



THE KINCANNON FIRM

August 23, 2011

Dr. Harris Pastides, President
University of South Carolina
Columbia, SC 29208

Re: Fraternity Matters

Dear President Pastides:

Yesterday I was retained by a fraternal organization active at the University of South Carolina in connection with the University's decision to punish all fraternities participating in rush activities. This punishment was imposed because of allegations of wrongdoing by only a few fraternities. I will not disclose the identity of my client due to justifiable concern of retaliation.

It is crystal clear that the decision to punish all fraternities and their members for the alleged actions of a few is unconstitutional. It violates the due process rights of fraternities that did not engage in wrongdoing. Further, the decision to sanction fraternities but not sororities (or any other membership organizations) is a blatant equal protection violation.

Also troubling is that the termination of rush is obviously a power play designed to put fraternities in an adverse negotiating position so as to leverage them into agreeing to whatever changes USC plans to impose as a condition of resuming rush. My client will not accept any changes whatsoever that are imposed as a result of USC's illegal and unconstitutional termination of rush, and we will sue if any such conditions are required of any fraternity not found to have done anything wrong.

Further, be advised that my client plans to resume rush this week whether USC approves it or not, and will call on other fraternities to do the same. Any individual associated with the University who thereafter attempts to stop rush or sanction my client in any way will be subject to a personal lawsuit under 42 U.S.C. § 1983 for deprivation of civil rights.

POST OFFICE BOX 7901 • COLUMBIA, SOUTH CAROLINA 29202
OFFICE: 877.99.COURT • FAX: 888.704.2010 • TODD@THEKINCANNONFIRM.COM

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From: J. Todd Kincannon

To: Dr. Harris Pastides



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This is not a hollow threat designed to gain leverage in a negotiation. My clients are tired of being bullied and will not be punished when no one was accused them of doing anything wrong. They have every right to resume rush pursuant to the terms and conditions that were in place before this fiasco and plan to exercise that right.

In addition to the civil rights claim, please also be advised that any lawsuit filed will include any other claims we can assert in good faith, including claims for intentional interference with prospective contractual relations, defamation, breach of contract, breach of the duty of good faith and fair dealing, and abuse of process. The reckless actions by certain USC administrators have damaged my client's ability to recruit and retain members, many of whom now believe—with good reason—that their membership in a fraternity will subject them to unfair scrutiny, abuse, and defamation by the University. Be advised this suit will seek actual and punitive damages given the nature of the conduct.

Further, my client demands the immediate termination of any individual who authorized or participated in this unconstitutional assault on the fraternity system and Greek life, including but not necessarily limited to Vice President Jerry Brewer and Director of Student Services Anna Edwards. I also demand a retraction of Edwards' disparaging and defamatory comments directed at my client and its leadership and members.

Specifically, Edwards is reported to have said “[U]ntil we have groups who can be honest and we have men who can be honorable, I think we have work to do.” Edward's comments are a clear statement that USC's fraternal organizations and their current leaders and members are dishonest and dishonorable. This claim was made in full knowledge that allegations of wrongdoing have been directed only at a minority of the fraternities and only at a few members of those fraternities. This is textbook slander per se, and my client will not tolerate it. I believe Mr. Brewer may have made similar comments, and if he has, I demand a retraction of those as well. I also expect that no one associated with USC will make such reckless statements in the future.

I want there to be no misunderstanding of our position. Unless rush is allowed to resume for all fraternities against whom no wrongdoing is alleged, my client **will** file suit, and we will not just sue the University but **will file personal lawsuits against USC administrators involved in this wrongdoing**. Further, such resumption of rush will not include harsher rules or any sort of probationary terms for fraternities uninvolved in wrongdoing. My client will not be subjected to punishment for mere allegations of wrongdoing leveled against others. Further, we intend to file suit anyway if the fraternities against whom wrongdoing is alleged are not afforded due process going forward or are subjected to unreasonably harsh punishment.

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My client has expressed severe concern that this letter will cause Brewer, Edwards, and others to begin a witchhunt to determine which fraternity has retained me. Given what I know of the situation, this seems to be a completely reasonable concern. Be advised that I will treat any attempt to determine my client's identity as an intentional invasion of the attorney client privilege, and I will respond accordingly.


You should also be aware that if this situation is not resolved to my client's satisfaction in short order, my client will make a very public call for all Greek alumni to withhold all donations from the University of South Carolina and instead make those donations directly to their fraternity or sorority to compensate for the damage caused by this illegal interference with the rush process. Based upon my conversations to this point, I can promise you that many will heed that call. We have no interest in hurting the University of South Carolina, but this step is necessary as a result of the economic harm caused by the University's actions.

I do not want you to think we intend to be unreasonable going forward. At this point in time, we ask nothing but that the wrongs of the past week be made right. If that is done, I can guarantee you that nothing else will come of this. But what I can also guarantee you is that if USC continues this illegal and unfair assault on Greek life, my client will exercise any and all legal options available.

In closing, I want to make clear none of this is in any way a personal attack against you or on the many individuals associated with the University of South Carolina who do not abuse their authority. At the same time, my client has now been subjected to severe punishment for absolutely no legal reason without a trial or even an allegation of wrongdoing. That we simply cannot and will not tolerate.

With kindest personal regards, I am,

Very truly yours,


J. Todd Kincannon

cc: USC Student Government
All USC Fraternities and Sororities