

JOHN McADAMS
3559 North Murray Avenue
Shorewood, Wisconsin 53211,
Plaintiff,

v.

MARQUETTE UNIVERSITY
1250 W. Wisconsin Avenue
Milwaukee, Wisconsin 53233,
Defendant.

Other - Contracts
Case Code: 30303
Case No. 16-CV-

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

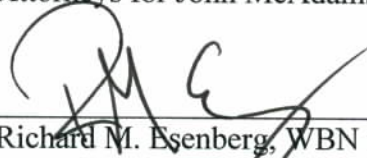
Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: **Clerk of Circuit Court, Milwaukee County Courthouse, 901 N. 9th Street, Milwaukee, WI 53233**, and to the Wisconsin Institute for Law & Liberty, Plaintiffs' attorneys, whose address is: **1139 E. Knapp Street, Milwaukee, WI 53202**.

You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien

against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Respectfully submitted,
WISCONSIN INSTITUTE FOR LAW & LIBERTY
Attorneys for John McAdams

A handwritten signature in black ink, appearing to read 'RME', is written over a horizontal line.

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COMPLAINT

The Plaintiff, John McAdams (“Professor McAdams”), by his attorneys Wisconsin Institute for Law & Liberty, alleges to the Court as follows:

1. Professor McAdams is an adult citizen of the State of Wisconsin, residing at 3559 N. Murray, in the Village of Shorewood. Professor McAdams has been a tenured faculty member at Marquette University for 30 years.

2. Marquette University (“Marquette”) is a Catholic and Jesuit university located in downtown Milwaukee with its administrative offices located at 1250 W. Wisconsin Ave. Marquette is a Wisconsin corporation, originally incorporated under Chapter 180 of the Wisconsin Statutes.

3. Marquette guarantees its tenured faculty academic freedom and expressly promises it will not fire them for exercising their constitutional freedom of expression. Nevertheless, Marquette has illegally suspended Professor McAdams and is going to terminate him for blogging.

4. For over eleven years Professor McAdams has published a blog called “The Marquette Warrior.” In his blog, Professor McAdams has regularly taken positions contrary to majority sentiment among faculty and administrators on campus and has been highly critical of certain faculty colleagues and many in positions of authority at Marquette, including the President, Provost, Deans, and department chairs.

5. In general, Professor McAdams has been a critic of a set of views referred to by some as “political correctness” and, at times, has pointed out the tension between certain positions taken by Marquette and its Catholic identity. In particular, he has opposed the view that academic discourse must be structured in a way that prevents the expression of ideas that might possibly be “hurtful” to certain “privileged” or “protected” classes of persons. He does not believe that such an approach serves disadvantaged groups or the search for the truth. This critique of political correctness has certainly annoyed administrators who do not share it and has been strongly opposed by those members of the faculty – probably a majority (and certainly a majority of those who are politically active and outspoken) – who do ascribe to its tenets.

6. In a November 9, 2014 blog post, Professor McAdams reported on an interaction between a Marquette Instructor named Cheryl Abbate and a Marquette undergraduate student who was taking a course at Marquette from Ms. Abbate.

7. During a philosophy course being taught by Ms. Abbate, the subject of gay marriage came up. The undergraduate student told Professor McAdams that he approached Ms. Abbate after the class to express his disappointment with her refusal during class to permit discussion of his own and others’ opposing views on the topic of gay marriage. After Ms. Abbate and the undergraduate student had a brief discussion of studies on the effect of adoption by gay couples, Ms. Abbate, speaking in her own words as a “professor of ethics,” made it clear

that – regardless of the context or the ways in which it was communicated – opposition to gay marriage was homophobic, offensive, and would not be permitted to be expressed in her class.

8. The undergraduate student provided Professor McAdams with an audio recording of the conversation so that there is no dispute about what was said.

9. Professor McAdams then wrote a blog post about the incident, naming Ms. Abbate and criticizing her for her conduct towards the undergraduate student and criticizing the Marquette administration for not properly addressing the conduct by Ms. Abbate.

10. While not everyone may agree with what Professor McAdams had to say, the position taken by the blog post – that opposition to same sex marriage ought not to be dismissed as homophobic or offensive – is hardly out of bounds in civil society, much less at a Catholic university.

11. Nevertheless, Marquette has now illegally suspended Professor McAdams and is going to terminate his tenure and fire him from employment at Marquette as the result of his blog post. This lawsuit challenges Marquette’s treatment of Professor McAdams.

12. This Court has both subject matter and personal jurisdiction in this matter. Venue is proper in this Court pursuant to Wis. Stat. §801.50(2)(a) and (c).

PROFESSOR McADAMS’ CONTRACT WITH MARQUETTE

13. Professor McAdams is a tenured professor at Marquette.

14. As a tenured member of the faculty, Professor McAdams has a contract with Marquette which is subject to automatic annual renewal. The last contract provided by Marquette to Professor McAdams is dated March 1, 2014 (the “Contract”). A copy of the Contract is attached hereto as Exhibit A.

15. The Contract, by its express terms, is subject to Marquette's Faculty Statutes on Appointment, Promotion and Tenure (the "Faculty Statutes") which grant Professor McAdams a variety of substantive and procedural protections.

16. According to Faculty Statute §304.02, "Tenure is a faculty status that fosters an environment of free inquiry without regard for the need to be considered for reappointment." Moreover, it "is not a reward for services performed" but rather "is a contract and property right granted in accordance with this Chapter" (emphasis added).

17. Sections 306.01 and 307.07(2) of the Faculty Statutes provide that Marquette may not suspend and/or terminate the appointment of a faculty member except for cause as defined in Sections 306.02 and 306.03.

18. The Faculty Statutes describe the causes for which a tenured professor's appointment may be suspended and/or terminated as either absolute cause or discretionary cause.

19. The "absolute" causes for suspension and/or termination are not at issue in this case. Marquette asserts that its suspension and proposed termination of Professor McAdams is justified by the existence of discretionary cause.

20. Pursuant to Faculty Statute §306.03, to meet the standard for "discretionary cause," Marquette must prove that the faculty member's conduct "clearly and substantially fail[s] to meet the standard of personal and professional excellence which generally characterizes University faculties" and that because of the conduct, the "faculty member's value will probably be substantially impaired."

21. However, §306.03 of the Faculty Statutes expressly states that "**discretionary cause**" **does not include any action protected by academic freedom.** ("In no case, however, shall discretionary cause be interpreted so as to impair the full and free enjoyment of legitimate

personal or academic freedoms of thought, doctrine, discourse, association, advocacy, or action”).

22. The procedures that must be followed by Marquette prior to nonrenewal, suspension and/or termination are set forth in Chapter 307 of the Faculty Statutes. Section 307.07(2) reiterates the promise that termination will not be used to hinder academic freedom and also promises to tenured faculty members that “Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights guaranteed them by the United States Constitution.”

First Claim – Breach of Contract – Professor McAdams’ Unlawful Suspension and Banning from Campus from December 16, 2014 through March 31, 2016.

23. Professor McAdams realleges and incorporates by reference the preceding Paragraphs of the Complaint.

24. On December 16, 2014, Dean Richard Holz of Marquette wrote a letter to Professor McAdams suspending him (with pay) and banning him from campus. A true and correct copy of Dean Holz’s December 16, 2014 letter is attached hereto as Exhibit B.

25. The December 16, 2014 letter specifically informed Professor McAdams that “until further notice . . . you are relieved of all teaching duties and all other faculty activities, including, but not limited to, advising, committee work, faculty meetings and any activity that would involve your interaction with Marquette students, faculty and staff.”

26. The December 16, 2014 letter also advised Professor McAdams that he was “to remain off campus during this time, and should you need to come to campus, you are to contact me in writing beforehand to explain the purpose of your visit, to obtain my consent and to make appropriate arrangements for that visit.”

27. Thereafter, University spokesperson Brian Dorrington released a statement implying that the ban from campus was due to safety concerns: “The safety of our students and campus community is our top priority We take any situation where a student’s safety is compromised extremely seriously.”

28. Section 306.01 of the Faculty Statutes provides that Marquette may suspend or terminate the appointment of a faculty member only for cause as defined in Sections 306.02 and 306.03. Dean Holz does not set forth any “cause” in his December 16th letter.

29. Section 307.03 provides that in all cases of suspension or termination, Marquette must provide a notice to the faculty member which states what section of the Faculty Statutes the faculty member has allegedly violated, the date of the alleged violation, and a detailed description of the facts constituting the violation including the names of the witnesses against the faculty member. Dean Holz’ letter does not contain any of this information.

30. The American Association of University Professors (AAUP) is, as its name suggests, a national professional association of university professors. The mission of the AAUP is to advance academic freedom and shared governance.

31. The AAUP is a nationally recognized authority on academic freedom.

32. The AAUP has stated that to deny a faculty member the opportunity to teach, without cause and without due process, regardless of monetary compensation, is to deny him his basic professional rights. Taking a good teacher out of the classroom is a serious harm in itself. *The Use and Abuse of Faculty Suspensions*, <http://www.aaup.org/report/use-and-abuse-faculty-suspensions>.

33. That harm is made worse when suspension is coupled with a banishment order, as occurred in this the case. Banishment not only denies the faculty member access to the material

needed to prove that the charges are groundless and wrongful, but also interferes with academic work by denying access to crucial resources such as a library, licensed computer software, or the faculty member's own office or laboratory.

34. The harms inflicted by suspension and banishment are not merely material. Suspension and, worse, banishment, tarnish the reputation of the faculty member by branding him or her with "an extremely negative judgment, for which the basis remains untested in the absence of a hearing." *The Use and Abuse of Faculty Suspensions*, <http://www.aaup.org/report/use-and-abuse-faculty-suspensions>.

35. Suspension and banishment can be a particularly "devastating indictment of a faculty member" when "the reason alleged for suspension is the best interest of the students." *Id.* (quoting *Academic Freedom and Tenure: University of Southern California*, ACADEME 81 (November–December 1995): 47–48). Such actions risk creating "a prejudicial atmosphere totally out of proportion to the alleged offense and undeserved in the light of the professor's previous record." *Id.*

36. The AAUP has expressed concern about the growing use of suspension by universities as a means of disciplining faculty, a severe sanction that the AAUP has long regarded as "second only to dismissal." *Id.*

37. Consistent with that conclusion, the Marquette Faculty Statutes prohibit both suspension and termination without "cause" and without the due process required under the Faculty Statutes.

38. Marquette breached the obligations it owes to Professor McAdams under his contract and the Faculty Statutes.

39. Dean Holz's letter of December 16, 2014, did not assert any cause for the suspension. Nor did it provide Professor McAdams with any of the due process required under the Faculty Statutes prior to imposing the sanction of suspension. It merely advised Professor McAdams that he was suspended, and ordered to stay away from campus while Marquette reviewed his conduct.

40. Professor McAdams immediately challenged the suspension and in a letter from his counsel dated December 22, 2014 stated his "objection under Section 307.04 to his suspension and his objection to the remainder of Dean Holz' letter barring him from campus and barring him from contact with Marquette faculty, students and staff." A true and correct copy of the December 22, 2014 letter from Dr. McAdams' counsel is attached hereto as Exhibit C.

41. The December 22nd letter closed with a "demand that the actions taken by Dean Holz be immediately rescinded and that Dr. McAdams be restored to his duties and privileges as a tenured member of the faculty." Marquette refused Professor McAdams' demand and the December 16, 2014 suspension remained in effect until March 31, 2016.

42. Professor McAdams' suspension from December 16, 2014 through March 31, 2016 caused harm to his interests without any of the protections guaranteed to him by his contract and the Faculty Statutes. He was prevented from teaching his classes and was effectively adjudged before the public and the Marquette community to be guilty of the charges against him and even worse, to be such a threat to the physical safety of students that his very presence on campus could not be tolerated.

43. Marquette's suspension and banishment of Professor McAdams was a violation of the Faculty Statutes and, as a result, a breach of his contract. The suspension occurred without

proper notice, was done without cause and in violation of his rights to due process. In addition, the illegal suspension was a precipitating cause of his ultimate termination by Marquette.

44. Marquette's conduct caused Professor McAdams both monetary damages and harm that is irreparable under the law and for which Professor McAdams has no adequate remedy at law.

45. Professor McAdams has suffered and will suffer substantial harm as the result of Marquette's illegal suspension, including but not limited to loss of reputation, emotional distress and present and future lost income.

Second Claim – Breach of Contract – Marquette Lacks the Necessary Cause to Suspend Professor McAdams without Pay from April 1, 2016 through January 17, 2017 and Marquette's Suspension Violates Professor McAdams' Right to Academic Freedom

46. Professor McAdams realleges and incorporates by reference the previous Paragraphs of the Complaint.

47. On March 24, 2016 Professor McAdams received a letter from Marquette informing him that Marquette was imposing a new suspension on him to begin on April 1, 2016 and continue through January 17, 2017. The new suspension would be without pay.

48. Marquette lacked discretionary cause, as defined in the Faculty Statutes, to suspend Professor McAdams and, as a result, the suspension is a violation of the Faculty Statutes and a breach of contract.

49. Further, Marquette's conduct in further suspending Professor McAdams violates his rights to free speech and academic freedom and is a violation of Faculty Statute §§306.03 and 307.07(2) and a breach of his contract.

50. The AAUP, in concert with the Association of American Colleges and Universities, defines academic freedom as including the freedom to "speak or write as citizens . .

. free from institutional censorship or discipline.” 1940 Statement of Principles on Academic Freedom and Tenure.

51. As a legal term, “academic freedom” is defined as “the right to speak freely about political or ideological issues without fear of loss of position or other reprisal.” Black's Law Dictionary, at 12 (9th ed. 2009).

52. Marquette faculty have academic freedom to ensure a robust exchange of ideas, free from censorship and retaliation by authority. Academic freedom exists specifically to protect faculty from interference by university administration.

53. As part of their academic freedom, professors may criticize their colleagues, including graduate student instructors; criticize their institutions and their administrators; and criticize society and ideological movements. A tenured professor cannot be suspended or fired simply because the administration or even other faculty disagree with her views or believe that the university atmosphere would be more harmonious if certain issues were not raised and certain views were not challenged.

54. Marquette’s suspension of Professor McAdams without pay from April 1, 2016 through January 17, 2017 has caused and will cause Professor McAdams both monetary damages and harm that is irreparable under the law and for which Professor McAdams has no adequate remedy at law.

55. Professor McAdams has suffered and will suffer substantial harm as the result of Marquette’s breach of contract, including but not limited to loss of reputation and emotional distress and present and future lost income.

Third Claim – Breach of Contract – Failure to Renew

56. Professor McAdams realleges and incorporates by reference the preceding Paragraphs of the Complaint.

57. Pursuant to Faculty Statute Section 304.09, Professor McAdams, as a tenured member of the faculty was entitled to an annual reappointment at a rank and compensation not less favorable than those which he previously enjoyed.

58. Pursuant to Chapter 307 of the Faculty Statutes, Professor McAdams was entitled to notice, a hearing and other procedural and substantive rights prior to nonrenewal of his contract and appointment.

59. The last contract tendered by Marquette to Professor McAdams is the Contract attached hereto as Exhibit A.

60. Marquette failed to renew the Contract and has failed to reappoint Professor McAdams in 2015 and again in 2016 without notice, a hearing or the other procedural or substantive rights to which he was entitled.

61. Marquette's failure to renew Professor McAdams' contract and his appointment is a violation of the Faculty Statutes and a breach of his contract.

62. Marquette's failure to renew Professor McAdams' contract and his appointment has caused and will cause Professor McAdams both monetary damages and harm that is irreparable under the law and for which Professor McAdams has no adequate remedy at law.

63. Professor McAdams has suffered and will suffer substantial harm as the result of Marquette's breach of contract, including but not limited to loss of reputation and emotional distress and present and future lost income.

Fourth Claim – Breach of Contract – Marquette Lacks the Necessary Cause to Terminate Professor McAdams and Marquette's Attempt to Coerce Professor McAdams and Marquette's Termination of Professor McAdams Violate Professor McAdams' Contract and His Right to Academic Freedom

64. Professor McAdams realleges and incorporates by reference the preceding Paragraphs of the Complaint.

65. In its March 24, 2016 letter Marquette further notified Professor McAdams that his tenure at Marquette would be terminated on January 17, 2017 if he did not deliver a letter of apology to Marquette by April 4, 2016 that among other things acknowledged that his previous conduct had been reckless and inconsistent with the values of Marquette.

66. Professor McAdams did not and does not agree with the statements that Marquette insisted be contained in a letter of apology and he did not and will not prepare or sign such a letter.

67. Professor McAdams was placed in an impossible position by Marquette's March 24th letter - his tenure would be revoked and his employment at Marquette terminated, unless he issued a written statement that he does not think is true. In other words, Marquette insists that he utter a false statement or be fired.

68. Professor McAdams did not issue the letter demanded by Marquette by the April 4th deadline imposed by Marquette and he does not intend to do so in the future. As a result, he will remain suspended without pay until January 17, 2017 and then be terminated.

69. Both Marquette's attempt to coerce Professor McAdams to make statements that are not true and its termination of Professor McAdams as of January 17, 2017 violate Professor McAdams' academic freedom and constitute a breach of his contract.

70. Marquette lacks discretionary cause, as defined in the Faculty Statutes, to coerce Professor McAdams to issue statements that he does not agree with and/or to terminate his tenure and employment and, as a result, Marquette's conduct is a violation of the Faculty Statutes and a breach of contract.

71. Marquette's attempted coercion and its conduct in terminating Professor McAdams violate his rights to free speech and academic freedom and are a violation of Faculty Statute §§306.03 and 307.07(2) and are a breach of his contract.

72. Marquette's conduct has caused and will cause Professor McAdams both monetary damages and harm that is irreparable under the law and for which Professor McAdams has no adequate remedy at law.

73. Professor McAdams has suffered and will suffer substantial harm as the result of Marquette's breach of contract, including but not limited to loss of reputation and emotional distress and present and future lost income.

**Fifth Claim – Breach of Contract –
Marquette Violated Professor McAdams' Due Process Rights Under the Contract**

74. Professor McAdams realleges and incorporates by reference the previous Paragraphs of the Complaint.

75. Professor McAdams was entitled to certain due process rights enumerated in the Faculty Statutes with respect to both his suspension by Marquette and the termination of his tenure and employment at Marquette.

76. Marquette violated Professor McAdams' due process right in ways that made the entire process set forth in Chapter 307 of the Faculty Statutes unfair and ended up in Professor McAdams' suspension and termination by Marquette.

77. Professor McAdams was entitled under the Faculty Statutes and his contract to have a hearing before the Faculty Hearing Committee prior to being suspended.

78. Marquette breached its obligations to Professor McAdams by denying him that right and suspending him without a hearing.

79. In September, 2015, approximately nine months after Professor McAdams was suspended, Marquette finally held a hearing regarding Professor McAdams but Marquette did so without granting Professor McAdams his other due process rights under the Faculty Statutes.

80. For example, the Faculty Statutes and his contract provided Professor McAdams with the express right to obtain information from Marquette in order to defend himself at such a hearing.

81. The Faculty Statutes specifically required Marquette to cooperate with Professor McAdams by providing him with access to witnesses and evidence. Pursuant to §307.07(11) “The subject faculty member will be afforded an opportunity to obtain necessary witnesses and documentation or other evidence The Administration also will cooperate with the FHC in securing witnesses from the University and making available documentary or other evidence.” (emphasis added).

82. Marquette breached its duties to Professor McAdams to turn over information in its possession to Professor McAdams.

83. On February 6, 2015, Professor McAdams’ counsel requested the right to interview the individuals who Marquette stated in writing supported Marquette’s position that it could terminate Professor McAdams. Marquette did not respond for months. When counsel for Professor McAdams pressed the matter, Marquette continued to resist. Finally, almost six months later, Marquette finally allowed Professor McAdams to interview some but not all of those witnesses and not Ms. Abbate.

84. Marquette did not make the following individuals available for interview despite relying on their written and oral statements at the hearing: Ms. Abbate, Dr. Luft, Dr. Snow, Dr.

Donaldson (all of whom are current or former Marquette faculty or staff), and certain students enrolled in Ms. Abbate's class.

85. Information from these people was submitted by Marquette to the Faculty Hearing Committee at its meeting in September, 2015. Marquette had the opportunity to interview all of these individuals and to learn everything they knew about the relevant events, but Professor McAdams was not provided with the same opportunity.

86. Professor McAdams' counsel also requested the following documents, among others, from Marquette: (a) copies of all transcripts, notes, memos or other documents that refer or relate to the interviews already done by Marquette; and (b) any written evidence that Marquette had that either supported or refuted the charges against Professor McAdams, including copies of any e-mails sent to or by Ms. Abbate from her Marquette e-mail account referring in any way to Professor McAdams or the events written about by Professor McAdams in his blog post.

87. Marquette refused to turn over the requested evidence; evidence that its own witnesses admitted they have and which was relevant to the dispute.

88. Despite being asked by Professor McAdams to enforce the disclosure requirements in the Faculty Statutes, the Faculty Hearing Committee refused to do so.

89. Marquette appointed Dr. Lynn Turner to the Faculty Hearing Committee in this matter, over the objection of Professor McAdams, even though she had previously signed an open letter critical of Professor McAdams and supportive of Ms. Abbate. The letter took positions on matters that were the direct topic of the subsequent hearing before the Faculty Hearing Committee. The letter reflected that Dr. Turner had a bias in this case against Professor McAdams and in favor of Ms. Abbate. As a result, her participation on the Faculty Hearing

Committee was a violation of Faculty Statute 307.07(8), which allowed Professor McAdams to request her recusal on the ground of bias.

90. Marquette's failure to provide Professor McAdams with the due process protections to which he was entitled was a violation of the Faculty Statutes and a breach of his contract by Marquette.

91. Marquette's conduct caused Professor McAdams both monetary damages and harm that is irreparable under the law and for which Professor McAdams has no adequate remedy at law.

92. Professor McAdams has suffered and will suffer substantial harm as the result of Marquette's breach of contract, including but not limited to loss of reputation and emotional distress and present and future lost income.

Sixth Claim – Breach of the Implied Covenant of Good Faith and Fair Dealing

93. Professor McAdams realleges and incorporates by reference the previous Paragraphs in the Complaint.

94. Marquette owed Professor McAdams a duty of good faith and fair dealing under its contract with Professor McAdams.

95. Marquette breached its duty of good faith and fair dealing owed to Professor McAdams in its performance of the contract by, among other things, conducting its investigation and implementing the procedures required under the contract prior to suspension and termination in a manner designed to deny the benefits of the contract to Professor McAdams.

96. Marquette failed to conduct a neutral and unbiased investigation regarding the speech by Professor McAdams. Instead, Marquette appointed Dr. James South as its lead investigator even though Dr. South had several previous personal conflicts with Professor

McAdams and had previously made a complaint to the Marquette Provost about Professor McAdams regarding prior speech by Professor McAdams.

97. Dr. South had also been the subject of criticism by Professor McAdams in his Marquette Warrior blog. Dr. South was also a friend of Ms. Abbate and was one of the two professors that she looked to for advice when Professor McAdams asked her for a comment regarding her interaction with the undergraduate student prior to publishing the story in his blog.

98. Marquette relieved Professor McAdams of all teaching duties and all other faculty activities, including, but not limited to, advising, committee work, faculty meetings and any activity that would involve his interaction with Marquette students, faculty and staff without prior notice and without providing him with any opportunity to defend himself.

99. Marquette banned Professor McAdams from campus and prohibited him from even contacting other members of the Marquette community (including faculty). Among other things, this interfered with Professor McAdams ability to defend himself from the charges made against him.

100. Marquette released a statement implying that the ban from campus was due to safety concerns and that its decision to ban Professor McAdams was done to protect the safety of students.

101. Marquette suspended and then terminated Professor McAdams for criticizing a graduate instructor by name, even though Professor McAdams was given no notice that Marquette considered criticizing and naming a graduate student instructor, who was placed in a position of authority by Marquette, as a fireable offense.

102. Marquette failed to turn over to Professor McAdams information in its possession relevant to its decision to suspend and terminate Professor McAdams prior to the hearing held by the Faculty Hearing Committee.

103. Marquette appointed Dr. Lynn Turner to the Faculty Hearing Committee, over the objection of Professor McAdams, even though she had previously signed an open letter critical of Professor McAdams and supportive of Ms. Abbate. The letter took positions on matters that were the direct topic of the subsequent hearing before the Faculty Hearing Committee. The letter reflected that Dr. Turner had a bias in this case against Professor McAdams and in favor of Ms. Abbate.

104. Marquette's conduct with respect to its investigation of Professor McAdams and its implementation of the process required by the contract prior to suspension or termination had the effect of injuring or destroying Professor McAdams' rights to receive the benefits of the contract. Marquette made it difficult, if not impossible, for Professor McAdams to defend his rights under the contract and to protect his reputation.

105. Marquette has attempted to coerce Professor McAdams into making statements that are not true for the purpose of enhancing Marquette's reputation and harming Professor McAdams' reputation.

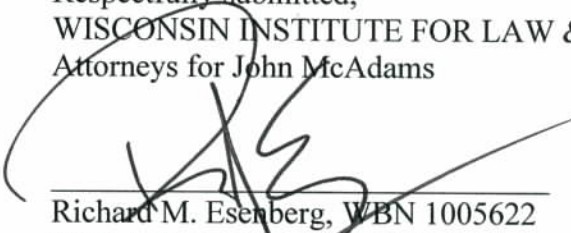
106. Marquette failed to issue a new contract to Professor McAdams in 2015 and 2016.

107. Professor McAdams has suffered and will suffer substantial harm as the result of Marquette's breaches of its duty of good faith and fair dealing, including but not limited to loss of reputation and emotional distress and present and future lost income.

WHEREFORE, Professor McAdams requests the following relief:

- A. Judgment against the Defendant Marquette University declaring that Marquette breached its contract with John McAdams;
- B. Damages as determined by the trier of fact;
- C. An injunction requiring that Marquette reinstate Professor McAdams as a tenured member of the Marquette faculty.
- D. Costs and attorneys' fees to the extent allowed by law; and
- E. Such other relief as the Court deems proper.

Respectfully submitted,
WISCONSIN INSTITUTE FOR LAW & LIBERTY
Attorneys for John McAdams



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MARQUETTE UNIVERSITY

EXHIBIT A

March 1, 2014

Dr. John C McAdams
Associate Professor
Political Science

Dear Dr. McAdams,

The Interim President, Rev. Robert A. Wild, S.J., has approved your appointment/contract for the academic year 2014-2015 (August 18, 2014 – May 17, 2015) at a gross salary for the academic year of:

\$77,860

The stated amount will be augmented by University contributions to your formal group employee benefit programs, so far as you are eligible and participate in such programs. In the event of cost increases affecting these programs in the course of the year, the University will continue to contribute to these programs at least the dollar amount of its current contribution. Employee eligibility and benefits under this contract are more particularly described in the relevant benefit plan document as may be amended from time to time. Stipends are paid in addition to salary for additional duties or responsibilities assumed and only continue through the actual period in which such additional duties or responsibilities are being performed.

This appointment/contract is subject to the University's statutes on Faculty Appointment, Promotion and Tenure. As a Marquette faculty member, you agree to comply with applicable Marquette academic and business policies, including those found in the Faculty Handbook, University Policies and Procedures (UPP) and the Marquette University Intellectual Property Policy.

Your acceptance of this appointment/contract may be indicated by endorsing both copies of this letter and returning one to me within three weeks of this date. The remaining copy is to be kept for your files. Your salary will be paid in monthly installments on the last working day of each month*. If you do not select a payment option by returning a signed copy of this letter, you will be paid under the "10 Payments" option listed below. No changes to your election or to the timing of your pay may be made after August 15 of this year, as now required by IRS rules.

This appointment and Marquette University's obligations hereunder are contingent upon the employee submitting to the University those documents necessary for certification of work eligibility under Federal law and the employee maintaining such work eligibility as a condition of continued employment.

By accepting this appointment, you acknowledge your duty to disclose material financial interests and affiliations and other potential conflicts of interest under University Policies and Procedures 1-02 at <http://www.marquette.edu/upp/documents/upp1-02.pdf>, and you represent that you have no material conflicts of interest or affiliations or other potential conflicts of interest except as disclosed.

(over)

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Dr. McAdams

The President extends his sincere appreciation for your contributions to the attainment of the goals toward which the University is striving. He wishes you success in your work next year. Please also be assured of my interest in the success of your work.

Sincerely yours,



Dr. Richard C. Holz, Dean
Klinger College of Arts and Sciences

Accepted:

Signature

Date

*Payment Options-paid on the last working day of each month

1. 10 Payments (8 monthly payments, ½ month's salary at the end of August 2014 and May 2015)
2. 13 Payments (11 monthly payments, ½ month's salary at the end of August 2014 and August 2015)

Check here if the payment option selected above is a change from the previous year.



Klingler College of Arts and Sciences
1103 W. Wisconsin Avenue
Milwaukee, WI 53201-1881
(414) 288-7059
E-mail: Richard.Holz@Marquette.edu

EXHIBIT B

December 16, 2014

Dr. John McAdams
3559 N. Murray Avenue
Shorewood, WI 53211

Dear John:

The university is continuing to review your conduct and during this period--and until further notice--you are relieved of all teaching duties and all other faculty activities, including, but not limited to, advising, committee work, faculty meetings and any activity that would involve your interaction with Marquette students, faculty and staff. Should any academic appeals arise from Fall 2014 semester, however, you are expected to fulfill your obligations in that specific matter.

Your salary and benefits will continue at their current level during this time.

You are to remain off campus during this time, and should you need to come to campus, you are to contact me in writing beforehand to explain the purpose of your visit, to obtain my consent and to make appropriate arrangements for that visit. I am enclosing with this letter Marquette's harassment policy, its guiding values statement, the University mission statement, and sections from the Faculty Handbook, which outline faculty rights and responsibilities; these documents will inform our review of your conduct.

Sincerely,

Richard C. Holz, Ph.D.
Dean

CC: Dr. Margaret Callahan
Dr. Lowell Barrington

EXHIBIT C



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
1139 E. Knapp Street, Milwaukee, WI 53202-2828
414-727-WILL
Fax 414-727-6385
www.will-law.org

Richard M. Esenberg
Michael Fischer
Brian W. McGrath
Thomas C. Kamenick
Charles J. Szafir III

Executive Director
Stacy A. Stueck

Education Research Director
Martin F. Lueken, Ph.D.

Via First Class Mail and Email

December 22, 2014

Dr. Michael Lovell
President, Marquette University
1250 W. Wisconsin Ave.
Milwaukee, WI 53233

michael.lovell@marquette.edu

Re: Dr. John McAdams

Dear President Lovell:

We are writing to you on behalf of and with our client, Dr. John McAdams. Dr. McAdams received a letter from Dean Richard Holz dated December 16, 2014, that suspends him from his duties as a member of the Marquette faculty, bars him from campus, and prohibits him from having any contact with Marquette students, faculty, or staff. The letter does not state any basis for this action, does not provide Dr. McAdams with any procedure to challenge the action, and violates Dr. McAdams' rights as a tenured faculty member at Marquette. These rights include but are not limited to his rights under Sections 306.01 and 307.03 of the Statutes of the University Academic Senate (the "Faculty Statutes"). Dr. McAdams' contract with Marquette is expressly subject to the Faculty Statutes and he is entitled to insist that they be followed.

Marquette has not followed the procedures mandated by the Faculty Statutes.

Section 306.01 of the Faculty Statutes provides that the University may suspend or terminate the appointment of a faculty member only for cause, as defined in Sections 306.02 and 306.03. Dean Holz does not set forth any "cause" in his December 16th letter. Section 307.03 provides that in all cases of suspension or termination, the University shall provide a notice to the faculty member which states what section of the Faculty Statutes the faculty member has allegedly violated, the date of the alleged violation, and a detailed description of the facts constituting the violation including the names of the witnesses against the faculty member. Sections 307.04–307.09 then provide a process for the faculty member to challenge the suspension or termination.

Dean Holz' letter does not even attempt to comply with these rules. It is a Kafkaesque document, telling Dr. McAdams that he is being investigated for some unnamed event that might violate some unidentified requirement of the university to be found somewhere in one of several documents enclosed with the letter. Dean Holz says that the university will proceed according to some unspecified procedure that, again, is possibly to be found somewhere in one of these documents. When Dr. McAdams sent Dean Holz an e-mail asking what he was being charged with, he did not receive the courtesy of a response.

While the charges and process are not disclosed, the punishment is – and it is one of the most significant that the university can impose. Not only is Dr. McAdams suspended, he is barred from campus as if he were a terrorist and subjected to some type of shunning such that he dare not engage in any “activity” that would involve interaction with anyone in the Marquette community. Such an action – particularly in conjunction with the statements made by the University described below – can effectively destroy a faculty member’s career.

A University spokesperson – but not Dean Holz – has now claimed that Dr. McAdams has not been “suspended.” Although “suspension” is not defined in the Faculty Statutes, the spokesperson claims that “suspended” means “without pay.” The Faculty Statutes say otherwise. Pursuant to Section 307.02, “in all cases of ... suspension ... a faculty member’s entitlement to salary and fringe benefits shall continue, irrespective of any suspension from duties.” Whatever distinguishes suspension from some other unspecified status, it is not the absence of pay.

The Oxford dictionary defines “suspension” as “[t]he official prohibition of someone from holding their usual post or carrying out their usual role for a particular length of time.” If a faculty member has had his classes cancelled, has been barred from teaching, has been forbidden to have contact with his colleagues, and has been banned from campus, he unquestionably has been “suspended” in the ordinary sense of that word. This is confirmed by the fact that Dean Holz’ action has been routinely described as a “suspension” in both the local and national media over the past week.

More fundamentally, if Dr. McAdams has not been “suspended,” what has happened to him? The University now says he is “under review” – a status that does not appear anywhere in the Faculty Statutes. While the University certainly ought to be able to investigate allegations against a faculty member, it would no doubt come as a surprise to tenured faculty that they may have their classes summarily cancelled and be banned from campus and from contact with their colleagues without any of the due process that the University has promised them.

Dr. McAdams has done nothing to warrant suspension.

Given the unusual nature of Dean Holz’ action, one might suspect that Dr. McAdams must stand accused of something truly awful – something so bad that he must be immediately and completely removed from the university community lest some harm befall someone. Yet it appears from the public statement issued by the University on December 17, 2014 that the letter relates to Dr. McAdams’ November 9, 2014 blog post about an exchange between an instructor in the Department of Philosophy and a student. During this exchange, the instructor told a student that opposition to gay marriage would not be tolerated in her class since such a view would be “homophobic” and would “offend” any gay students in the class. Dr. McAdams reported on this exchange and expressed the view that such a stance is inconsistent with academic freedom and the Catholic mission of Marquette. He argued that it has, unfortunately, become common for certain views to be dismissed out of hand as “offensive,” rather than argued on the merits. He believed that the exchange in question was an example of this.

We understand that the instructor and her supporters now claim that she did not say or, at least, did not mean to say, that a student could not argue against same sex marriage. However, the conversation was recorded. Dr. McAdams’ description of what was said is accurate. Not only is it a reasonable interpretation of the instructor’s comments, it would appear to be the only reasonable interpretation. The student repeatedly asked whether one could oppose same sex marriage in class and the instructor responded that such a view would be “experienced” as offensive or “come off” as homophobic and that “offensive” or “homophobic” comments would not be tolerated.

Dr. McAdams’ post does not violate any Faculty Statute or other university requirement. Nothing in the statutes or any other university policy prohibits a faculty member from publicly

disagreeing with a graduate student, much less someone who has been given sole responsibility for a course and authority over every student enrolled in it. Having accepted that authority and responsibility, the instructor in question chose to express her view on what can and cannot be permitted in academic discourse. In fact she relied on her authority as a “professor of ethics” in order to do so. That was her right. But Dr. McAdams is free to offer his differing view. Punishing him for doing so would violate Section 306.03 of the Faculty Statutes, which prohibits suspension or termination for reasons that would impair the full and free enjoyment of legitimate personal or academic freedoms of thought, doctrine, discourse, association, advocacy, or action. Indeed, a recent statement by University spokesperson Brian Dorrington confirms that “a professor cannot be relieved of teaching duties for voicing an opinion about whether a potentially controversial offensive subject should be allowed by a TA to be discussed in class” and that “[a] professor also cannot be relieved of teaching duties for having a viewpoint contrary to the university’s position on a moral issue”

If Dr. McAdams’ reporting of a fact about a Marquette instructor’s conduct and offering his opinion on that fact are grounds for punishment, then academic discourse would dissolve in the face of a war of all against all. No one could say anything critical of anyone else. One would, for example, expect the University to similarly punish every faculty member who has reported what Dr. McAdams wrote and then offered criticism. One would expect the suspension and banning from campus of a faculty member who confronted Dr. McAdams in public, expressing her disapproval of his view and claiming that the student was “lying.” If offering criticism via a blog post is “harassing,” surely such direct confrontational behavior must be harassing to an even greater degree. The instructor in question, who certainly seemed to be telling her student that his point of view was “homophobic” and “offensive,” would also be subject to discipline.

Ironically, on this narrow view of what can and cannot be said, the statement released by the University on December 17 might itself constitute a “harassing” or “disrespectful” statement. The statement connects the investigation of Dr. McAdams to Dr. Lovell’s statement that the University “deplores[s] hatred and abuse directed at a member of our community in any format.” Dr. McAdams’ differing view on the scope of academic freedom can hardly be called an expression of hate or abuse. To say otherwise could certainly be characterized as an attack on a member of the university community. Indeed, the University’s suggestion that Dr. McAdams has engaged in some expression of “hate or abuse” is false and defamatory, and has aggravated the injury to him.

It is our surmise – although we cannot know because Dean Holz won’t say – that Dr. McAdams’ post is somehow thought to be “harassing” or “disrespectful.” We cannot imagine how anyone could think so. To be sure, Dr. McAdams strongly disapproved of the view that this instructor expressed. But he did not use abusive language or criticize her on some extraneous basis. A guarantee of academic freedom that is subject to a post hoc parsing by the authorities to determine if perhaps whatever has been said could be better said – with suspension or the type of ostracization effected by Dean Holz’ action as the penalty for getting it wrong – is no guarantee at all.

Dr. McAdams’ Objections

This letter constitutes Dr. McAdams’ objection under Section 307.04 to his suspension and his objection to the remainder of Dean Holz’ letter barring him from campus and barring him from contact with Marquette faculty, students and staff.

Dr. Lovell, we have addressed the letter to you based on our understanding of Section 302.01 of the Faculty Statutes that you are the ultimate “appointing authority” at Marquette University. We are concerned that the University will contend that Dean Holz’ December 16th letter was “notice” under Section 307.03, even though the letter does not comply with the requirements of such notice. Pursuant to Section 307.04, Dr. McAdams would then have 10 days to file an objection with the “appointing authority.” That appears to be you. We have also had Dr.

McAdams co-sign the letter so that the University cannot later contend that the objection was not filed by the faculty member.

Our understanding of Section 307.04 of the Faculty Statutes is that this letter should be addressed to you as the "appointing authority" and, therefore, that communication directly with the President of the University is both authorized by law and required. We have also copied Dean Holz on this letter because he is the member of the administration who has taken the action that lead to this letter. Going forward, we understand that Marquette University may choose to be represented by its Office of General Counsel and, recognizing this possibility, we have copied Attorney Bauer on this letter. If the University's position is that it will be represented by its General Counsel and that all future communications from us should go to Attorney Bauer (or some other lawyer of its choosing), simply notify us of that fact and we will comply. We will assume in that instance that our sending communications to counsel satisfies all procedural requirements under University rules, policies, procedures, statutes, etc.

In addition to constituting an objection under Section 307.04, please consider this letter a demand that the actions taken by Dean Holz be immediately rescinded and that Dr. McAdams be restored to his duties and privileges as a tenured member of the faculty.

Very truly yours.



Richard Esenberg
President and General Counsel



Dr. John McAdams
Associate Professor of Political Science. Ph.D.,

cc: Attorney Cynthia Bauer
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Dean Richard Holz
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