. They have banded together to oppose any and every disciplinary measure imposed by campus administrators. University of Arkansas has also received numerous complaints about all these events. Students have threatened to withdraw from the University and donors have threatened to stop making contributions.

Lifting Plaintiff's suspension and allowing him to return to campus will only increase the tension and outrage felt by Arkansas's administration and professors that have difficulty controlling their

classes. His presence will cause an even greater disturbance, which is to the detriment to the learning environment on campus.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's motion for preliminary injunction.

/s/_____
Attorney for Defendant

Dated: December 1, 2017

IN THE DISTRICT COURT FOR WASHINGTON COUNTY

STATE OF ARKANSAS

		:	
JOHN DOE,	:		
	Plaintiff,	:	
		:	
-against-		:	OPINION AND ORDER
		:	DENYING PLAINTIFF'S
University of Arkansas,		:	MOTION FOR
	Defendant.	:	PRELIMINARY INJUNCTION
		:	

Carrefour, J.

INTRODUCTION

Plaintiff John Doe has moved for a preliminary injunction on his claim, alleging a violation of his First Amendment rights. Plaintiff claims that his creation and posting of a webpage on a social networking website are constitutionally protected. Plaintiff seeks to enjoin Defendant, the University of Arkansas from continuing his suspension for refusing to remove the website from a social networking site. For the following reasons, this Court denies Plaintiff's motion for preliminary injunction.

FINDINGS OF FACT

Plaintiff is a student at the state's flagship campus, the University of Arkansas School of Law, a part of the University of Arkansas system. On September 9, 2017, Plaintiff formed a virtual group on a social networking website called "Facebook." Facebook is a publicly accessible website that operates independently of the University of Arkansas. The group that Plaintiff created was called "UArk UBigots," and its membership consisted almost entirely of students, staff and professors, many of whom are added to the group without their permission.

Over the next month, students began to post various links, photographs, drawings, and comments to the group's webpage. While most of the webpage's contents were harmless depictions of average student lives, a few postings by Plaintiff were particularly incendiary and provocative. For instance, some of Plaintiff's postings depicted professors and administrators in sexually explicit drawings.

The contents of the group's website came to the attention of school authorities when a professor found a printout of one of the posted drawings in his classroom, and then again in the Arkansas Student Union and in several dorms. Plaintiff has denied playing any role in taking the printout to campus, and Defendant has not contested this. The administrators also received many complaints

about the group's webpage from concerned members of the campus community including faculty that might start looking at jobs at other institutions to avoid being associated with this campus. One of the faculty complaints came from a female professor who stated that her likeness appeared in a sexually charged drawing.

Arkansas administrators subsequently requested that Plaintiff delete the offensive material from the website. When Plaintiff refused, Arkansas administrators suspended Plaintiff. The University has indicated it will continue Plaintiff's suspension until Plaintiff complies with its requests. As a result, Plaintiff claim for violation of his civil rights and moved for preliminary injunction.

DISCUSSION

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits and likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008).

I. LIKELIHOOD OF SUCCESS ON THE MERITS

This case involves a clash between the First Amendment's protection of free speech and the interests of a school in providing an educational environment. While "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," the Supreme Court has consistently emphasized the need for States and school officials to have comprehensive authority, consistent with fundamental constitutional safeguards, to "prescribe and control conduct in the schools." Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506-07 (1969).

Due to these compelling (but at times inconsistent) interests, the Supreme Court has determined that the relevant test in a school setting is whether "the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.'" Id. at 509. The school must also be able to show that "its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." Id.

The Supreme Court has further defined the limits of Tinker in two relevant ways. First, in Bethel School District No. 403 v. Fraser, 478 U.S. 675, 683 (1986), the Court held that a school may categorically prohibit lewd, vulgar, or profane language on school property. Second, the Court held in Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988) that a school may regulate speech that the public might reasonably perceive to bear the imprimatur of the school.

The merits of the present case depend in great part on whether Plaintiff's Facebook postings can be considered to be "on-campus". The difficulty of this case is that the postings are primarily on a public and independent website that is in no way affiliated with the University. Plaintiff's

statements would be seemingly protected by the more robust first amendment standards that apply outside of the school setting. See Terminello v. City of Chicago, 337 U.S. 1, 4 (1949) (freedom of speech is "protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest"). On the other hand, portions of the webpage (e.g., printouts of Plaintiff's offensive drawings) have been found on campus and have caused some not-insignificant disruptions.

Many courts have interpreted Tinker to apply to both on- and off-campus expressions, stating that the relevant test is the effect on the school rather than technical and at times inconsequential distinctions that determine what constitutes "school grounds." See Wisniewski v. Bd. Of Educ. Of the Weedsport Central School District, 607 F.2d 1043, 1052 n.17 (2d Cir. 1979) ("We can, of course, envision a case in which a group of students incites substantial disrupt within the school from some remote locale").

This Court agrees with this approach, in part because the advent of the Internet, and its availability everywhere we go, has made the distinction between on- and off-campus speech untenable. Furthermore, the Court must "decline to draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech." Citizens United v. Federal Election Commission, 588 U.S. 310 (2010).

The present case involves student expression that has had serious disruptive effects on the academic environment. It has affected professors, administrators, students. Administrators have been placed in a very difficult position with little recourse to other remedies. The results of Plaintiff's postings fit into what the Court has described as a "material and substantial interference with the requirements of appropriate discipline in the operation of the school." See Tinker, 393 U.S. at 509.

This Court determines that Plaintiff is thus not likely to succeed on the merits.

II. IRREPARABLE HARM, BALANCE OF INEQUITIES, & THE PUBLIC INTEREST

This Court does not take Plaintiff's harm lightly. Suspension is a serious disciplinary measure that will force Plaintiff to miss educational activities. However, the harm is not merely one-sided. The University is also facing serious consequences as a result of Plaintiff's actions. The harm, furthermore, is not limited to the University administration but rather extends to the campus community at large. The balance of inequities thus weighs heavily on Defendant. Also, Plaintiff's suspension will serve the public interest insofar as it may encourage him to take down the offensive aspects of his postings, at least temporarily while this litigation is pending.

CONCLUSION

Plaintiff's motion for preliminary injunction is DENIED. Judgment shall be entered accordingly.

IT IS SO ORDERED.

/S/_____
Hon. Judge
United States District Judge

Dated: January 10, 2018

IN THE DISTRICT COURT FOR WASHINGTON COUNTY
STATE OF ARKANSAS

JOHN DOE, Plaintiff,	:	
-against-	:	NOTICE OF APPEAL
UNIVERISTY OF ARKANSAS, Defendant.	:	

NOTICE IS HEREBY GIVEN that John Doe, Plaintiff in the above-captioned action, appeals to the Arkansas Supreme Court from the Order dated January 10, 2018, denying Plaintiff's motion for preliminary injunction.

/s/_____
Attorney for Plaintiff

Dated: January 11, 2018

ARKANSAS SUPREME COURT

JOHN DOE, Plaintiff,	:	
-against-	:	ORDER ON APPEAL
UNIVERSITY OF ARKANSAS, Defendant.	:	

An application for appeal having made from the final judgment entered by the District Court for Washington County, dated January 10, 2016, and upon consideration of the issues presented therein, it is hereby:

ORDERED, that said appeal be heard in this Court. This Court will entertain the following questions for its review:

1. Whether student speech made outside the classroom setting may be governed by Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), and its progeny.

2. If so, whether application of the standards in Tinker and its progeny allow Appellant's speech to be regulated by the Appellee, the University of Arkansas.

/S/_____
Hon. Chief Justice
Arkansas Supreme Court

Dated: February 10, 2018