

RECEIVED

MAR 21 2018

CLERK OF SUPREME COURT  
OF WISCONSIN

STATE SUPREME COURT  
STATE OF WISCONSIN

---

JOHN McADAMS,

Plaintiff-Appellant,

Appeal No. 2017AP001240

vs.

MARQUETTE UNIVERSITY,

Defendant-Respondent.

---

Appeal from a Final Judgment of the Circuit Court for  
Milwaukee County, The Honorable David A. Hansher, Presiding.  
Circuit Court Case No. 2016CV003396

---

**NATIONAL ASSOCIATION OF MANUFACTURERS' MOTION  
TO ENLARGE TIME AND FOR LEAVE TO FILE THE  
ACCOMPANYING AMICUS CURIAE BRIEF**

---

The National Association of Manufacturers, by its attorneys, Godfrey & Kahn, S.C., moves this Court for permission to file the accompanying non-party brief pursuant to Wis. Stat. § 809.19(7). In support of its motion, the National Association of Manufacturers states as follows:

1. The National Association of Manufacturers is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.25 trillion to the United States economy annually, has the largest economic impact of any major sector, and accounts for more than three-quarters of all private-sector research and

development in the nation. The National Association of Manufacturers is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

2. The National Association of Manufacturers wishes to file a brief that adopts the arguments made by the Metropolitan Milwaukee Association of Commerce (“MMAC”) in its March 5, 2018 *amicus curiae* brief in this appeal. The concerns identified and positions taken by the MMAC are not unique to Wisconsin and its business community. Because a decision in this appeal will be persuasive authority for courts around the country, the National Association of Manufacturers requests leave to state its support for the position of Marquette University and to endorse the MMAC’s brief exploring both the similarities and differences between an institution of higher learning such as Marquette University and commercial employers such as most of the National Association of Manufacturers’ members.

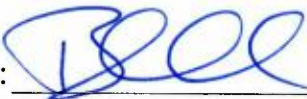
3. The National Association of Manufacturers, like MMAC, believes that any rule announced by the Court in this case should take into consideration (among other things) the goals and purposes of the organization employing the individual who claims his speech was infringed, by whom those goals and purposes of the organization are properly defined, the degree to which extramural speech that affects those purposes may be regulated, and the reasonable expectations of the owners, managers, and employees of the organization.

4. Given that the Wisconsin Rules of Appellate Procedure do not appear to specify timing rules for non-party briefs in cases before this Court on bypass and in which the parties have not submitted new briefs, the National Association of Manufacturers requests that the Court enlarge the time for the filing of this motion and that the Court accept the accompanying *amicus curiae* brief.

WHEREFORE, the National Association of Manufacturers requests that the Court grant this motion to extend the time in which to move for leave to file an *amicus curiae* brief and grant the National Association of Manufacturers leave to file the accompanying *amicus curiae* brief in support of the position of Marquette University.

Dated this 21st day of March, 2018.

GODFREY & KAHN, S.C.

By:   
Michael B. Apfeld  
State Bar No. 1016749  
Bryan J. Cahill  
State Bar No. 1055439

*Attorneys for Non-Party National Association of  
Manufacturers*

P.O. ADDRESS:  
833 East Michigan Street, Suite 1800  
Milwaukee, WI 53202-5615  
Phone: 414-273-3500  
Fax: 414-273-5198  
mbapfeld@gklaw.com  
bcahill@gklaw.com

## CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2018, the National Association of  
Manufacturers' Motion To Enlarge Time And For Leave To File The  
Accompanying Non-Party Brief was sent via U.S. Mail to:

Richard M. Esenberg  
Brian W. McGrath  
Thomas C. Kamenick  
Wisconsin Institute for Law & Liberty  
Bloodgood House  
1139 East Knapp Street  
Milwaukee, WI 53202-2828

Ralph A. Weber  
Gass Weber Mullins LLC  
241 North Broadway, Suite 300  
Milwaukee, WI 53202

Michael D. Dean  
Michael D. Dean LLC  
350 Bishops Way, Suite 201  
P.O. Box 2545  
Brookfield WI 53008-2545

Erin E. Mersino  
Great Lakes Justice Center  
5600 W. Mount Hope Hwy.  
Lansing, MI 48917-7510

Daniel M. Adams  
Adams Law Group LLC  
1200 E. Capitol Dr., Suite 360  
Milwaukee, WI 53211

Ryan J. Walsh  
Wisconsin Department of  
Justice  
17 W. Main Street  
P.O. Box 7857  
Madison WI 53707-7857

Thomas L. Shriner, Jr.  
Aaron R. Wegrzyn  
Foley & Lardner LLP  
777 E. Wisconsin Ave.  
Milwaukee, WI 53202-5306

Bernardo Cueto  
WISLawyer LLC  
700 N. 3rd St., Suite LL5  
La Crosse, WI 54601-9304

Frederick Perillo  
The Previant Law Firm, S.C.  
310 W. Wisconsin Ave.  
Suite 100MW  
Milwaukee, WI 53203-2213

Andrew M. Bath  
Thomas More Society  
19 South LaSalle Street  
Suite 603  
Chicago, IL 60603

James R. Troupis  
Troupis Law Office  
4126 Timber Lane  
Cross Plains, WI 53528-9786

Kenneth Chesebro  
1600 Massachusetts Ave.  
No. 801  
Cambridge, MA 02138

Andrew A. Hitt  
Michelle L. Dama  
Michael Best & Friedrich LLP  
One S. Pinckney St., Suite 700  
Madison, WI 53703

Dated this 21st day of March 2018.



---

Bryan J. Cahill

18658422.1

STATE SUPREME COURT  
STATE OF WISCONSIN

Appeal No. 2017AP001240

---

JOHN McADAMS,

Plaintiff-Appellant,

v.

MARQUETTE UNIVERSITY,

Defendant-Respondent.

---

**RECEIVED**

MAR 21 2018

CLERK OF SUPREME COURT  
OF WISCONSIN

---

Appeal from a Final Judgment of the Circuit Court of Milwaukee  
County, the Honorable David A. Hansher Presiding,  
Circuit Court Case No. 2016CV003396

---

**BRIEF OF AMICUS CURIAE  
NATIONAL ASSOCIATION OF MANUFACTURERS**

---

Michael B. Apfeld  
State Bar No. 1016749  
Bryan J. Cahill  
Bar No. 1055439

*Attorneys for Non-Party  
National Association of  
Manufacturers*

GODFREY & KAHN, S.C.  
833 East Michigan Street  
Suite 1800  
Milwaukee, WI 53202-5615  
Phone: 414-273-3500  
Fax: 414-273-5198

## TABLE OF CONTENTS

	<u>Page</u>
INTEREST OF AMICUS CURIAE .....	1
INTRODUCTION .....	1
CONCLUSION.....	3
RULE 809.19(8)(D) FORM AND LENGTH CERTIFICATION .....	4
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12).....	6

## **INTEREST OF AMICUS CURIAE**

The National Association of Manufacturers is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.25 trillion to the United States economy annually, has the largest economic impact of any major sector, and accounts for more than three-quarters of all private-sector research and development in the nation. The National Association of Manufacturers is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

## **INTRODUCTION**

The National Association of Manufacturers files this brief to support the position of Marquette University and to



adopt the arguments made by the Metropolitan Milwaukee Association of Commerce (“MMAC”) in its March 5, 2018 *amicus curiae* brief in this appeal.


The MMAC’s brief identifies the interests of private and, in particular, commercial employers in responding to employees’ extramural speech. Private employers should remain free to discipline an employee for conduct or speech that disrupts or adversely affects the particular purpose of the enterprise. And where an employment contract establishes a process to resolve disciplinary disputes, judicial review should be limited to whether the procedures promised were substantially followed. These interests and positions taken by the MMAC are not unique to Wisconsin and its business community—they are shared by the members of the National Association of Manufacturers. Accordingly, the National Association of Manufacturers joins the MMAC’s arguments and incorporates them by reference.

## CONCLUSION

For all the reasons stated in the Metropolitan Milwaukee Association of Commerce's *amicus curiae* brief, this Court should make clear that where, as here, a private employment contract provides a reasonable process for resolving disputes about an employee's rights and responsibilities, a court's review should be limited to whether the process was substantially fulfilled consistent with the contract. Deeper review or the creation of any extraordinary speech right that supersedes the provisions of the private employer-employee contract would interfere with the employer's right to define its mission, sets its priorities, and assess the impact of the alleged infraction on the overall health of the enterprise.

Dated this 21st day of March, 2018.

GODFREY & KAHN, S.C.

By:   
Michael B. Apfeld  
State Bar No. 1016749  
Bryan J. Cahill  
State Bar No. 1055439

*Attorneys for Non-Party National  
Association of Manufacturers*

P.O. ADDRESS:  
833 East Michigan Street  
Suite 1800  
Milwaukee, WI 53202-5615  
Phone: 414-273-3500  
Fax: 414-273-5198  
mbapfeld@gklaw.com  
bcahill@gklaw.com

**RULE 809.19(8)(D) FORM AND LENGTH  
CERTIFICATION**

I hereby certify that this brief conforms to the rule contained in Wis. Stat. § 809.19(8)(b) for a brief produced with a proportional serif font. The length of those portions of

this brief referred to in s. 809.19(1)(d), (e), and (f) is 364 words.

Dated: March 21, 2018.

A handwritten signature in blue ink, appearing to be 'Bryan J. Cahill', written over a horizontal line.

Bryan J. Cahill

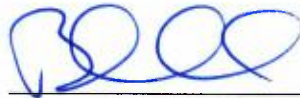
**CERTIFICATION OF COMPLIANCE  
WITH RULE 809.19(12)**

I hereby certify that I have submitted an electronic copy of this brief, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the Court and served on all parties.

Dated: March 21, 2018.



---

Bryan J. Cahill