

RECEIVED

03-22-2018

**CLERK OF SUPREME COURT
OF WISCONSIN**

STATE SUPREME COURT
STATE OF WISCONSIN

Appeal No. 2017AP001240

JOHN McADAMS,

Plaintiff-Appellant,

v.

MARQUETTE UNIVERSITY,

Defendant-Respondent.

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.



Bryan J. Cahill

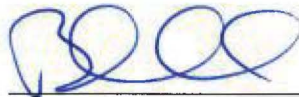
**CERTIFICATION OF COMPLIANCE
WITH RULE 809.19(12)**

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