ORAL ARGUMENT SCHEDULED FOR DECEMBER 11, 2018

Consolidated Case Nos. 18-1063 & 18-1078

IN THE

United States Court of Appeals for the District of Columbia Circuit

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT,

Petitioner/Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent/Cross-Petitioner,

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC,

Intervenor for Respondent.

On Petition for Review of a Decision and Order of the National Labor Relations Board and Cross-Application for Enforcement

JOINT APPENDIX—VOLUME I OF IV (JA1 to JA507)

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United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

April 16, 2018

Mark Langer
Clerk of the Court
United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, NW, Rm. 5423
Washington, DC 20001-2866

Re: *Duquesne University of the Holy Spirit v. NLRB*
D.C. Cir. Nos. 18-1063, 18-1078
Board Case No. 06-CA-197492

Dear Mr. Langer:

I am filing electronically a copy of the certified list of the contents of the agency record in this case.

Very truly yours,

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
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Washington, DC 20570
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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT	)	
	)	
Petitioner/Cross-Respondent	)	Nos. 18-1063,18-1078
	)	
v.	)	Board Case No.
	)	06-CA-197492
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent/Cross-Petitioner	)	

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list set forth in the attached Index, consisting of three volumes, fully describes all documents, transcripts of testimony, exhibits, and other material constituting the record before the Board in *Duquesne University of the Holy Spirit*, Board Case No. 06-CA-197492, which took official notice of the record in Board Case No. 06-RC-080933.

Gary W. Shinners
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

April 16, 2018

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT	)	
	)	
Petitioner/Cross-Respondent	)	Nos. 18-1063,18-1078
	)	
v.	)	Board Case No.
	)	06-CA-197492
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent/Cross-Petitioner	)	

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2018, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 16th day of April 2018

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Duquesne University of the Holy Spirit *and* United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO, CLC
Case 06–CA–197492

February 28, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on April 24, 2017 by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO, CLC (the Union), on May 8, 2017, the General Counsel issued the complaint alleging that Duquesne University of the Holy Spirit (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 06–RC–080933. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On May 26, 2017, the General Counsel filed a Motion for Summary Judgment. On May 31, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Regional Director for Region 6's certification of the Union on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the Board lacks jurisdiction over the Respondent, a Catholic university, pursuant to *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), and that the Board's test for asserting its jurisdiction, as set forth in *Pacific Lutheran University*, 361 NLRB 1404 (2014), constitutes an unconstitutional intrusion into the Respondent's religious liberty.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue that is properly litigable in this unfair labor practice proceeding. *See Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

Findings of Fact

I. JURISDICTION

At all material times, the Respondent has been a Pennsylvania corporation engaged in the operation of a private, nonprofit university of higher education.[2]

During the 12-month period ending March 31, 2017, in conducting its operations described above, the Respondent derived gross revenues in excess of $1 million, and purchased and received at the Respondent's facility, products, goods, and materials valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7), and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held by mail ballot between June 22, 2012 and July 9, 2012, in which a majority of the employees voted for the Union, the Regional Director for Region 6 certified the Union[3] on

[1] Chairman Kaplan and Member Emanuel did not participate in the underlying representation proceeding. They express no opinion on the merits of the Board's decision in that proceeding or on whether *Pacific Lutheran University*, 361 NLRB 1404 (2014), was correctly decided. Nonetheless, they agree that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

[2] In its amended answer, the Respondent denies the complaint allegation that it has been, at all material times, "a Pennsylvania corporation with its sole facility in Pittsburgh, Pennsylvania [and] has been operating a private nonprofit university of higher education." However, in its amended answer, it admits that "it is organized as a Pennsylvania Membership Corporation, maintains its sole facility in Pittsburgh, Pennsylvania, and operates a private, Catholic nonprofit university of higher education."

[3] By unpublished Order dated April 10, 2017, the Board issued an Order excluding part-time adjunct faculty in the department of theology

April 19, 2017, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated April 19, 2017, the Union requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit employees. Since about April 21, 2017, the Respondent has failed and refused to do so.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing, since April 21, 2017, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785, 787 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Duquesne University of the Holy Spirit, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO, CLC (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such

from the unit found appropriate and denied the Respondent's request for review in all other aspects. *Duquesne University of the Holy Spirit*, 06–RC–080933, 2017 WL 1330294.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 21, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 6 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February, 28, 2018

Marvin E. Kaplan, Chairman

Mark Gaston Pearce, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO, CLC (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

> All part-time adjunct faculty employed by us in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT

The Board's decision can be found at https://www.nlrb.gov/case/06–CA–197492 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

6/18/12

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT

Employer

and

Case 06-RC-080933

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

ORDER DENYING MOTION TO WITHDRAW FROM STIPULATED ELECTION AGREEMENT AND REQUEST FOR EXPEDITED REVIEW

On May 14, 2012, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC filed the petition in the above-captioned case. On May 25, 2012, the Regional Director approved a Stipulated Election Agreement executed by the Employer and the Petitioner for the following bargaining unit:

> All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

The election is currently scheduled for a mail ballot with voting commencing on June 22, 2012 and ending on July 9, 2012.

On June 14, 2012 the Employer filed a Motion to Withdraw from Stipulated Election Agreement and Request for Expedited Review. The Employer's basis for its Motion is its contention that the Employer is a "church operated school" as defined by the Supreme Court in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) and its progeny.

The Employer acknowledges the well-established rule that "once an election agreement has been approved, a party may withdraw therefrom only upon an affirmative showing of unusual circumstances or by agreement of the parties." The Petitioner opposes the requested withdrawal. The Employer contends its claim that the Board cannot assert jurisdiction over it is itself an unusual circumstance which should permit it to withdraw from the election agreement.

Subsequent to the *Catholic Bishop of Chicago* ruling the Board asserted jurisdiction over this same Employer. *Duquesne University of the Holy Ghost*, 261 NLRB 587 (1982). Since that time the Employer has stipulated to the Board's jurisdiction in three representation cases before the Region, including the instant case. The Motion does not establish there are any relevant changed circumstances.

Having considered the matter:

The Employer's Motion to Withdraw from the Stipulated Election Agreement and Request for Expedited Review in the above-entitled case is hereby denied.

Signed at Pittsburgh, Pennsylvania, this 18th day of June 2012.

/s/Mark Wirick

Mark Wirick, Acting Regional Director
Region Six
NATIONAL LABOR RELATIONS BOARD
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, Pennsylvania 15222-4111

UNITED STATES GOVERNMENT
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FAX NO.: (412)395-5986

FAX TRANSMISSION COVER SHEET

DATE: June 18, 2012

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FROM: Mark Wirick, Acting RD
Telephone: (412)395-6846

NUMBER OF PAGES INCLUDING THIS PAGE: 3

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RE: **DUQUESNE UNIVERSITY OF THE HOLY SPIRIT**
Case 06-RC-080933

Attached is ORDER DISMISSING MOTION TO WITHDRAW FROM STIPULATED ELECTION AGREEMENT AND REQUEST FOR EXPEDITED REVIEW

CONFIDENTIALITY NOTICE: OFFICIAL GOVERNMENT BUSINESS
This communication is intended for the sole use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication may be strictly prohibited. If you have received this communication in error, please notify me immediately by telephone, and return communication to me at the address above via united states postal service. Thank you.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT
Employer

and Case 06-RC-080933

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC
Petitioner

ORDER

The Employer's request to file a Special Appeal of the Acting Regional Director's Order Denying Motion to Withdraw from Stipulated Election Agreement and Request for Expedited Review is denied without prejudice.

The Special Appeal raises issues concerning statutory jurisdiction, which may not be necessary to decide. The election in this case has been conducted and the ballots impounded. If the Petitioner did not receive a majority of the votes cast, it may not be necessary to address the Employer's contention that it is not subject to the Board's jurisdiction. Conversely, if the Union did receive a majority of the votes cast, the Employer may renew its jurisdictional contention before the Board.

Accordingly, the proceeding is remanded to the Regional Director to open and count the ballots, to serve on the parties a tally of ballots, and to take further appropriate action.

MARK GASTON PEARCE, CHAIRMAN

SHARON BLOCK, MEMBER

MEMBER HAYES, dissenting:

I do not favor releasing parties from their election agreements, but in this case I see no choice. The Board's jurisdiction has been challenged. We must settle that issue to determine whether we can do anything else. If we lack jurisdiction, then we have no power to order the Regional Director to do the things my colleagues order to be done. Accordingly, I dissent.

BRIAN E. HAYES, MEMBER

Dated, Washington, D.C., September 14, 2012

FORM NLRB-760
(7-10)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Date Filed
May 14, 2012

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT

Employer

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

Case No 06-RC-080933

Date Issued 09/20/2012

City Pittsburgh State PA

Type of Election:
(Check one:)

- [x] Stipulation
- [ ] Board Direction
- [ ] Consent Agreement
- [ ] RD Direction
  Incumbent Union (Code)

(If applicable check either or both:)

- [ ] 8(b) (7)
- [x] Mail Ballot

ORIGINAL

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows

1 Approximate number of eligible voters 88

2. Number of Void ballots 0

3 Number of Votes cast for PETITIONER 50

4 [redacted]

5 [redacted]

6 Number of Votes cast against participating labor organization(X) 9

7 Number of Valid votes counted (sum 3, 4, 5, and 6) 59

8 Number of challenged ballots 0

9 Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 59

10 Challenges are (not) sufficient in number to affect the results of the election

11 A majority of the valid votes counted plus challenged ballots (Item 9) has ([redacted]) been cast for PETITIONER

For the Regional Director [signature]

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above We also acknowledge service of this tally

For EMPLOYER
No representative present

For PETITIONER
[illegible] Senior Associate General Counsel!

For Maria Fonna organizer

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT
Employer

and Case 06-RC-080933

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC
Petitioner

ORDER

On September 14, 2012, the Board issued an Order remanding this proceeding to the Region to count the ballots. The tally showed that the Union prevailed in the election. Thereafter, the University filed a "Motion for Board to Order an Evidentiary Hearing, Vacate Election, and Dismiss Petition."

On December 16, 2014, the Board issued its decision in *Pacific Lutheran University*, 361 NLRB No. 157, which specifically addressed, among other things, the standard the Board will apply for determining, in accordance with *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), when we should decline to exercise jurisdiction over faculty members at self-identified religious colleges and universities.[1] Accordingly, we remand this proceeding to the Regional Director for further appropriate action consistent with *Pacific Lutheran University*.[2]

MARK GASTON PEARCE,	CHAIRMAN
PHILIP A. MISCIMARRA,	MEMBER
KENT Y. HIROZAWA,	MEMBER
HARRY I. JOHNSON, III,	MEMBER
LAUREN McFERRAN,	MEMBER

Dated, Washington, D.C., February 12, 2015

[1] The Petitioner seeks to represent a unit of adjunct faculty at the University. The University has not raised an issue concerning the employee status of that faculty.
[2] Members Miscimarra and Johnson adhere to their dissenting views in *Pacific Lutheran University*. Nevertheless, they agree with their colleagues that a remand is appropriate.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SIX

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT, Employer, and UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC, Petitioner.	Case No. 06-RC-080933

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT'S POST-HEARING BRIEF TO THE REGIONAL DIRECTOR

Pursuant to Section 102.67(a) of the National Labor Relations Board Rules and Regulations and the Order of the Regional Director dated May 4, 2015, Duquesne University of the Holy Spirit ("Duquesne" or the "University"), by its attorneys, Hogan Lovells US LLP and Glankler Brown, PLC, hereby submits its post-hearing brief in the above-captioned proceeding.

INTRODUCTION

Duquesne University of the Holy Spirit is a Catholic, Spiritan university, founded and still ultimately controlled by priests and brothers of the Congregation of the Holy Spirit ("Spiritans"). Duquesne is deeply committed to the Catholic Church's teachings on labor and to providing its workers fair wages and just treatment. That is not what this case is about. This case is about whether the National Labor Relations Board ("Board" or "NLRB") may assert jurisdiction and thereby insert itself between the Congregation of the Holy Spirit—which retains exclusive ultimate authority over Duquesne's Catholic, Spiritan mission and philosophy—and a

group of faculty crucial to achieving that mission. In *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), the United States Supreme Court ruled that the National Labor Relations Act does not cover teachers at church-operated schools. Applying *Catholic Bishop*, the NLRB has no jurisdiction over Duquesne.

In *Pacific Lutheran University*, 361 NLRB No. 157 (Dec. 16, 2014) ("*PLU*"), a Board majority announced a new two-prong test for determining whether *Catholic Bishop* applies. Under that test, the Board has no jurisdiction when an institution (1) holds itself out as providing a religious educational environment; and (2) holds out petitioned-for unit employees as performing a specific role in creating or maintaining that environment. The new test perpetuates the unconstitutional entanglement of its "substantial religious character" predecessor by licensing the Board to determine (or assume) what is or is not a "religious function," and then to judge whether the institution sufficiently holds out its faculty members as performing that function. Duquesne asks the Board to avoid entangling itself in the University's religious beliefs by assessing jurisdiction under the Constitutional test articulated by the United States Court of Appeals for the District of Columbia Circuit in *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002) and reaffirmed in *Carroll College, Inc. v. NLRB*, 558 F.3d 568 (D.C. Cir. 2009).

However, even applying *PLU*, the Board has no jurisdiction here. On Prong One, Duquesne holds itself out as providing a religious educational environment, as even a brief visit to Duquesne's website or campus would demonstrate. Duquesne's Catholic, Spiritan mission is manifest. On Prong Two, Duquesne holds out that its faculty[1] "serve God by serving students" and are indispensable if Duquesne is to achieve its Catholic, Spiritan mission. Moreover, Duquesne holds out that its Catholic, Spiritan mission affects the terms and conditions of faculty

[1] A reference to "faculty" in this brief includes all adjunct faculty unless otherwise specified.

employment: it factors in hiring decisions; faculty deliver curricula designed to further the mission in a religious environment, which includes a crucifix in every classroom; academic freedom is subject to the mission; and the University may terminate or decline to rehire faculty for trampling it. To assert jurisdiction here would result in the very entanglement the *Catholic Bishop* decision exists to avoid.

PROCEDURAL HISTORY

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("Union" or "Steelworkers") filed a petition on May 14, 2012 seeking to represent a unit of all part-time adjunct faculty employed in Duquesne's McAnulty College and Graduate School of Liberal Arts ("McAnulty College") located in Pittsburgh, Pennsylvania. The bargaining unit therefore would include professors who teach a wide range of liberal arts subjects, including theology, Catholic theology, philosophy, ethics, science, history and literature, just to name a few. *See* Er. Ex. 65 at 2010-11 Catalog, 60.[2] On June 14, 2012, Duquesne moved to withdraw from a stipulated election agreement because it is not subject to the Board's jurisdiction under *Catholic Bishop*. The Region denied the motion, and Duquesne appealed to the Board.

On appeal, the parties thoroughly briefed whether Duquesne had waived its challenge to jurisdiction by entering into the stipulated election agreement. *E.g.*, Tr. 161. On December 16, 2014, the Board decided *PLU*. By order dated February 12, 2015, the Board remanded this case to the Region for proceedings consistent with *PLU*. The Region held a hearing on April 27–29, 2015. The hearing focused exclusively on whether the NLRB has jurisdiction over Duquesne under *Catholic Bishop* and *PLU*. *See* Tr. 9, 162, 166–67 (the Hearing Officer stated that "[t]he

[2] Citations to Employer Exhibits are abbreviated "Er. Ex."

university is permitted to raise jurisdiction at any time," "[t]he case law says that, that is Board law at this point . . . .").

RELEVANT FACTS

I. Duquesne is a Catholic University, Ultimately Controlled by the Congregation of the Holy Spirit.

Spiritans founded Duquesne in 1878 to serve poor, often Catholic, Irish and German immigrants. *See* Tr. 22. Duquesne's legal name is "Duquesne University of the Holy Spirit" and its motto is "It is the Spirit Who Gives Life." Tr. 22–23. The Holy Spirit is one component of the Catholic conception of God—the Trinity—and the University's motto is taken from the Nicene Creed in which Catholics affirm the Holy Spirit as "Lord, the giver of life." Tr. 23. Today, Duquesne remains a Catholic, Spiritan university. It is organized as a nonprofit Pennsylvania membership corporation, Tr. 23, 29; Er. Ex. 2 (Articles of Incorporation); Er. Ex. 3 (Bylaws).[3] And it is accredited by the Middle States Commission on Higher Education ("MSCHE"). Tr. 337.

As a membership corporation, Duquesne's corporate Members retain exclusive, reserved powers as set forth in Duquesne's Articles of Incorporation and Bylaws (both available on the University's website). Tr. 29, 32, 35; *see* Er. Ex. 2; Er. Ex. 3. Only vowed Spiritan priests and brothers in good standing can serve as Duquesne's Members. Tr. 32; Er. Ex. 2, art. VII; Er. Ex. 3 art. III. A Provincial Superior governs the Spiritans in the United States and appoints the Spiritans who serve as Members of the corporation. Tr. 357–58; Er. Ex. 2, art. VII.

[3] The Parties also stipulated that Duquesne is a nonprofit corporation. Tr. 8. *Accord* Er. Ex. 2, art. II ("The University is organized, and shall be operated, exclusively for religious, charitable, scientific, literary and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or the corresponding provision of any future United States Internal Revenue Law."); Tr. 201.

The Members have eleven "fundamental," reserved powers. *See* Tr. at 32; Er. Ex. 2, arts. VIII, IX; Er. Ex. 3, art. 4. The Members' "full and exclusive reserved powers" include the power to elect or remove any member of the Board of Directors; to amend, alter, modify or repeal the Articles of Incorporation or the Bylaws; and to dissolve the University. *See id.* The Members also have exclusive authority to "determine or change the mission, the philosophy, objectives or purpose of the University" and to "issue to the Board, from time to time, a statement of policy concerning the philosophy and mission of the University." *Id.* In sum, the Members—all vowed Spiritan priests and brothers—retain ultimate control over the University, including exclusive control over the Catholic, Spiritan mission, philosophy, and objectives of the University. *See id.*

Duquesne is a Catholic university, officially recognized by the local Bishop and listed in the *Official Catholic Directory*. Tr. at 42–44; Er. Ex. 4 (Official Catholic Directory Excerpt). The Catholic Church is a hierarchical church. *See* Tr. at 45. As a Catholic university, Duquesne is dependent on the local Bishop for recognition. Tr. 42. The Bishop or the Bishop's designee has an *ex officio* seat on Duquesne's Board of Trustees and Duquesne cultivates its relationship with the Bishop. Tr. 41–42; Er. Ex. 3, art. VI, § 6.2. As President Charles Dougherty testified, Duquesne's "teaching, research and student life function are consistent with the teachings of the Catholic church." Tr. 42.

Duquesne is also subject to the guidelines the Church has handed down for universities: *Ex Corde Ecclesiae* ("*Ex Corde*") given by Saint Pope John Paul II in 1990, and the Application of *Ex Corde Ecclesiae* for the United States ("USCBB Application"), promulgated by the U.S. Conference of Catholic Bishops in 2000. *See* Tr. at 45–50; Er. Ex. 5 (*Ex Corde*); Er. Ex. 6 (USCCB Application); Er. Exs. 7, 7(a) (letter to Bishop David Zubik of the Diocese of

Pittsburgh enclosing report regarding compliance with USCCB Application); Er. Ex. 8 (letter regarding compliance with Mandatum requirement for theology faculty); Er. Ex. 32 at 8 (brochure titled "Duquesne University: A Catholic University in the Spiritan Tradition" and containing the text of Duquesne's Board of Directors' handbook, Tr. 222, which states: "Duquesne University also affirms its complete adherence to the teachings of *Ex Corde Ecclesiae* . . . ."). Duquesne links to *Ex Corde* on its website. Tr. 69–70. Translated, *Ex Corde Ecclesiae* means "From the Heart of the Church," which points to Catholic universities' "particularly close relationship to the church." Tr. 47.

Ex Corde and the USCCB Application proclaim that Catholic universities contribute to the work of the Catholic Church by uniting two orders of reality that "too frequently tend to be placed in opposition as though they were antithetical"—faith and reason. See Er. Ex. 5, Introduction. Rather, because God is the ground of all existence, there can be no real inconsistency between faith and reason. *See id.* Introduction, § 4; *accord* Tr. 48. Therefore, it is the "responsibility of a Catholic University to consecrate itself without reserve to the cause of truth. This is its way of serving at one and the same time both the dignity of man and the good of the Church, which has 'an intimate conviction that truth is (its) real ally . . . and that knowledge and reason are sure ministers to faith'(7)." Er. Ex. 5, Introduction § 4. "[E]ach Catholic University makes an important contribution to the Church's work of evangelization," and "all the . . . academic activities of a Catholic University are connected with and in harmony with the evangelizing mission of the church . . . ." *Id.* §§ 4, 49.

Thus, the Catholic Church teaches and Duquesne holds out that the work of the University—including academic work in secular disciplines—is the work of the Church and contributes to the Church's mission of evangelization. *See id.*; *see also id.* §§ 7, 10; *id.* Part I,

§§ 14–15. Consistent with the Church's view that faith and reason are "'sure ministers to faith'" and that all individuals are children of God entitled to freedom of conscience, *Ex Corde* and the USCCB Application require academic freedom and responsibility, encourage ecumenism, and discourage proselytizing. *E.g.*, Tr. 56, 59–60, 67; Er. Ex. 5, Part I, §§ 22, 29; Er. Ex. 6, Part 2, art. 2, §§ 3–4; *id.* n.27. Catholic universities are to invite everyone to the faith but to coerce no one. *See id.* However, academic freedom and ecumenism do not mean anything goes: "all professors are expected to be aware of and committed to the Catholic mission and identity of their institutions" and to demonstrate "respect for Catholic doctrine." Er. Ex. 6, Part 2, art. 4, § 4(a)–(b); *accord* Er. Ex. 5, Part II, art. 4, § 2.

II. Duquesne's Religious Educational Environment.

Ex Corde and the USCCB Application are the most basic documents that hold out Duquesne's religious educational environment. *E.g.*, Tr. 69–70 (Duquesne's website links to *Ex Corde*). The record contains much more, starting with Duquesne's mission statement. Duquesne's mission is well-publicized on its website and elsewhere. Distinctively Catholic and Spiritan, it reads:

> Duquesne University of the Holy Spirit is a Catholic university founded by members of the Congregation of the Holy Spirit, the Spiritans, and sustained through a partnership of laity and religious. Duquesne serves God by serving students through:
>
> - Commitment to excellence in liberal and professional education;
> - Profound concern for moral and spiritual values;
> - Maintaining an ecumenical atmosphere open to diversity;
> - Service to the Church, the community, the nation, and the world;
> - Attentiveness to global concerns.

See, e.g., Er. Ex. 1 (mission and identity webpage); *accord* Er. Ex. 11 (student handbook); Union Ex. 9 (faculty handbook); Er. Ex. 32 (brochure containing Board of Directors handbook text). Thus, consistent with *Ex Corde* and the USCCB Application, the mission seeks to unite academic excellence, moral and spiritual values, and service to the Church in an ecumenical environment. *See* Er. Ex. 31; *Compare* Er. Ex. 1, *with* Er. Ex. 5 (*Ex Corde*), *and* Er. Ex. 6 (USCCB Application).

The mission is also distinctly Spiritan. Duquesne's website explains that the Congregation of the Holy Spirit's charism is to evangelize the poor, with a preference for those who have "not yet heard the Gospel message or those who have scarcely heard it." Tr. at 358–61; Er. Ex. 50 (Duquesne webpage titled "The World of Spiritans"). For Spiritans, "[e]ducation, both formal and informal, is an integral part of our mission of evangelization." Er. Ex. 50; *accord* Tr. at 360–61 (explaining that this principle is applicable to Duquesne today because "too few students" have "authentically heard the Gospel"). Duquesne's mission and goals also link directly to the Spiritan Rule of Life. *See, e.g.*, Er. Ex. 32 at 5–13 (linking goal of academic excellence to the Spiritan Rule of Life and service to the Church). All members of the Duquesne community share in the Spiritan charism, including adjunct faculty. Tr. 361. Father James McCloskey, a former Spiritan Provincial Superior and current Member of the corporation, testified that the "religious mission of the university is vitally important, its mission as Catholic and Spiritan, to me, and to members of the corporation." Tr. 363; *see also* Er. Ex. 32 ("Numerous ideas and proposed actions have been rejected because they were not in keeping with the Mission and Goals of the University").

Duquesne's Catholic, Spiritan mission is expresses itself in many ways. *See, e.g.*, Tr. 73, 146. There is a cabinet level Vice President for Mission and Identity who also serves *ex officio*

on the Board of Directors. *See, e.g.*, Er. Ex. 3, art. 6, § 6.2. Each of the University's strategic plans prioritizes achieving the Catholic, Spiritan mission as the first area of focus. *E.g.*, Tr. 143; Er. Ex. 18 (2003–2008 Strategic Plan); Er. Ex. 19 (2010–2013 Strategic Plan). In the words of the most recent strategic plan: "Our extraordinary and pervasive sense of MISSION as a Spiritan Catholic university will be the guide for all Duquesne University does." Er. Ex. 19 at 6.

The campus community includes 12–15 Spiritan priests who live on campus and serve the University as faculty, adjunct faculty, and/or administrators. Tr. 85–86; 92–93 *see* Er. Ex. 10 (Duquesne webpage titled "Meet the Spiritans" listing 21 Spiritan priests, including both Spiritans employed by the University and Spiritans studying at the University). The Spiritans have a "good working relationship with faculty members." Tr. 85.

The physical campus embodies the religious mission. *E.g.*, Tr. 209 (Duquesne's Catholic, Spiritan mission is "very public within the campus"). At its heart stands a large Catholic chapel, which always contains the Eucharist (the real presence of Christ). *See* Tr. 384–85; Er. Ex. 25 at 5–7 (photo collection of Catholic symbolism on campus). The campus has a 25-to-30-foot-tall crucifix; multiple statues of the Virgin Mary, Jesus' mother; and many traditional symbols of the Holy Spirit, such as the dove, flame, and water. *E.g.*, Tr. at 220–22; *see* Er. Ex. 9 (Religious Art Tour), Er. Ex. 25. Catholic, Spiritan symbols also illumine academic spaces. There is a crucifix in every classroom. Tr. 91–92, 221.[4] Statues of Patron Saints often appear outside of pertinent academic buildings, such as the St. Thomas More statue at the Law School. Er. Ex. 25 at 26, 29. College Hall, home of McAnulty College, named for Father Joseph McAnulty, is adorned with statues, pictures and other religious symbols. Er. Ex.

[4] One Steelworkers witness testified that not every classroom contained a crucifix, but he "could not remember which specific room it would be" that did not contain one. Tr. 505–06. He also admitted to seeing many religious symbols on campus. Tr. 505–07.

25 at 42; Tr. 554. At least 14 campus buildings bear the name of Spiritan priests. Er. Ex. 25 at 26.

Duquesne's religious educational environment extends far beyond the presence of priests and ubiquitous Catholic symbols. The *Code of Student Rights, Responsibilities and Conduct 2014–2015* opens with a letter from President Dougherty encouraging students to "[a]ttend religious services and programs" and to "[s]erve God by serving others," and explaining that "Duquesne faculty, staff, and administrators believe that the education you receive here is not only for your mind, but for your heart and Spirit." Er. Ex. 11 at 1. "The whole Duquesne family is concerned with your academic, moral, and spiritual growth." *Id.* Duquesne's student expectations include: "[g]row spiritually, preparing for life, not just a career" and "[b]e at peace with God and with yourself." *Id.* at 4. The University reserves the right to refuse recognition to student organizations that are not in accordance with the "Mission and Expectations of the University." Er. Ex. 11 at 10; *see, e.g.*, Tr. 99; Er. Ex. 15 at 3 ("Establishment of a University sponsored club to promote atheism, for example, may be an interest of some students here and now but plainly does not serve God by serving students overall and in the long run.").

A report to Bishop David Zubik of the Diocese of Pittsburgh on Duquesne's compliance with the USCCB Application captured "highlights" of the implementation of Duquesne's Catholic, Spiritan mission. Tr. 73; Er. Ex. 7 at Encl. For example, Duquesne offers daily celebration of Catholic sacraments, service programs, alternative spring break trips, faith formation and retreat programs, and mission-related academic centers and institutes, endowed chairs, and conferences and symposia. *Id.*; *see also* Tr. 73–78 (President Dougherty testifying that all faculty are invited to attend events such as Bible studies, Libermann Lunch talks about Spiritan issues, and service trips with prayer components). Each year, Duquesne celebrates

"Founders Week" to focus the entire community on the University's Spiritan nature). Er. Ex. 7 at Enclosure; *see also* Tr. at 229–30; Er. Ex. 30 (describing the February 2015 Founders Week activities). The report noted "[m]ission orientation programs for faculty, staff, administrators and students." Er. Ex. 7 at Enclosure. It concluded that Duquesne is "[d]eeply committed to the founding vision . . . as Catholic and Spiritan, the university attempts to build a culture of faith and service—in its classrooms and residence halls, among its alumni and friends, and for the wider Church of the Diocese of Pittsburgh and the world." *Id.* "[R]everence for the Catholic Intellectual Tradition—and attempts to inform the curriculum and form faculty and students in this tradition—are strong." *Id.*

The Catholic, Spiritan mission is critical to Duquesne's portrayal of itself to the world. *See* Tr. 208–11 (testimony of Vice President for University Advancement responsible for University communications and fundraising). Duquesne publishes its mission "broadly" and "across all platforms," including student and faculty recruitment and alumni giving. *Id.*

For example, Duquesne's first major student recruitment piece is known as a "Viewbook" and is sent to 90,000 prospective students. *See* Tr. 211–12. All three Viewbooks used over the past six years are in evidence and each emphasizes Duquesne's Catholic, Spiritan mission. *See* Tr. 212, 215–16; Er. Exs. 22–24. For example, the current Viewbook, "Something More," features Catholic symbols and images and identifies Duquesne as providing a "Catholic education in the Spiritan tradition," where "faith plays an important role." Er. Ex. 22 at 25; *see, e.g.*, Er. Ex. 23 at 10 (prior Viewbook holding out that "[f]aculty, administrators and staff aspire to "'serve God by serving students' so they in turn can serve others"); Er. Ex. 24 at 14 (prior Viewbook holding out that "[b]ecause we are the nation's only Spiritan university, our founding principles remain a powerful force that shapes who we are and makes our achievements

possible.”). Duquesne’s current television commercial depicts Catholic symbols and a priest and closes with “the Spirit guides you every step of the way.” Er. Ex. 26; *see also* Tr. 222–23.

Duquesne’s Catholic, Spiritan mission also features in faculty recruitment. *E.g.*, Tr. 236; Er. Ex. 33 (human resources recruitment brochure highlighting that “[o]ur employees contribute to our vision of enhancing our culture of academic excellence dedicated to our mission of serving God by serving students, led by a profound concern for moral and spiritual values in an atmosphere that welcomes all and excludes none.”); Er. Ex. 34 (website welcome letter from human resources director stating “[a]pplicants must be willing to contribute actively to the mission and to respect the Spiritan Catholic identity of Duquesne University.”). Both Steelworkers witnesses knew they were applying to a Catholic university. Tr. 477, 500.

The mission plays a “very important role” in alumni giving and fundraising, Tr. 211, and features prominently in the University magazine, which the University distributes three times per year to about 200,000, including faculty and staff. Tr. 86, 209; *see, e.g.*, Er. Ex. 27 at 33 (Fall 2011 edition, quoting a student participant in Duquesne academic program at Vatican City as stating “‘One of the recurring themes of our lectures, however, was the idea of law as vocation, and many of the individuals whom we met along our trip—Justice Alito, Cardinal Turkson and many others—had a spiritual element to them that complemented their brilliance beautifully’”); Er. Ex. 28 at 20 (Winter 2015 edition, containing mission cover story that observed, “‘We are focused on bringing Duquesne’s Catholic Spiritan identity to life in tangible ways that touch students, staff, faculty and alumni, and making it easier for the campus community to identify Duquesne’s mission at work’”).

III. Role of Duquesne's Adjunct Faculty in Creating or Maintaining its Religious Educational Environment.

Precisely because Duquesne is Catholic, it welcomes diversity, encourages professional academic autonomy and free pursuit of the truth, and imposes no requirement that faculty indoctrinate students or participate in Catholic sacraments.[5] In countless ways, Duquesne holds out to current and prospective faculty their important role in Duquesne's Catholic, Spiritan mission. Duquesne (a) proclaims that faculty serve its Catholic, Spiritan mission; (b) designs curricula around it and encourages and rewards faculty who embrace it; (c) factors it in hiring; (d) orients new faculty to it; and (e) defines terms and conditions of employment, including academic freedom, as subject to it.

A. Duquesne Proclaims that Faculty Serve Its Catholic, Spiritan Mission.

Duquesne consistently proclaims through events and communications that its faculty and academic endeavors are integral to its Catholic, Spiritan mission. *E.g.*, *supra* pp. 4–12. Duquesne's academic year starts with two such events to which all faculty are invited: the Mass of the Holy Spirit and Convocation. The Mass of the Holy Spirit is the largest Mass in the Diocese. The Bishop presides, and the Mass opens the new academic year. *See* Tr. 81, 88–89; Er. Ex. 7, Enclosure at 2.

Academic convocation is an annual "major academic meeting," that also is typically held near the start of the year. Tr. 108. Duquesne's president gives a "major speech on issues facing the university." Tr. 86, 108. "And, all members of the university community are invited to

[5] The Board must understand that it is contrary to Catholic teaching to force faculty to advocate Catholicism or religion in general in their classrooms. Thus, while the University invites and indeed strongly encourages faculty to bring faith into their classroom whatever subject they teach, and provides the tools to do so through programs such as the Center for the Catholic Intellectual Tradition, the University does not compel faculty to proselytize on behalf of the Catholic or any other religion. *See* Er. Exs. 5–6; *supra* pp. 5–7. The Board states in *PLU* that proselytizing is not required to meet its two-part test. *PLU*, 361 NLRB No. 157 at *12 n.14.

attend, with special emphasis on the faculty, including the adjunct faculty." Tr. 109, 201. Each of the president's convocation speeches is distributed to all faculty, Tr. 195, is currently published on the University's website, and addresses the University's religious mission. Tr. 109. The following excerpts show how the University President holds out the role of faculty in Duquesne's Catholic, Spiritan mission at an important University academic meeting:

- *2010 Academic Convocation*. "Our core religious faith is Catholic, carried in a special way for us by our Spiritan sponsors. This means there will be moments when concerns that are especially Catholic will have to dominate—in health care coverage, in some hiring, in the curriculum, for example." Er. Ex. 13 at 3.
- *2011 Academic Convocation*. "[O]f all the things that unite us, the most important is our purpose for being here . . . our mission . . . ." Er. Ex. 14 at 1. "We are a university. We teach. We conduct research. We contribute service. All of these activities are suffused with our overarching-self-understanding that we are serving God by serving students." *Id.* at 3. President Dougherty details that the Church teaches that faith and reason are "ultimately compatible." *Id.* at 9. "Our belief, beyond full understanding, is that God is at once a loving Creator, a self-sacrificing Redeemer, and a Spirit that guides our lives. As a Catholic university, we must remain true to these beliefs even as our understandings of them—and our rational knowledge of the world—evolve." *Id.* at 9. As President Dougherty testified, "we" comprises the entire University community, including adjunct faculty. Tr. 116.
- *2012 Academic Convocation.* President Dougherty explains that the University's Catholic, Spiritan mission—"we serve God by serving students"—distinguishes Duquesne from other universities. "We serve God by serving students. This is a phrase

we repeat to ourselves as a reminder of the overarching goal of Duquesne University and all of our individual efforts. It is the ultimate context for what we do together." Er. Ex. 15 at 3. Service to students is "true of virtually all universities," but Duquesne's "motivation for service is far deeper." *Id.* The "goal for us" is "service to students as a means of serving God." *Id.* "[T]he link between serving God and serving students is a close one" that lies "in our tradition's foundational assumption that each human being is endowed with human dignity by God." "[E]ach of our students' dignity is the spark of the Holy Spirit within them. Our service to God is reverence to the Holy Spirit in the life of every one of our students." *Id.* at 4. "Our service to students is primarily educational," and that role is "most clear in the case of faculty." *Id.* at 6.

- *2013 Academic Convocation*. The University's strategic plan is "organized to draw attention to the fact that the heart of what we are is a trinity involving students, faculty and a mission that binds them together. To put it in more dramatic terms, who we are at our core is best illustrated when one faculty member assists one student to grow in knowledge and maturity within a Catholic, Spiritan context. The academic commitment at the core of this trinity has been part of the Spiritan tradition since the very beginning." Er. Ex. 16 at 1. President Dougherty specifically thanks "all those in Academic Affairs," including the "faculty" in particular, because "[y]ou are a critical part of the trinity at the heart of who we are as you bring our students an education for a lifetime in our Catholic, Spiritan tradition. You serve God by serving our students." *Id.* at 17.

Other communications from President Dougherty similarly emphasize the faculty's critical role in the Catholic, Spiritan mission. *See, e.g.*, Tr. 151–153; Er. Ex. 20 at 1 (letter addressing this litigation posted to Duquesne website and explaining that "in the case of faculty

who are central to the core of who and what we are," our religious mission is paramount); Er. Ex. 21 (President Dougherty's retirement message, thanking all faculty because "[o]ur mission is vibrant, alive and woven into every aspect of life at Duquesne").

The record is full of other ways the University communicates the same basic message. Faculty and staff can attend alternative spring break service trips described as a "journey of faith" where participants "overcom[e] fear and doubt to answer God's call." Er. Ex. 29 (describing such trips); *see, e.g.*, Tr. at 227–28 (faculty invited to attend). Bishop Zubik made a pastoral visit in 2011 specifically to the faculty to address a papal encyclical. Tr. 365–67; *see* Er. Ex. 51 (Mission Advisory Committee Meeting Minutes describing plans for faculty reading groups of the encyclical). The University invited all faculty to attend, and "several hundred" did. Tr. 366.

B. Duquesne Designs Curricula to Achieve Its Catholic, Spiritan Mission, and Encourages and Rewards Faculty Who Embrace It.

The faculty are responsible for delivering the curricula, Tr. 329, which is one area in which "concerns that are especially Catholic" must "dominate," Tr. 120; Er. Ex. 13 at 3. Duquesne has structured curricula to implement its Catholic, Spiritan mission. The focus is most obvious in Catholic theology, where the University works with the local diocese so that professors teaching in that subject receive a Mandatum from the Bishop, which recognizes the professor's commitment and responsibility to teach authentic Catholic doctrine. *See* Er. Ex. 6, Part II, art. IV, § 4(e); Er. Ex. 8; *see also* Tr. 55. However, the influence of the University's mission on the curriculum extends well beyond theology.

The University has developed and publishes on its website a document titled "Dimensions of a Duquesne University Education" (the "Dimensions"). Er. Ex. 46 (Dimensions); *see* Tr. 327–33. "All active [academic] programs, graduate and undergraduate,

use the Duquesne dimensions to link their curriculum and student learning outcomes with the mission of the University." Tr. 328. One of the Dimensions is "Ethical, Moral, and Spiritual Development." Er. Ex. 46. Its "academic components" include: "Recognize the importance of faith and spiritual values; [a]pply ethical, moral and spiritual principles in making decisions and interacting with others." *Id.* Another Dimension is "Leadership and Service." Its "academic components" include: "[u]nderstand the moral and ethical framework necessary to be a just leader." *Id.* The faculty are responsible for delivering academic programs and for achieving these dimensions in the curriculum. Tr. 329–30.[6]

All undergraduates must complete a "Core Curriculum" ("Core"). Tr. 332. Developed by a group of Duquesne faculty, Tr. 335, the Core "uniquely expresses the Spiritan-Catholic identity of Duquesne University." Er. Ex. 47 (Core Curriculum Website Page); *see also* Tr. 87–88. The vision is education that "informs the mind, engages the heart, and invigorates the spirit," and that vision takes its inspiration from the University's mission, including "concern for moral and spiritual values." Er. Ex. 47. The Core Curriculum's "educational values" include "[s]piritual and moral development and ecumenical openness that fosters inter-religious understanding." *Id.* Students must take three credits in theology and three credits in ethics. Tr. 336. The Academic Core Founding Document identifies "general goals and student learning outcomes," such as to "[c]omprehend fundamental human questions through the study of selected texts and figures in philosophy and theology;" "[e]xplain how religion can inform personal, societal, and professional life through study of and reflection on theological sources and questions;" "[i]dentify some of the unique perspectives provided by faith and reason in the pursuit of truth;" and "[l]ink academic theory and community-based practice through service."

[6] The University's philosophy department teaches all diocesan seminarians as part of its generally available academic programs. *See* Tr. 82.

Er. Ex. 48 at 1–2. It is the responsibility of the faculty teaching in the Core to achieve these learning goals. Tr. 336. Adjunct faculty play a significant role in the Core, teaching an average of 44 percent of the credit hours over the past five years, ranging from a high of 49 percent to a low of 43 percent. *Id.*

Duquesne holds out that its curricula cannot be divided into courses in which the University's Catholic, Spiritan tradition is relevant and courses in which it is not. *E.g.*, Tr. 396–97. The Catholic Church and Duquesne (1) hold that faith and reason are two paths with the same end, Tr. 48, and (2) emphasize the unity of academic disciplines as part of one, eternal truth, Tr. 394–95. *See, e.g.*, *supra* pp. 5–7. Though faculty are generally free to design the courses they teach, the University encourages and expects them to embrace the University's Catholic, Spiritan mission in doing so. Thus, President Dougherty has informed the faculty that "[a]nything related to the Spiritan and Catholic intellectual traditions cuts across all our disciplines and should be a focus for us." Er. Ex. 16 at 8 (2013 Convocation Address). Indeed, many of the University's endowed chairs—a "recognition" given to "outstanding faculty members" who serve as role models for all faculty—are named for Spiritan priests or Catholic intellectual giants. Tr. 101–02; *See* Er. Ex. 12 (listing Duquesne's endowed chairs).

Duquesne has also created academic centers and programs to encourage all faculty to focus on the Catholic, Spiritan mission in their teaching and research. *E.g.*, Tr. 131. For example, in 2012 Duquesne created the Center for the Catholic Intellectual Tradition ("CCIT") to "'support but also to highlight and showcase the ways in which the work already being done [at Duquesne] engages the Catholic intellectual tradition.'" Er. Ex. 57; Tr. 390–91. The Catholic intellectual tradition "animates Duquesne University," Er. Ex. 58 at 1, and is "founded on an affirmation that truth is one . . . that there is a universality of truth . . . the complementarity

of faith and reason." Tr. 394; *see also* Er. Ex. 58 at 1–2. The Catholic intellectual tradition encompasses all branches of human knowledge and all areas of professional practice, each contributing through a particular skill set to a holistic unity. Tr. 394–95. A "Catholic understanding of education is essentially integrative, and holistic, so it is not something that can be compartmentalized." Tr. 394. Thus, natural sciences faculty are expected to achieve the mission-related learning goals quoted above in the Core. *See* Tr. 336; Tr. 397, 430–31 (explaining on cross examination that even a class on planets taught by an atheist professor at Duquesne contributes to the Catholic, Spiritan mission). And it would be a mistake to think "that only courses which are taught by theology faculty or offered by the Theology Department would qualify as mission related courses in the core." Tr. 397; *see also* Tr. 420–421 (an anatomy class can contribute to the Catholic, Spiritan mission).

Through CCIT, all faculty, including adjunct faculty, are invited and "strong[ly] encourage[ed]" to engage with the Catholic intellectual tradition. Tr. 441, 445; *see* Tr. 401–14; Er. Exs. 59–63 (evidencing examples of CCIT programming to which all faculty are generally invited). Many adjunct faculty members do. For example, adjunct faculty have joined an "ongoing, open-ended interdisciplinary conversation exploring the intersection of teaching and the Spiritan charism" to articulate a "Spiritan pedagogy." Er. Ex. 59; *see* Tr. at 402. Adjunct faculty also have participated in the CCIT's Catholic Artistic Imagination series, including a discussion of Rublev's Icon of the Trinity.[7] Tr. 405–40; Er. Ex. 60. And they have engaged in the "Rice on the Road" lecture series held off-campus and related to social justice. Tr. at 408–09; Er. Ex. 61. A "Rice on the Road" program always starts by talking about what is "Spiritan about the process of going out into community" because the "Spiritans are a missionary

[7] The Trinity is a "Catholic understanding of God. It is one God, but three persons, Father, Son and Holy Spirit." Tr. 407.

organization." Tr. 409–410. The event is always framed explicitly "in reference to the Catholic and Spiritan identity and mission." Tr. 410.

Adjunct faculty also have applied for and received the CCIT's "Part-time Faculty Mission Micro-Grant[s]." Tr. 410–12; Er. Exs. 62–63. The website announcement states that "Part-time Faculty contribute to the mission of Duquesne University" and that the grants are intended to support "scholarly, curricular and professional development opportunities that reflect Duquesne's mission and engage resources in Catholic intellectual tradition." Er. Ex. 62 at 2. Winners have come from multiple disciplines in the McAnulty College. *See* Er. Ex. 63.

C. Duquesne Hires Faculty for Its Catholic, Spiritan Mission.

Given the integral relationship between Duquesne's Catholic, Spiritan mission and its academic offerings, Duquesne hires all faculty for mission and publicizes that it does so. Section 1.1 of Duquesne's first strategic plan read: "Commitment to the mission will be a factor in hiring and performance evaluations. A candidate's understanding of and willingness to contribute to the mission will be a part of the hiring process. Annual performance evaluations will include a discussion of mission." Er. Ex. 18 at 2. This goal was first because, as President Dougherty testified, "unless we have personnel, administrators and faculty committed to mission, the rest of it is impossible." Tr. 142. The plan is still published on the University's website, and President Dougherty testified that the University is still implementing Section 1.1 today and looking for ways to improve it. Tr. 144, 146, 151.

Provost Timothy Austin, Duquesne's chief academic officer, Tr. 249, testified that mission-hiring is critical for all faculty, because the "Spiritan Catholic education that we deliver, is entrusted to our faculty. The task of representing our values, and our priorities, is something that our faculty convey to our students, and we must be satisfied in employing a faculty member

that she or he is able to fulfill that responsibility." *See* Tr. 252. The University implements hiring for mission differently for full-time faculty than it does for adjunct faculty. *See* Tr. 251. However, the bottom line is the same: the University does not intend to hire faculty who cannot support the University's Catholic, Spiritan mission or who express hostility to it. Tr. 263–64 (Provost Austin testimony that "[t]he University is not able to hire anybody who is unable to support the mission of the institution."); *accord* Tr. 113 (President Dougherty testified: "if we identified a candidate who was extremely indifferent or hostile to the mission, that would be a reason not to hire them.").

An Associate Provost interviews finalists for full-time faculty positions and prepares a report for consideration by the hiring committee, the Provost, and the President. Tr. 253–54. The Provost considers the report in making the hiring decision. *See. id.* By contrast, the hiring process for adjunct faculty is more decentralized, with discretion left to department chairs due to timing and volume. Tr. 254. As described below, the Provost's job is to "make sure that those who will be involved in that process are appropriately prepared." Tr. 251; *accord* Tr. 312 (Provost Austin "set[s] the stage").

For adjunct faculty, to the extent a job posting is used,[8] it is Duquesne's policy and practice to include a description of Duquesne's Catholic, Spiritan identity. *See* Tr. 256; *accord* Union Ex. 23 (job posting, which identified Duquesne as a Catholic, Spiritan University). The University's "Faculty and Staff Employment Application"—which is the human resources "application form" for all adjunct faculty—quotes the University's mission statement and in bold

[8] Provost Austin testified that department chairs receive unsolicited curriculum vitae through the mail and solicit local Ph.D. departments when seeking to hire adjunct faculty. Tr. 256.

text asks the applicant to "Please describe how you would support and contribute to the University Mission." Er. Ex. 36; *see* Tr. 257–58, 297.[9]

Further, Provost Austin testified that the University expects that adjunct faculty candidates "will be asked to remark on how they see themselves relating to the mission of the university, and that a decision about employment will be made in that context." Tr. 258–59. The Provost communicates this expectation to chairs at hiring workshops and at new department chair orientations. Tr. 259, 263–64 (hiring workshops); *id.* 261, 263–64 (new chair orientations). Duquesne also publishes and distributes guidelines for departments on how to interview for mission. *See* Tr. 260–61; Er. Ex. 37. The guidelines state that "in order to advance in the search process, candidates must fully understand and be willing to support the University Mission Statement." Er. Ex. 37. The guidelines also include sample questions such as: "[a]t Duquesne, we take the mission seriously. Rather than being just a 'statement' on paper, we strive to 'live' it proactively. How do you see yourself as embodying the mission;" and "While teaching performance and qualifications are central to our educational mission, we are also part of a religious tradition here at Duquesne. What are your thoughts about the relationship between faith and reason in the academic environment?" *Id.* Duquesne instructs department chairs that the University cannot hire anyone who is unable to support its Catholic, Spiritan mission. Tr. 264.

[9] Provost Austin testified that the "Faculty and Staff" application form is used by "our Office of Human Resource Management for all applicants for jobs of all kinds in the university." Tr. 257–58. According to the transcript, the next two questions and answers were: "Q. Would that exclude adjunct faculty? A. Yes, it would. Q. Adjunct faculty in the McAnulty College? A. Yes." In fact, as confirmed by the Court reporter, the transcript is incorrect. On reviewing the recording of the testimony, he confirmed that the word used in the question is "include," not "exclude." See email from Eugene C. Forcier to Joel Buckman, dated May 21, 2015, attached to this brief. Duquesne will be filing a formal motion to correct the record.

D. Duquesne Orients New Adjunct Faculty to Its Catholic, Spiritan Mission.

Duquesne communicates its Catholic, Spiritan mission to new adjunct faculty hires. For example, the University publishes a website titled "Getting Started: Adjunct Faculty at Duquesne." Tr. 264–65; Er. Ex. 38 ("Getting Started: Adjunct Faculty at Duquesne"). The "Getting Started" website links to a welcome from Provost Austin. Tr. 266–67. Provost Austin's message explains the University's mission and communicates Duquesne's expectation that "each individual to bring his or her gifts as a teacher, as a scholar to the task of furthering that university mission." Tr. 267. Under bold text titled "First Things," the "Getting Started Website" proclaims that the University's mission "provides a context and guide for all that we do at Duquesne" and links to the University's mission and identity webpage. Tr. 267, 269 (describing Employer Exhibit 1 as the mission and identity webpage); Er. Ex. 38.

The mission and identity webpage, in turn, embeds a YouTube video that addresses the University's Catholic, Spiritan mission. *See* Er. Ex. 40 (video). The video says: "you can tell that people genuinely care, they put their heart and soul into a lot of different initiatives, it's very apparent it's mission driven . . . the mission is definitely what . . . is focused on here at Duquesne." *Id.* The video concludes by declaring that "Serving God by serving students permeates all aspects of campus life . . . our hope is that Duquesne graduates will in turn serve God by serving others because they have witnessed the many ways the Duquesne community lives that mission" and that "You are Invited to Live the Mission." *Id.* The welcome website also links to certain important documents such as the *Faculty Handbook*. *See* Er. Ex. 38.

In addition to the website, Duquesne offers new adjunct faculty orientation sessions and encourages participation. Tr. 269–72; Er. Ex. 41 (letter from Provost Austin encouraging attendance). The orientations include a presentation devoted to the University's mission,

typically given by the Vice President for Mission and Identity or that individual's designee. Tr. 270.

Father McCloskey served as Vice President for Mission and Identity from 2009 to 2013. Tr. 356. A typical new adjunct faculty orientation addresses the mission front-and-center, immediately after the initial welcome. *See* Tr. 369; Ex. 52 (example of "typical" agenda (Spring 2013)). Father McCloskey's presentation focused on the Catholic identity of the University, its Spiritan mission and history, and the role of adjunct faculty in Duquesne's Catholic and Spiritan identity. Tr. 375. Father McCloskey typically distributed three documents: (1) a wallet-sized pocket card containing the University's mission statement and faculty and staff expectations, Er. Ex. 53; (2) a document titled "The Spirit Who Gives Life, Duquesne University," Er. Ex. 54; and (3) an article titled "Distinctively Catholic," Er. Ex. 55. *See* Tr. 370–75.[10]

The wallet-sized, pocket card contains the University's mission statement on one side and "Faculty and Staff Expectations" on the other. The "Faculty and Staff Expectations" include: "1. Accept and commit to the values expressed in the mission statement. 2. Work towards understanding the Spiritan values expressed in the mission statement and strive to incorporate them into your daily work. . . . 7. Recognize and be committed to the importance of service to others. 8. Be respectful of the Catholic tradition on which our university is founded." Er. Ex. 53.

"The Spirit Who Gives Life" document states that at Duquesne: "[o]utstanding teacher-scholars and scientists are hired, rewarded and retained to support the mutual enrichment of faith and reason." Tr. 372; Er. Ex. 54. Father McCloskey held out the "Distinctively Catholic" article

[10] The Director of CCIT, Dr. Darlene Weaver, testified that she has provided the mission portion of the adjunct faculty orientation more recently. Much like Father McCloskey, she informs faculty that the University's Catholic, Spiritan mission belongs to them because of the "ultimate unity of faith and reason, the complementarity, the implementation of different branches of knowledge." Tr. 417.

as a good article on the role of faculty. *See* Tr. 373–74. The article emphasizes that morality at a Catholic university is not a "bland humanism," but a "deeper and more profound tradition of Catholic moral teaching for which the university and faculty is responsive." Tr. 374. It also describes the Catholic conception of faith and reason and the Catholic intellectual tradition. *See, e.g.*, Er. Ex. 55 at 4 ("Seeking the truth of things, whether in science or the humanities is a religious act."); *id.* at 2 ("A Catholic intellectual community does not lead students to decide who they *want* to be; it helps them discover who they have been *called* to be. The key concern is not personal identity but dedication to God and to others.") (emphasis in original). Finally, the article states that "[f]aculty who are skeptical about the intellectual relevance of a Catholic university's religious mission pose [a] problem." *Id.* at 3.

E. Duquesne's Catholic, Spiritan Mission Affects the Terms and Conditions of Faculty Employment.

Duquesne's Catholic, Spiritan mission affects the terms and conditions of faculty employment. Provost Austin testified that the terms and conditions of adjunct faculty employment are set forth in numerous documents including: the letter of appointment, the *Faculty Handbook*, the Executive Resolutions of the Board of Trustees, and the Administrative Policies ("TAPs"). Tr. 272, 295.

Duquesne's *Faculty Handbook* applies to "all faculty of the university; it is the standard resource that faculty members of all kinds should go to." Tr. 273; *see* Union Ex. 9. The *Faculty Handbook* states in bold text that the "Executive Resolutions and relevant sections of the Faculty Handbook are part of the faculty member's contractual agreement with the University." Union Ex. 9 at 2. For adjuncts the relevant sections are those sections that do not "explicitly refer to such matters as tenure, or . . . to full-time employment." Tr. 274.

Per the *Faculty Handbook*, Duquesne is a Catholic, Spiritan university with a commitment to ecumenism. "[W]e take great pride in our Catholic character and ambience, and we subscribe to the teachings of the Roman Catholic Church." Union Ex. 9 at 2; *see* Tr. 273–74. "We" includes the faculty as a whole. Tr. 274. "Our teaching of the moral and ethical foundations of thought and action reflect our Catholic heritage and should pervade the university." Union Ex. 9 at 2.

The *Faculty Handbook* also provides that individual members of the faculty "shall be deemed to agree to pursue and uphold the purpose of the University as stated in the Second Article of the Charter and to comply with the University's Bylaws and Executive Resolutions." Union Ex. 9 at 13; Tr. 275–76. The *Faculty Handbook* defines the "essential role of the faculty" as "implicit in the stated goals and mission of the University." Union Ex. 9 at 10; Tr. 275–76. "Without the faculty, the University would be unable to prepare its students intellectually, professionally, aesthetically, spiritually, or ethically for the ordinary responsibilities of life and for leadership in a free, complex, and changing society." Union Ex. 9 at 10; Tr. 275–76. And the *Faculty Handbook* contains Duquesne's mission statement and goals, including that "[i]t is Duquesne University's special trust to seek truth and to disseminate knowledge within a moral and spiritual framework." Union Ex. 9 at 3; *accord* Er. Ex. 5, Introduction § 4 (*Ex Corde*).

Duquesne's Catholic, Spiritan identity also affects its definition of academic freedom. Tr. 276, 279–81. In relevant part, the *Faculty Handbook* defines academic freedom in teaching as follows: "Academic freedom is essential to teaching. The teacher is entitled to freedom in the classroom. The teacher should not, however, interject opinions which have no relation to the subject and should not impose personal views of the subject upon the students. *The teacher should respect the religious and ecumenical orientation of the University*." Union Ex. 9 at 12

(emphasis added); *accord* Er. Ex. 6, Part 2, art. IV, § 4(b). The Executive Resolutions, which control in the event of a conflict with the *Faculty Handbook*, Union Ex. 9 at 3, elaborate that academic freedom in the classroom is "subject to the principles and values expressed in the Duquesne University Mission Statement." Union Ex. 6, Executive Resolutions of the Board § V.A (defining academic freedom in teaching).[11] The Provost explained that "academic freedom is an important and foundational value, as in all academic institutions, but that . . . must be constrained by the faculty member's ability to conform his or her behavior to the mission orientation of the university." Tr. 281; *see also* Tr. 56 (testimony from President Dougherty that "[v]irtually all of our documents will say academic freedom within the constraints of Catholic doctrine"). [12]

Duquesne's most recent MSCHE accreditation Self Study is posted to the University's website and similarly describes Duquesne's approach to academic freedom:

> The Mission Statement defines Duquesne as "a community dedicated to the discovery, enhancement, and communication of knowledge and to the free and diligent pursuit of truth . . ." (appendix MS, p. 2). Duquesne is open to the exploration and discussion of new and controversial ideas. The University places a premium on intellectual autonomy and integrity, and the pursuit of truth through scholarly research. By fostering an atmosphere of openness, the University provides the ecumenical community "for the dialogue of students and teachers of all beliefs." The search for truth within an atmosphere of openness is a central theme that informs Duquesne as both a University and a Catholic University.
>
> It does not follow, however, that Duquesne's openness to dialogue will lead it to relinquish those core beliefs that constitute its specifically Catholic identity. *Hence, ecumenism does not mean that everything is acceptable.* In fact, while academic freedom is essential to teaching at Duquesne, the Faculty Handbook also states that "the teacher should not . . . interject opinions which

[11] The Executive Resolutions are available on the University's website. *See* Tr. 176.

[12] Similarly "[r]esearch proposals [for funding] must be consistent with the goals and objectives of the university." Tr. 295; Er. Ex. 42 (TAP 44).

> have no relation to the subject and should not impose personal views of the subject upon the students. The teacher should respect the religious and ecumenical orientation of the University" (appendix FHB, p. 12).
>
> The central conclusion with respect to academic freedom is that *academic autonomy is preserved within the context of Duquesne's mission statement*. One can have a commitment to Duquesne's mission and identity and to the values upon which the University was founded without sacrificing academic excellence. Duquesne's commitment to the scholarly norms of excellence expected within any University is also operationalized through its "goal of hiring, rewarding, and retaining outstanding teacher-scholars" (appendix SSD, p. 19). *Newly appointed faculty are encouraged to conceptualize academic freedom against the backdrop of a vibrant Catholic intellectual tradition and a critical dialogical exchange of ideas.*

Union Ex. 10 at 82–83 (emphasis added); Tr. 341–42 (the quoted discussion is still accurate and on the University website); *accord* Er. Ex. 49 at 11 (the most recent MSCHE evaluation report noting that academic freedom operates "within the context of mission").

Duquesne's Catholic, Spiritan identity also informs the grounds on which the University may terminate faculty or decline to rehire adjunct faculty for a subsequent semester. Adjunct faculty are employed for one-semester at a time, and the University may refuse to rehire them for any reason. *See, e.g.*, Tr. 108. At Duquesne, the *Faculty Handbook* makes clear that the University may revoke tenure and terminate even full-time faculty for "Serious Misconduct," defined to include "failure to observe the principles of the Mission Statement of Duquesne University or elaborations thereof approved by the Board of Directors [and] conduct involving moral turpitude . . . ." Union Ex. 9 at 19 n.2. Provost Austin testified that if an adjunct faculty member failed to "respect the religious and ecumenical orientation of the university," the University would reserve the right to take adverse employment action. *See* Tr. 293–95; *see also* Tr. 117 (testimony of President Dougherty that "we expect [faculty] to respect [Catholic]

belief[s] as part of what the community believes, even if they don't believe them themselves"); *id.* Tr. 125 (testimony of President Dougherty that if an adjunct faculty member mocked the notion of serving God by serving students "seriously, to try to undermine what we stand for . . . [, such conduct] would be grounds for not renewing an adjunct, for example").

Duquesne's Catholic, Spiritan mission also affects available employee benefits. For example, Duquesne "has never provided [healthcare] coverage for abortion, contraception or sterilization" and "won't." Tr. 112–13.

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Duquesne's most recent MSCHE Self Study titled "Education for the Mind, Heart, and Spirit" and corresponding MSCHE evaluation report—both published on the University's website—summarize the many ways in which Duquesne expresses its Catholic, Spiritan mission. *See* Tr. 338–43; Union Ex. 10 ("Education for the Mind, Heart, and Spirit Duquesne University Self Study"); Er. Ex. 49 (2008 MSCHE evaluation report). For example, the Self Study stated and Duquesne's accreditation liaison officer confirmed as still accurate that:

- "Duquesne's students, faculty, staff, and administrators have many opportunities in which to learn about and engage the mission." Union Ex. 10 at 11; Tr. 338–39;
- "An understanding of the mission and a willingness to contribute to it are emphasized as part of the hiring process." Union Ex. 10 at 11; Tr. 338–39;
- Duquesne takes steps to provide "Mission Orientation and Programming for All Constituencies." Union Ex. 10 at 12 –13; Tr. Tr. 338–40; and
- "Duquesne's faculty play a critical role in achieving the University's mission and the strategic plan goal to develop Duquesne's reputation for national excellence. They communicate the mission and values of the University to students, serve as role models

with regard to ethical standards and openness to diversity, and demonstrate commitment to excellence in liberal professional education in teaching, scholarship, and service." Union Ex. 10 at 70; *see also* Tr. 341.

The MSCHE evaluation report affirmed the centrality of Duquesne's Catholic, Spiritan mission and the role of faculty in achieving it: "The Board of Directors, the president, and his entire leadership team have embraced and promoted the mission; and faculty, staff, and students have enthusiastically and sincerely taken it to heart. It is also clear that mission drives many of Duquesne's goals and objectives, as can be seen in the 2003-2008 strategic plan that places mission front and center. It is clear that the University community has sought, with considerable success, to imbue all its activities with a sense of mission. . . . A sense of mission pervades recruitment, hiring, and performance evaluations of faculty and staff." Er. Ex. 49 at 4. Accordingly, the MSCHE evaluation report "commend[ed] Duquesne for its embrace of the Spiritan mission and for its many successes at implementing that mission." *Id.* at 5.

ARGUMENT

The record in this case demonstrates that *PLU* entails the same improper, unconstitutional inquiry as its "substantial religious character" predecessor and fails to avoid the entanglement the *Catholic Bishop* decision exists to avoid. The Board should abandon *PLU* and adopt the constitutional *Great Falls* test, which Duquesne also satisfies. Nevertheless, as we show below, the Board lacks jurisdiction over Duquesne even under *PLU*.[13]

[13] Although the Board need not reach this issue, the *PLU* test, depending on its application, could also substantially burden Duquesne's free exercise rights in violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 (2000). The *PLU* test allows for a jurisdictional analysis based in part on how individual faculty members further religious mission in practice. This analysis risks forcing Duquesne's faculty members to choose between furthering Duquesne's religious mission on the one hand and joining a Board-approved bargaining unit on the other. This dilemma would impede Duquesne's pursuit of its religious educational mission by discouraging faculty who may want to be represented by a

I. THE BOARD HAS NO JURISDICTION UNDER *PLU*.

Under *PLU*, the NLRB has no jurisdiction over a religious-affiliated higher education institution that (1) holds itself out as providing a religious educational environment ("Prong One"), and (2) holds out the petitioned-for faculty members as performing a specific role in creating or maintaining its religious educational environment ("Prong Two"). Duquesne does both. *See supra* pp. 4–30 ("Relevant Facts").

A. Duquesne Meets *PLU* Prong One.

Duquesne easily satisfies Prong One. Prong One is a threshold requirement that "does not require any particular showing of religious character and does not impose a heavy burden on colleges and universities claiming to be religious institutions." *PLU*, 361 NLRB No. 157 at *9. Prong One requires only a "minimal showing" because the question is whether "First Amendment concerns are even potentially implicated with respect to the petitioned-for unit." *Id.* The Board "err[s] on the side of being overinclusive." *Id.* In *PLU*, the Board looked no further than discussion of the institution's Lutheran heritage and tradition on its website, articles of incorporation, bylaws, faculty handbook, course catalog, and other publications. On that basis the Board concluded the threshold requirement satisfied. *Id.* at *15–16.

There can be no honest dispute that Duquesne satisfies this threshold inquiry. *See, e.g.*, *supra* pp. 4–12. To summarize, Duquesne is a Catholic, Spiritan university to the core. As a Catholic, Spiritan university, Duquesne's mission invites members of the community to the faith by the example of service and the compatibility of faith and reason. *See, e.g.*, *id.* The University is ultimately controlled by members of the Spiritan Congregation—Catholic priests and brothers—and proudly and prominently proclaims its Catholic, Spiritan mission to prospective

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Board-approved bargaining unit from taking an active role in creating and maintaining Duquesne's religious educational mission.

students, prospective faculty, and the entire community. *See, e.g.*, *id.* at 4–30. Duquesne's MSCHE Self Study and evaluation report alone provide sufficient evidence on Prong One, captured by the MSCHE evaluation report's "commend[ation of] Duquesne for its embrace of the Spiritan mission and for its many successes at implementing that mission." Er. Ex. 49 at 5.

B. Duquesne Meets *PLU* Prong Two.

Duquesne also satisfies Prong Two. Prong Two asks whether the university holds out petitioned-for faculty as performing a specific role in creating or maintaining its religious educational environment. *PLU*, 361 NLRB No. 157 at *10. The Board imagines examples of such a function, including requiring faculty to integrate religious teachings into coursework, serve as religious advisors, engage in religious indoctrination, or conform to its religious doctrine. *Id.* at *11–12. But the Board cautions that these examples are "intended only to demonstrate that there must be a *connection* between the performance of a religious role and faculty members' employment requirements." *Id.* at *12, n.14 (emphasis in original). Prong Two bottoms on whether the "religious nature of the university *affects* faculty members' job duties or requirements"—whether the "religious nature of the university will have any impact at all on their employment." *Id.* at *11 (emphasis added).

Among other things, the Board will consider whether faculty members "are hired, fired, and assessed under criteria that . . . *implicate* religious considerations." *Id.* at *11 (emphasis added). The Board will also consider whether faculty roles are different than those that "they would be expected to fill at virtually all universities." *Id.* at *12. Relevant evidence includes but is not limited to "communications to current or potential students and faculty members and the community at large," *id.* at *11, as well as job descriptions, employment contracts, and faculty handbooks, *id.* at *12. The Board will "rely on the institution's own statements about whether its

teachers are obligated to perform a religious function, without questioning the institution's good faith or otherwise second-guessing those statements" and "focus[ ] on whether a reasonable prospective applicant would conclude that performance of [his or her] faculty responsibilities would require furtherance of the college or university's religious mission." *Id* at *12–13. The Board underscored that its "holding out" inquiry is "limited:" the Board will not examine faculty members' actual performance of their duties. *Id*. at *11, *13.

Duquesne more than satisfies Prong Two for two overarching reasons. First, Duquesne's mission is religious, and Duquesne consistently communicates to all existing and prospective faculty that their participation in the mission is integral. Second, Duquesne's religious mission affects adjunct faculty hiring, teaching, its definition of academic freedom, and grounds for non-renewal. It also conflicts with the requirements of collective bargaining under the National Labor Relations Act.

1. Duquesne's Mission is Religious, and Duquesne Holds Out Adjunct Faculty as Performing an Integral Role in Achieving it.

Duquesne's Catholic, Spiritan mission is a religious mission. It is to "serve[] God by serving students" as a Catholic, Spiritan university "sustained through a partnership of laity and religious" by, among other things, "excellence in liberal and professional education," "profound concern for moral and spiritual values," ecumenism, and "[s]ervice to the Church, the community, the nation, and the world." *E.g.*, Er. Ex. 1; *accord* Er. Ex. 11; Union Ex. 9. It holds out all aspects of the mission as contributing to the mission of both the Church and the Spiritans. *See, e.g.*, Er. Ex. 1; Er. Ex. 5; Er. Ex. 6; Er. Ex. 50; Tr. 68; *supra* pp. 4–9.

Moreover, Duquesne's physical campus, its website, statements to faculty at academic convocations, and many other communications hold out that all faculty play an indispensable role in this mission. *E.g.*, Er. Ex. 15 at 3–4; *see supra* pp. 13–30. For example, students walk

past ubiquitous Catholic symbols to arrive in classrooms in which professors of all disciplines teach under a crucifix. *See, e.g.*, Tr. at 220–22; Er. Ex. 9; Er. Ex. 25. More, Duquesne publicly proclaims to all faculty that "who we are at our core is best illustrated when one faculty member assists one student to grow in knowledge and maturity within a Catholic, Spiritan context." Er. Ex. 16 at 1. Duquesne also communicates publicly to faculty that "you are a critical part of the trinity at the heart of who we are as you bring our students an education for a lifetime in our Catholic, Spiritan tradition. You serve God by serving our students." *Id.* at 17. As service to God is a quintessential "specific religious function," the inquiry should end here.[14]

2. Duquesne Holds Out that Its Catholic, Spiritan Mission Affects Adjunct Faculty Hiring, Job Duties, and the Definition of Academic Freedom and Grounds for Non-Renewal.

Duquesne's Catholic, Spiritan mission affects adjunct faculty employment in more concrete ways: who is hired, the curricula taught, the University's definition of academic freedom, and grounds for non-renewal.

(a) Who is hired.

As an initial matter, Duquesne holds out that its Catholic, Spiritan mission affects adjunct faculty hiring. Provost Austin testified that the "Spiritan Catholic education that we deliver, is entrusted to our faculty. The task of representing our values, and our priorities, is something that our faculty convey to our students, and we must be satisfied in employing a faculty member that she or he is able to fulfill that responsibility." Tr. 252.

The first goal of Duquesne's first strategic plan reads: "1.1 Commitment to the mission will be a factor in hiring . . . A candidate's understanding of and willingness to contribute to the

[14] At the hearing, the Steelworkers and the Hearing Officer suggested that these types of communications are irrelevant to Prong Two. But as noted above, *PLU* states unequivocally that the Board considers "communications to current or potential students and faculty members, and the community at large." *Id.* at *11.

mission will be a part of the hiring process." Er. Ex. 18 at 2. The plan is currently published on the University's website. The University has implemented Section 1.1.'s call for mission hiring, continues to do so, and looks for ways to improve such hiring. Tr. 144, 146, 151; *accord* Er. Ex. 49 at 4 (MSCHE evaluation report stating "[a] sense of mission pervades recruitment, hiring . . . ."). Duquesne's human resources recruitment materials communicate that mission will factor in hiring, *e.g.*, Er. Exs. 33–34, and its "Faculty and Staff" application form asks applicants to "describe how you would support and contribute to the University Mission." Er. Ex. 36; *see* Tr. 258.[15] Duquesne also trains academic department chairs in the University's expectation that they will take the University's Catholic, Spiritan mission into account in the adjunct faculty interviewing and hiring process and distributes guidance about how to do so. *See* Tr. 259–60.

In short, as Provost Austin testified, "[t]he University is not able to hire anybody who is unable to support the mission of the institution." Tr. 263–64; *accord* Tr. 113 (President Dougherty testified: "if we identified a candidate who was extremely indifferent or hostile to the mission, that would be a reason not to hire them."). Duquesne publicly reserves the right to hire a candidate best suited for its Catholic, Spiritan mission, not the candidate with other qualities that the Steelworkers or secular institutions might prefer (such as years of service).[16]

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[15] To the extent job postings are used in adjunct faculty hiring, they identify Duquesne as a Catholic, Spiritan university. Tr. 256; *e.g.* Union Ex. 23.

[16] Two Steelworkers witnesses testified that they were not asked about Duquesne's mission when hired in 2007, and 2008, respectively, long before the hearing in this case. *See* Tr. 456, 488. Even assuming this were true, it proves nothing other than that Duquesne's approach to achieving its clear and public goal of hiring for mission had not achieved 100-percent effectiveness as of more than half a decade ago. Duquesne unquestionably holds out that its Catholic, Spiritan mission affects adjunct faculty hiring. While the Board considered adjunct faculty testimony in *PLU* to show religion did not factor in hiring, unlike here, the Board had no public PLU documents stating that it did. *See* 361 NLRB No. 157 at *12 (citing no such documents).

(b) How and what is taught.

Once hired, Duquesne's adjunct faculty are contractually obligated through the *Faculty Handbook* to support the purposes of the University. Union Ex. 9 at 13; Tr. 275–76. Their role is also defined contractually through the *Faculty Handbook* as implicit in the University's mission and goals, which include a "special trust to seek truth and to disseminate knowledge within a moral and spiritual framework." *See* Union Ex. 9 at 10; *id.* at 3; Tr. 276. Duquesne provides new adjunct faculty orientations in part to emphasize the University's mission expectations. For example, new adjunct faculty received literature explaining that "[o]utstanding teacher-scholars and scientists are hired, rewarded and retained to support the mutual enrichment of faith and reason." Tr. 372; Er. Ex. 54. New adjuncts also received wallet-sized pocket cards listing a series of "Faculty and Staff Expectations," such as "[w]ork towards understanding the Spiritan values expressed in the mission statement and strive to incorporate them into your daily work" and "[b]e respectful of the Catholic tradition on which our university is founded." Er. Ex. 53; *see* Tr. 372.

Adjunct faculty who teach Catholic theology are required to have a Mandatum from the Bishop, and at least one adjunct faculty member who voted in the election has one. *See* Er. Ex. 8 (listing adjunct faculty member and participant in the election S. Patrick Doering as having a Mandatum). However, all adjunct faculty teach courses as part of curricula, and the University holds out curricula as one area where "concerns that are especially Catholic must dominate." Er. Ex. 13 at 3. Indeed, all curricula are explicitly linked to Duquesne's Catholic, Spiritan mission through the Dimensions. *See* Tr. 327–33; Er. Ex. 46. By, among other ways, linking to *Ex Corde* on its website and through the work of CCIT, Duquesne holds out that its entire academic endeavor serves its religious mission. *See, e.g.*, *supra* pp. 4–8, 12, 13–20, 23–30; Er. Ex. 65 at

2010-2011 Catalog, 60 (describing the McAnulty college as "at the center of Duquesne University's Education for the Mind, Heart and Spirit," as embodying "both Duquesne's Catholic tradition and its ecumenical atmosphere," and as striving for "respect for the dignity of the human person").

What is more, adjunct faculty teach extensively in Duquesne's Core, teaching an average of 44 percent of core credit hours over the past five years. Tr. 336. The Core "uniquely expresses the Spiritan-Catholic identity of Duquesne University." Er. Ex. 47 (Core Curriculum Website Page). Faculty in all disciplines who teach in the Core are responsible for achieving student learning outcomes such as "[i]dentify some of the unique perspectives provided by faith and reason in the pursuit of truth." *See* Union Ex. 14 at 1–2; Tr. 336.

Crucifixes in every classroom serve as a tangible reminder of the unity between the academic endeavor and the religious mission. *E.g.*, Tr. at 221. By word, example, and reward, Duquesne encourages adjunct faculty to deepen the already present connection between their work and the Catholic intellectual tradition, and many have done so. *See, e.g.*, *supra* pp. 16–20 (discussing the CCIT's programming and opportunities, including the "Part-time Faculty Micro-Mission Grant"). In short, as President Dougherty testified, the University encourages faculty to make the connection between faith and reason. Tr. 56. Although Duquesne does not "force faculty to do anything related to Catholicism," we "invite them in, we expect them to participate." Tr. 131.

c. The definition of academic freedom and grounds for nonrenewal.

Whatever else adjunct faculty may do, they may not improperly undercut Duquesne's Catholic Spiritan mission. This principle is evident first in Duquesne's definition of academic freedom, and, second, in Duquesne's definition of "Serious Misconduct."

First, Duquesne adheres to principles of academic freedom and encourages faculty to pursue the truth wherever it leads in the context of its mission. Duquesne's terms and conditions of employment define academic freedom in teaching as "subject to the principles and values expressed in the Duquesne University Mission Statement" and require teachers to "respect the religious and ecumenical orientation of the University." Union Ex. 6, § V.A; Union Ex. 9 at 12.[17] The *Faculty Handbook* also states unequivocally that "we take great pride in our Catholic character and ambience, and we subscribe to the teachings of the Roman Catholic Church." Union Ex. 9 at 2; *see* Tr. 273–74. In short, though free professional and academic analysis is encouraged, Duquesne reserves the right to determine that an adjunct faculty member's purported exercise of academic freedom improperly violated or failed to respect Duquesne's Catholic, Spiritan mission. *See* Union Ex. 10 at 82–83 (Duquesne's Self Study describing academic freedom and underscoring that "[i]t does not follow, however, that Duquesne's openness to dialogue will lead it to relinquish those core beliefs that constitute its specifically Catholic identity. Hence, ecumenism does not mean that everything is acceptable"). Research proposals similarly "must be consistent with the goals and objectives of the university." Tr. 295; Er. Ex. 42 (TAP 44).

Second, Duquesne's adjunct faculty members are hired on a semester-by-semester basis. *E.g.*, Tr. 464–65. Any reasonable prospective adjunct faculty member would understand that the University would not tolerate behavior from an adjunct that could result in revocation of a full-time faculty member's tenure. Under the *Faculty Handbook*, Duquesne may revoke tenure for "Serious Misconduct," defined to include the "failure to observe the principles of the Mission

[17] In relevant part, the AAUP 1940 Statement of Principles on Academic Freedom and Tenure states: "Teachers are entitled to freedom in the classroom in discussing their subject, but should be careful not to introduce into their teaching controversial matter which has no relation to their subject. *Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment*." Union Ex. 11 at 14 ¶ 2 (footnotes omitted, emphasis added).

Statement of Duquesne University or elaborations thereof approved by the Board of Directors" and "conduct involving moral turpitude." Union Ex. 9 at 19, n.2. Indeed, Provost Austin testified without contradiction that failure to respect the religious and ecumenical orientation of the University could result in non-renewal of an adjunct faculty member's contract. *See* Tr. 295; *see also* Tr. 117 (testimony of President Dougherty that "we expect [faculty] to respect [Catholic] beliefs as part of what the community believes, even if they don't believe them themselves); Tr. 125 (testimony of President Dougherty that if an adjunct faculty member mocked the notion of serving God by serving students "seriously, to try to undermine what we stand for . . . [, such conduct] would be grounds for not renewing an adjunct, for example").

Duquesne's approach to academic freedom and serious misconduct are consistent with *Ex Corde* and the USCCB Application. Those documents call for academic freedom and responsibility and respect for Catholic teachings. Er. Ex. 6, Part 2, Art IV, § 4(b) (USCCB Application, which states "[a]ll professors are expected to exhibit not only academic competence and good character but also respect for Catholic doctrine. When these qualities are found to be lacking, the university statutes are to specify the competent authority and the process to be followed to remedy the situation."); *accord* Er. Ex. 5, Part I, § 27 (*Ex Corde*, which states "[n]on-Catholic members are required to respect the Catholic character of the University . . . ."); *id.* Part II, art. 2, § 4 ("Catholic teaching and discipline are to influence all university activities, while the freedom of conscience of each person is to be fully respected."); *id.* Part II, art. 4, § 2 ("All teachers and all administrators, at the time of their appointment, are to be informed about the Catholic identity of the Institution and its implications, and about their responsibility to promote, or at least to respect, that identity.").

In sum, there is a line at Duquesne—respect for the religious and ecumenical orientation of the University—and that line is dictated by and implicates Church teaching in *Ex Corde* and the USCCB Application. *PLU* makes clear that this religious boundary is exactly the type of line *Catholic Bishop* forbids the Board from policing. *See PLU*, 361 NLRB No. 157 at *10, n.19 ("We will decline jurisdiction so long as the university's public representations make it clear that faculty members are subject to employment-related decisions that are based on religious considerations.").[18]

* * *

Given the powerful effect of Duquesne's Catholic, Spiritan mission on adjunct faculty employment, the Steelworkers may try to say that Duquesne's mission is not religious.[19] Even if

[18] To the extent the Steelworkers argue that the terms and conditions of faculty employment are no different than at secular universities, the Board should understand that the AAUP and members of Duquesne's faculty have expressed otherwise. The Hearing Officer improperly excluded on relevancy and hearsay grounds three e-mail messages from members of the Duquesne faculty addressing these issues, including one enclosing an AAUP analysis. *See* Tr. at 320–26. The AAUP, for example, analyzed the definition of "serious misconduct" in the *Faculty Handbook*. Rejected Er. Ex. 43, Attachment (Letter on Behalf of AAUP to Duquesne Professor); *see also* Tr. 315–17. The AAUP had "serious concerns" including "[w]hat would constitute 'a failure to observe the principles of the Mission Statement"? Rejected Er. Ex. 43 at Enclosure. Another professor—who the Steelworkers' counsel labeled a "Union guy," Tr. 322—expressed concern that some faculty candidates were not hired for failing the "'mission and identity test.'" Rejected Er. Ex. 44; *see also* Tr. 322–24. Another explained that "Catholic Universities in America are at risk that Catholic authorities will seek to intervene inappropriately into academic discussions . . . [which] requires both vigilance and prudence as faculty members seek to engage all questions and issues but not in a way that misrepresents the identity, mission and value system to which the University subscribes to seek and attain." Rejected Er. Ex. 45; *see also* 324–26. The Hearing Officer's erroneous ruling does not foreclose consideration of these exhibits by the Board.

[19] The testimony of the Steelworkers only witnesses demonstrates how Duquesne's religious mission affects adjunct faculty employment. Both teach in the Core. Tr. 456–57, 508. Professor Clint Benjamin teaches composition courses and Professor Adam Davis teaches History of Science. Both witnesses could connect their classes expressly to the Catholic intellectual tradition and Duquesne's religious mission. Composition is obviously broad enough to do so. One of Professor Davis's own textbooks is apparently David Lindberg's *The Beginnings of Western Science*. *See* Tr. 509–10 (transcript refers to "David Lindbergh" and "The History of Western Science"). The 2007 edition of the Lindberg text contains many references to "Church" and "Catholic" and even refers to "transubstantiation" (i.e., the transformation of bread and wine into the body and blood of Christ during the Catholic Mass). It also states: "One of the charges frequently leveled against the church is that it was broadly anti-intellectual—that the leaders of the church preferred faith to reason and ignorance to education. In fact this is a major

it were constitutional for a government agency to decide that question—as explained below, it is not—the plain text of Duquesne's mission plus *PLU's* focus on a reasonable prospective faculty member rebuts the idea.

However, to suggest that Duquesne's mission is not religious is a problem for another reason of deep *Catholic Bishop* significance. Only one group has the power to determine the mission and philosophy of the University: the Spiritan priests and brothers who are Members of the corporation. Er. Ex. 2, arts. VIII, IX; Er. Ex. 3, art. IV. They alone have the authority to define it, change it, and thus interpret it. *See id.* A former Spiritan Provincial Superior and current Member of the corporation testified that Duquesne's "religious mission . . . is vitally important, its mission as Catholic and Spiritan, to me, and to members of the corporation." Tr. 363; *see also* Tr. 359–62 (explaining that education is an integral part of the Spiritan mission of

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distortion." Lindberg, *supra* at 148. The church's mission "did not include the suppression of scientific investigations and ideas." *Id.* at 149.

Professor Benjamin testified that he teaches the same courses at public institutions and makes no effort to modify the content or engage with the University's mission. *See* Tr. 457, 478. Professor Davis testified that he believes mission is relevant to faculty only if it is articulated, Tr. 501, and implied that no one articulated it to him, *see* Tr. 490–95. Both witnesses' testimony is irrelevant because *PLU* is clear that the Board will not consider faculty members' actual performance of their duties. *PLU*, 361 NLRB No. 157 at *11. Regardless, today, Duquesne reserves the right not to rehire both professors and replace them with professors willing and/or better able to incorporate Duquesne's Catholic, Spiritan mission into their courses. If either were to undermine Duquesne's Catholic, Spiritan mission—for example, because his textbook mentions transubstantiation, if Mr. Davis improperly denigrated the Eucharist—Duquesne would have the right to take adverse action. *See* Tr. 478, 501 (denying denigration of Catholicism in class).

NLRB supervision would entail tremendous potential for entanglement. As just one example, if the Steelworkers claimed that Duquesne refused to rehire an adjunct professor who denigrated Duquesne's mission, and the Steelworkers argued that the refusal was actually driven by anti-union animus, the University's good faith would be put squarely at issue. This type of dispute is just what the Supreme Court in *Catholic Bishop* sought to avoid. *See* 440 U.S. at 502 (fearing that an unfair labor practice charge might force the Board to decide the "good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission"); *Universidad Cent. de Bayamon v. NLRB*, 793 F.2d 383, 401 (1st Cir. 1985) (en banc) (controlling opinion of Breyer, J.) ("One can imagine the University imposing sanctions upon faculty that relate, let us say, to counseling in the sensitive area of abortion; reviewing such sanctions would place the Board squarely in the position of determining what is 'good faith' Dominican practice in respect to such counseling.").

evangelization and that the entire Duquesne community, including faculty, shares in that charism). Therefore, there is an obvious and tremendous potential for entanglement if the Board asserts jurisdiction here—particularly when the Members' other exclusive, reserved powers include appointing the Board, amending the Articles of Incorporation, and closing the University. *See* Er. Ex. 2, arts. VIII, IX; Er. Ex. 3, art. 4. In this and many other respects, Duquesne is like the institution at issue in *St. Joseph's College*, a case in which the Board wisely declined jurisdiction even before *PLU*. 282 NLRB No. 9 at *3, *6 (1986) (declining jurisdiction when a religious order had ultimate authority over the college and the college required faculty to promote the objectives and goals of the order, although not to teach religious dogma).

II. THE SECOND PRONG OF *PLU* CREATES THE ENTANGLEMENT *CATHOLIC BISHOP* EXISTS TO AVOID, AND DUQUESNE EASILY SATISFIES THE CONSTITUTIONAL *GREAT FALLS* TEST.

For all of the reasons set forth above, Duquesne is not subject to NLRB jurisdiction under *PLU*. However, the record in this case demonstrates that the second prong of *PLU* repackages the same improper and entangling "substantial religious character test" without addressing the constitutional avoidance doctrine motivating *Catholic Bishop*. The Board should discard *PLU* and adopt and apply the constitutional *Great Falls* test, which Duquesne easily satisfies.

A. The Second Prong of *PLU* Creates the Unconstitutional Entanglement *Catholic Bishop* Exists to Avoid.

The Supreme Court decided *Catholic Bishop* on constitutional avoidance grounds: it was enough that the assertion of jurisdiction would raise "serious First Amendment questions." 440 U.S. at 504; *see also Great Falls*, 278 F.3d at 1340 ("*Catholic Bishop* was decided on grounds of constitutional avoidance"). By contrast, the Board in *PLU* improperly seeks to balance the First Amendment protections and the National Labor Relations Act and to assert "the broadest jurisdiction constitutionally permissible." 361 NLRB No. 157 at *8. The record in this case

demonstrates the folly of that attempted balancing: *PLU's* underlying assumptions and analytical framework are inherently entangling, and *PLU* fails to guard against the risk of future entanglement.

The analysis *PLU* demands is itself improperly entangling because the government decides what constitutes a "specific religious function." The First Amendment forbids the government from deciding what is secular and what is religious. *See Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 336 (1987) ("The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission.") (footnote omitted); *see also Town of Greece v. Galloway*, 134 S. Ct. 1811, 1822 (2014) (observing that analysis of whether legislative prayers were nonsectarian "would involve government in religious matters to a far greater degree"); *Mitchell v. Helms*, 530 U.S 793, 828 (2000) (plurality opinion) (concluding that inquiry into "whether a school is pervasively sectarian is not only unnecessary but also offensive"); *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 694 (1989) (rejecting proposal that "would force the IRS and the judiciary into differentiating 'religious' services from 'secular' ones").

PLU claims to avoid this problem by focusing only on an institution's own statements about the faculty role. But the Board has defined "specific religious function" based on its own assumptions about what is religious and what is not. The Board admitted in *PLU* that the inquiry is *not* simply whether the university holds out its faculty as performing a religious function, but whether the university holds out its faculty as "performing a . . . role that they would [not] be expected to fill at virtually all universities" as understood by the Board. 361 NLRB No. 157 at

*12. The Board went so far as to cast aside the importance of academic freedom to Lutheranism and to presume that a commitment by a religious institution to "diversity and academic freedom" puts forth the message that "religion has no bearing on faculty members' job duties or responsibilities." *Id.* at *11. The dangerous implicit assumption is that diversity and academic freedom are inconsistent with a genuinely religious endeavor—only fundamentalist religions and strident proselytizing count. *But see Great Falls*, 278 F.3d at 1346 ("That a secular university might share some goals and practices with a Catholic or other religious institution cannot render the actions of the latter any less religious."); *id.* ("Religion may have as much to do with why one takes an action as it does with what action one takes."). Similarly, the Board took it upon itself to determine that *PLU's* mission was not a religious mission. 361 NLRB at *18 n.25. The Board thus eviscerated whatever entanglement avoidance a holding-out requirement might achieve, arrogated to itself the job of determining what is and is not sufficiently religious based on its own assumptions, and preferred "some religions (and thereby some approaches to indoctrinating religion) to others." *Great Falls*, 278 F.3d at 1346.

The record in this case reinforces the point. The Catholic Church teaches—and Duquesne holds out—that Catholic universities grow from the heart of the Church and contribute to its mission of spreading the Good News. However, they do so in part precisely by recognizing academic freedom and responsibility and welcoming diversity. Such values grow directly from *Ex Corde* and the USCCB Application, which teach that faith and reason are valuable and compatible and that all people are children of God, endowed with inherent human dignity and free to choose the faith (or not). *See, e.g.*, *supra* pp. 5–7. These principles are rooted in Catholic Doctrine. For example, the *Catechism of the Catholic Church* states that: "methodical research in all branches of knowledge, provided it is carried out in a truly scientific manner and does not

override moral laws, can never conflict with the faith, because the things of the world and the things of faith derive from the same God. The humble and persevering investigator of the secrets of nature is being led, as it were, by the hand of God in spite of himself, for it is God, the conserver of all things, who made them what they are." § 159.[20] Thus, to rule that Duquesne does not hold out faculty as performing a religious function because it welcomes a diverse faculty and gives them academic freedom and responsibility would be based not on what Duquesne or the Church holds out, but rather on the Board's improper, entangling assumptions. It would also send an offensive and harmful official message from the United States government that whatever Duquesne and the Catholic Church say, Duquesne's academic endeavor is unconnected to its religious mission. Such governmental decisions about religious matters are exactly what the *Catholic Bishop* decision exists to prevent.

PLU invites the Board to determine what is and is not religious in another more subtle but equally harmful way. Specifically, *PLU* focuses on whether a "reasonable" prospective applicant would understand an institution's public documents to communicate that religion has a bearing on employment. 361 NLRB No. 157 at *13. But the "reasonable" person is a federal agency interpreting a religious institution's documents on its own and deciding what is religious and what is secular. For example, in this case the Hearing Officer not infrequently forbade inquiry into how Duquesne[21] understood its own documents, not to mention its Catholic, Spiritan mission, its strategy to achieve it, and its understanding of how its mission would affect its ability to negotiate with a union. *E.g.*, Tr. 154–57 (ruling inadmissible that Duquesne would

[20] Apparently seeking to avoid entanglement, the Hearing Officer forbade any questions about the *Catechism*. Tr. 419. However, it is available on the Vatican's website and presents "the essential and fundamental contents of Catholic doctrine." *Catechism of the Catholic Church*, Prologue III, § 11, *available at* http://www.vatican.va/archive/ENG0015/_INDEX.HTM.

[21] Speaking through University officials, such as its president, provost, and a member of the corporation.

refuse to bargain over healthcare benefits for contraception and abortion and over the role of adjunct faculty in its religious mission); Tr. 294 (ruling inadmissible the University's chief academic officer's interpretation of the *Faculty Handbook*); *see also* Tr. 50, 141–42, 283–84. *PLU* thus leaves the Board to make its own interpretation and determination.

For similar reasons, the approach also fails to guard against the risk of entanglement. *See Universidad Cent. de Bayamon v. NLRB*, 793 F.2d 383, 401–02 (1985) (Breyer, J.) (explaining "'mandatory subjects of bargaining' . . . in the context of 'educational institutions' may concern the whole of school life") (citation omitted). What counts for entanglement purposes is the position the University would adopt when taking particular employment actions or in union negotiations—not the Board's *ex ante* interpretation of cold documents. If the Board asserts jurisdiction, Duquesne may be forced not only to explain what the Hearing Officer forbade it to testify in this hearing, but to defend its employment action or refusal to bargain on whatever otherwise would be mandatory subjects of bargaining in an unfair labor practice proceeding before this agency. Again, this injection of the Board into the relationship between a religious-affiliated institution and its faculty is exactly what the *Catholic Bishop* decision exists to avoid.

Finally, *PLU* wrongly assumes that a religious institution's religious mission is frozen. *PLU* concludes that if a University does not at the time of a hearing require faculty to perform what the NLRB deems a specific religious function, then there is no entanglement problem and the constitutional avoidance concern motivating *Catholic Bishop* is resolved. Far from it. Here, for example, the Spiritans control the University's mission and philosophy, and have sole authority to change it or Duquesne's approach. President Dougherty's 2014 convocation address hinted at the potential need for change; at once calling for even greater "stress on our mission," Er. Ex. 17 at 6, while at the same time identifying two factors that "will affect the future on this

score in unknown ways": vocations to the Spiritans have declined, and young Americans are "alienated from organized religion as never before," *id.* at 8. *See* Tr. 134–36.

In response to these factors, the University could decide to require more of its faculty regarding its Catholic, Spiritan mission, such as requiring participation in CCIT programs on Spiritan pedagogy. If a union existed, and if it sought to bargain over the University's decision regarding faculty professional development or if the union argued that the University's new requirements were an unlawful unilateral change in terms and conditions of employment, the Board's supervision of such issues would create a First Amendment entanglement nightmare. *See Bayamon*, 793 F.2d at 402 (identifying a potential entanglement because certain faculty "objected to teaching so many theology and philosophy courses"). Similarly, there would be an entanglement nightmare if a union sought to bargain over a University decision to institute a formalized evaluation system to assess contributions to Duquesne's religious mission, with retention contingent on satisfactory performance. Thus, even if the Board concludes that Duquesne's current approach to achieving its Catholic, Spiritan mission is not religious enough or implemented well enough for the Board, it has not meaningfully solved the Constitutional avoidance concern motivating *Catholic Bishop*.

B. Duquesne Meets the *Great Falls* Test.

This case demonstrates the folly of *PLU's* attempt "to avoid entanglement by creating new, finely spun judicial distinctions" because the application of such distinctions results and here resulted in entanglement. *See Bayamon*, 793 F.2d at 402 (Breyer, J.). The Board should abandon *PLU* and apply *Great Falls*.

Under *Great Falls*, the Board cannot assert jurisdiction over a university that (1) holds itself out as providing a religious educational environment, (2) is organized as a nonprofit, and

(3) is affiliated with a recognized religious organization. 278 F.3d at 1343–44. Here, it is stipulated that Duquesne is a nonprofit corporation, and it is indisputable that Duquesne is affiliated with the Catholic Church and the Spiritan congregation. For all the reasons that Duquesne meets *PLU*, it satisfies the *Great Falls* requirement that it holds itself out as providing a religious educational environment.

CONCLUSION

For the foregoing reasons, the Board should decline to exercise jurisdiction over Duquesne University of the Holy Spirit.

Dated: May 22, 2015

Respectfully submitted,

/s/ Arnold E. Perl

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CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing was filed electronically and copies were served via e-mail on the following on this the 22nd day of May, 2015:

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/s/ Joel D. Buckman
Joel D. Buckman

Attachment 1

Buckman, Joel D.

From: GenoFo@aol.com
Sent: Thursday, May 21, 2015 6:15 PM
To: Buckman, Joel D.
Subject: Re: NLRB / Duquesne

I have checked the wave file for this and it is very clear from the sound backup that the word is "include" and not "exclude." It is a transcription error on my part. You can share this e-mail with all parties to make the correction.

Gene

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In a message dated 5/21/2015 6:04:48 P.M. Eastern Daylight Time, joel.buckman@hoganlovells.com writes:

> Hi Gene, this is Joel Buckman from Hogan on the Duquesne matter before the NLRB (April 27-29). We spoke by phone just now regarding a transcript issue and the backup audio. Here is the pertinent text from the transcript (what I remember is in brackets):
>
> Vol. II, page 257 lines 1–12:

1 Employer 36.

2 Do you recognize this document, Provost Austin?

3 A. Yes, I do.

4 Q. What is it?

5 A. This is the application form used by our Office of Human

6 Resource Management for all applicants for jobs of all kinds in

7 the university.

8 Q. Would that exclude adjunct faculty? **[My recollection is that I asked him "Would that <u>include</u> adjunct faculty?]**

9 A. Yes, it would.

10 Q. Adjunct faculty in the McAnulty College?

11 A. Yes, it would.

12 MR. BUCKMAN: I would move this into evidence now.

Hate to impose, but you mentioned the audio is at home. If you could listen tonight and let me know, I would really appreciate it. Need to file the brief tomorrow.

All the best,

Joel

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT

Employer

and **Case 06-RC-080933**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

REGIONAL DIRECTOR'S DECISION, AND RECOMMENDATION TO OVERRULE OBJECTION TO ELECTION AND ISSUE CERTIFICATION

The above-captioned matter is before me on remand from the National Labor Relations Board (Board). In May, 2012, the parties entered into a Stipulated Election Agreement in this case and shortly thereafter the Employer filed a motion to withdraw from that Agreement, asserting that it had a "religious exemption" from Board jurisdiction pursuant to *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). Region Six denied the Employer's Motion to Withdraw, and the Employer took a special appeal to the Board. When its special appeal was denied by the Board,[1] the Employer filed on September 25, 2012, its Motion for Board to Order an Evidentiary Hearing, Vacate Election, and Dismiss Petition and the Objection to Conduct of Election.[2]

On December 16, 2014, the Board issued its decision in *Pacific Lutheran University,* 361 NLRB No. 157, in which the Board reexamined the standard for declining or extending jurisdiction in cases involving self-identified religious colleges and universities. Following that decision, on February 12, 2015, the Board issued an Order remanding this proceeding to me for further appropriate action consistent with *Pacific Lutheran University.*

A hearing officer of the Board held a hearing[3] and both parties filed timely briefs. The sole issue at the hearing was whether the Board should decline to exercise jurisdiction over the Employer under the recent standards enunciated by *Pacific Lutheran University.*

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[1] A mail ballot election was subsequently conducted and the votes counted. The Tally of Ballots dated September 20, 2012, shows that there were 50 votes in favor of representation and 9 votes against representation.
[2] The Employer's Objection is that the Board lacks statutory jurisdiction over the Employer.
[3] On June 4, 2015, the Employer filed a Motion to Correct transcript which is hereby granted.

The Employer contends that it does not meet the jurisdictional standards of *Pacific Lutheran University* as both the University itself and its employees in the petitioned for unit are held out as performing a religious function in a religious environment, and that the Board should not assert jurisdiction and thereby insert itself between the University and its Catholic mission and philosophy, and a group of faculty crucial to achieving that mission[4]

The Petitioner contends that jurisdiction is appropriate here as while the Employer purports to offer a religious educational environment, the part-time faculty in the petitioned-for unit are not held out by the Employer, either to the students or to the public, as having specific religious functions or any functions which are different from those of instructors at other educational institutions.

I have considered the evidence and the arguments presented by the parties on these issues.[5] As discussed below, I have determined that the Employer, contrary to its contentions, is not exempt from the Board's jurisdiction under the two-pronged test of *Pacific Lutheran University*. In so doing, I have concluded that although the Employer holds itself out as providing a religious educational environment for its students, it has not been established that the petitioned-for adjunct faculty members are held out as performing a specific role in maintaining the University's religious educational environment. Therefore, the exercise of jurisdiction by the Board over the Employer is proper. Accordingly, an appropriate certification of representative of the 2012 election should issue, in accordance with the Tally of Ballots dated September 20, 2012.[6]

To provide a context for my discussion of the issues, I will first review the Employer's organization and operations. Then, I will present in detail the facts and reasoning that support each of my conclusions on the issues.

I. OVERVIEW

The Employer is a private, coeducational university located in Pittsburgh, Pennsylvania, which offers degree programs at the baccalaureate, professional, master's and doctoral levels. It currently has about 6500 undergraduate students and 3000 graduate students. The students attend ten different schools within the University, including McAnulty College, which is the employing entity of the petitioned-for unit.[7] The Employer's faculty consists of tenured professors and full-time, non-tenured instructors, in addition to the adjunct professors employed by McAnulty

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[4] The Employer also argues that *Pacific Lutheran University* was wrongly decided by the Board and should be overturned. However, as noted below, I do not reach that issue herein.

[5] The Petitioner argues that the Employer should be bound to the Stipulated Election Agreement that was executed in 2012, and that its current challenge to the Board's jurisdiction is untimely. I note that statutory jurisdiction, unlike discretionary jurisdiction, may be challenged at any time. See *Anchortank, Inc.*, 233 NLRB 295, fn. 1 (1977).

[6] In so doing, I also recommend that the Employer's Objection to the Conduct of Election filed September 12, 2012, be overruled as its sole basis asserts the Board's lack of jurisdiction. Therefore the objection is coextensive with the issues presented herein.

[7] The Unit is: All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

College and other Schools within the University. The Employer is accredited by the Middle States Commission on Higher Education.

II. FINDINGS OF FACT

A. The Nature and Environment of the University

The Employer was founded in 1878 by members of the Spiritan [a Roman Catholic] religious congregation and it is the only Spiritan university in the United States. The Employer's legal name, as amended, is "Duquesne University of the Holy Spirit" and its motto is "It is the Spirit Who Gives Life."[8] The Employer's Seal is a white dove, symbolizing the Holy Spirit.

The Employer is organized as a nonprofit Pennsylvania membership corporation[9] and, in accordance with its Articles of Incorporation and Bylaws, only Spiritan priests and brothers can serve as its Members.[10] The Members' powers include the appointment of the Employer's Board, President, and officers and directors, as well as the authority to "determine or change the mission, the philosophy, objectives or purpose of the University." The Employer is officially recognized as a Catholic university by the local Bishop and listed as such in the *Official Catholic Directory*. The Bishop or the Bishop's designee has an *ex officio* seat on the Employer's Board of Trustees.

The Employer identifies itself on its Internet website as "A Catholic University in the Spiritan Tradition." Also featured on its website as well as in other documents, including the student handbook and faculty handbook, is its Mission Statement which reads:

> Duquesne University of the Holy Spirit is a Catholic university founded by members of the Congregation of the Holy Spirit, the Spiritans, and sustained through a partnership of laity and religious. Duquesne serves God by serving students through:
>
> - Commitment to excellence in liberal and professional education;
> - Profound concern for moral and spiritual values;
> - Maintaining an ecumenical atmosphere open to diversity;
> - Service to the Church, the community, the nation, and the world;
> - Attentiveness to global concerns.

As a Catholic university, the Employer is subject to guidelines that the Catholic Church has issued for universities: the 1990 *Ex Corde Ecclesiae* (*Ex Corde*) contains guidance given by Pope John Paul II, and the Application of *Ex Corde Ecclesiae* for the United States (Application), was promulgated by the U.S. Conference of Catholic Bishops (USCCB) in 2000. The *Ex Corde* and the USCCB's Application instruct that Catholic universities should contribute to the work of the Catholic Church through education and by uniting faith and reason. Both the *Ex Corde* and

[8] The Holy Spirit is one component of the Holy Trinity, which is the Catholic understanding of God.
[9] The Employer has also been granted an exemption under Section 501(c) of the Internal Revenue Code.
[10] The Members are appointed from within the Spiritan organization by its hierarchy.

USCCB's Application are provided on its website, available to the public as well as current and prospective students

The Catholic Church considers education to be the work of the Church, even if teaching in secular disciplines, and posits that educating students is an expression of service to God. This concept is reflected in the portion of the Employer's mission statement that states that it " .serves God by serving students. " This mission extends to promoting moral and spiritual development in the students, regardless of their faith.

Catholic universities are also instructed to be inclusive to all faiths and lack of faith. Thus, the Employer is not required to teach only Catholic students, mandate Catholic sacraments, or employ only Catholic professors. In its 2013-2014 Faculty Resource Guide which is available on its website, the Employer states: "[a]s a Catholic University, Duquesne is dedicated to fostering an environment that invites, but does not conscript, participation in spiritual life."

The Employer has an Office of Mission and Identity whose purpose is to reach out to faculty through forums, presentations, and discussion groups to reinforce information about its Mission. The Employer disseminates its Mission and its philosophy of service to God through education in the publications it puts out, such as its university magazine, its "Viewbook" sent to prospective students, its fund raising letters to alumni, and various other documents which are either mass mailed or available to the public on its website. The Employer also articulates its philosophy in orientation sessions for incoming freshman, speeches at its annual Convocations, and other outreach events. The Employer's core curriculum for undergraduates mandates that each student achieve three credits in Ethics and three credits in Theology, although there are options available which emphasize the philosophical, rather than the religious, aspect of these subjects.

The Employer's campus community includes about a dozen Spiritan priests who live on campus and serve the Employer as faculty, adjunct faculty, and/or administrators. There is a page on the Employer's website captioned "Meet the Spiritans" which pictures over twenty Spiritan priests, including the above-referenced faculty and administrators, who live, work, and/or study at the campus. There is another section on the website entitled "The World of Spiritans" which is dedicated to describing the Order and the Spiritan Rule of Life. There is an annual, well-publicized "Founders Week" which celebrates the Spiritans' community and has many special events. Other members of the Spiritan congregation visit the campus and attend or are honored during Founders Week.

The Employer's physical campus contains a Catholic chapel where Mass is said every day as well as on special occasions. The Bishop celebrates a Mass of the Holy Spirit at the beginning of each academic year. These religious ceremonies are advertised and are open to the public, as well as students and faculty. At the crossroads of the campus is a 25 foot tall crucifix. The surrounding area has benches and can be used for prayer, meditation, or reflection. There are other items of religious art and Catholic symbols on the campus, including statues of Catholic saints and the Virgin Mary, which are in various locations. The University Seal, the symbol for the Holy Spirit, is also featured in locations on campus. More than ten campus buildings and residence halls are named for Spiritan members. A crucifix may be found in most, if not all, of the classrooms and conference rooms of the University.

B. The Role of the Petitioned-for Unit Members within the University

In 2012, when the representation petition was filed in this case, there were approximately 88 adjunct professors in the proposed bargaining unit.[11] During the most recent five year period prior to the hearing, the average number of student credit hours taught in the core curriculum subjects by adjunct faculty was 44 percent of the total hours, ranging from a high of 49 percent, to a low of about 43 percent. The adjunct faculty members are part-time employees who are contracted to teach a particular scheduled class for a semester and are limited to teaching six credits each semester. Adjunct professors have no expectation of continued employment beyond that semester for which they are currently contracted. The adjuncts received their contractual rate and no fringe benefits. The adjuncts' one semester contracts do not reference religious duties or the Employer's Mission, or any role that the adjunct would be expected to play in furthering the Mission or the Employer's religious educational environment.

There was considerable testimony at the hearing with respect to the employment application and interview process for faculty but that testimony revealed that the described procedures are not utilized for adjuncts.[12] Adjuncts are generally hired as the need arises due to registration levels and the hiring sometimes occurs at the last minute. While an application for adjunct employment exists, the Employer does not mandate it in the hiring process and it is not always utilized. Individuals sometimes submit unsolicited resumes for consideration so there is a pool of instructors available from these. Likewise, adjunct positions may be filled without advertising or posting the positions as there are past adjunct instructors available. The record contains only one instance of the Employer advertising for an adjunct instructor since 2012. While that advertisement self-identifies the Employer as a Catholic university, it does not contain any reference to any role that the adjunct would play in furthering that identity.

The Employer's process for hiring adjuncts is decentralized, due, as stated above, to the nature of the position, the number of positions, and the timing sometimes necessary to fill vacant teaching spots. Rather than using the application and interview process through the University Provost's Office that other faculty must undergo, the adjuncts are hired by the chairs of the individual departments within the various Schools where they will teach. While the record reveals that these chairs attend hiring seminars in which any of the Employer's expectations related to hiring are communicated to them, there is no evidence in the record from any department chair as to how the hiring is actually accomplished and what information is communicated to the adjunct applicant. In accordance with prevailing law, the Employer does not question any applicants regarding their faith, or lack thereof, and there is no requirement that faculty be Catholic, Christian, or hold any religious belief.

Adjuncts are invited to a new instructor orientation at the beginning of the academic year, but there is no requirement that they attend. Similarly, adjuncts are invited to the annual University Convocation, as well as various other campus events such as Bible studies and

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[11] The record reveals that as of 2012, the total number of full-time faculty members was 486, with 260 being tenured faculty and the remaining faculty being non-tenured. The record does not reveal the number of adjuncts in Schools other than McAnulty College.

[12] There was also testimony concerning contents of the Employer's Strategic Plan. I do not rely on the Plan documents provided as they clearly are goals, as opposed to established facts. Moreover, the testimony revealed, without specification, that not all of the Plans' goals have been attained.

mission trips, but attendance at these is not required either. There is no evidence that the Employer monitors which adjuncts might or might not attend any of these events.

The Employer has a Faculty Handbook which is not distributed individually to adjunct faculty but is available on the Employer's website. The Handbook, at page 12 states:

> **Adjunct Faculty.** The adjunct faculty is comprised of individuals who teach up to 6 credit/contact hours per term at the University. Exceptions to this limit may be made by the Dean of the College/School. As a rule, adjuncts are responsible only for teaching. The SES [Student Evaluation Survey*] will be administered in all classes taught by adjunct faculty. Adjunct faculty members do not have voting privileges and their specific responsibilities are determined by their chairs.
>
> *The **Student Evaluation Survey** form is contained in the Handbook at page 83.

The Employer has endowed Chairs in various departments which are available to "outstanding faculty members" who serve as role models for other faculty. However, these prestigious Chairs are for full-time faculty only so adjuncts are not eligible to apply. There is a "Part-time Faculty Mission Micro-Grant" program for which adjuncts are eligible and they can receive up to $500 for approved projects. In this regard the website states that the grants are intended to support "scholarly, curricular and professional development opportunities that reflect Duquesne's mission and engage resources in Catholic intellectual tradition." The record reveals that adjuncts have, at times, received these grants. Adjuncts are not, however, required to apply.

In addition to the Employer's Mission Statement which has been discussed above, the Employer's Undergraduate Catalog describes the Mission of McAnulty College as:

> The College prepares students for productive and creative lives of service in a rapidly changing world. We teach students to think, write and speak clearly and critically, so they can seek truth about God, themselves, and society, and contribute to their families, communities, businesses and professions.

Two of the Employer's adjunct professors, Clint Benjamin and Adam Welles Davis, testified at the hearing. Both have taught for the Employer for more than six years. Both testified that they began their employment by responding to a newspaper ad and submitting a resume. Neither of the witnesses recalled filling out an employment application. Both were interviewed by their respective Department heads. Neither recalled any discussion about the Employer's Catholic identity or Mission. Neither was told that a role in supporting the Employer's Mission would be a condition of their employment.

Benjamin testified that he attended an Adjunct Orientation early in his career with the Employer. He said the two current core classes in the English Department that he teaches do not have any religious, or anti-religious, content and that he does not incorporate any element of Catholicism into his teaching or his evaluation of his students. Benjamin testified that he was not told what to teach and he merely submits his syllabi to the Department head at the beginning of the semester. He said there was nothing in his syllabi which referenced the Employer's Mission

or religious identity. The English course that Benjamin teaches for the Employer is no different than the one that he teaches at a Community College.

Regarding his teaching performance, Benjamin testified that he is evaluated only by students via the above-referenced SES. The SES forms submitted by the students to evaluate the adjuncts contain no criteria referencing Catholicism, religion, God, the Spiritans, the Employer's Mission, or the adjuncts' adherence to any of the foregoing. Benjamin testified that his teaching has occasionally been observed by a faculty observer from whom he received some feedback but it did not include any comments about religious content, or lack thereof, or anything about the Employer's Mission or his alleged role in it. Benjamin testified that no student had ever come to him for advice about their spiritual development and no Employer representative had ever told him that counseling students concerning their religious development was a part of his job duties.

Davis testified that when he was hired there was no discussion of the Employer's Mission or philosophy, his opinion on it, or how he would incorporate it into his teaching. He was told he could design his own course. While he submitted a syllabus early in his employment, he does not regularly submit them to anyone and no one approves his syllabi. Davis has never attended an instructor orientation, Convocation, Bible study, or mission trip. He testified that he does not have any participation within the Employer's organization beyond the course that he teaches. He presently teaches one class that meets one night a week. Davis testified that he goes to the campus, teaches his one class, and goes home. If he needs to do something like pick up paperwork, he might stop by at another time but he otherwise has no involvement in the campus community. Adjuncts are not provided with their own office space.

The record contains testimony concerning academic freedom and whether faculty would be free to teach a concept which was not in accordance with Catholic teachings. The Provost testified that faculty could not be "hostile" to the Employer's mission and, if such a person was brought to his attention, he would take disciplinary action, such that, for example, the adjunct's contract would not be renewed. As mentioned above, the adjuncts are not evaluated on this type of basis and there is no evidence of any complaints concerning adjuncts who were "hostile" or who have been disciplined. The record, however, is clear that adjuncts are not required to be Catholic and are not told that they must adhere to Catholic teachings or values in their job performance.

III. ANALYSIS

A. The Legal Standards

In *NLRB v. Catholic Bishop of Chicago,* the Supreme Court overturned the Board's then-applicable policy to "to decline jurisdiction over religiously sponsored organizations 'only when they are completely religious, not just religiously associated.'" 440 U.S. 490, 492 (1979), quoting *Roman Catholic Archdiocese of Baltimore,* 216 NLRB 249, 250 (1975). The Court found "no clear expression of an affirmative intention of Congress that teachers in church-operated schools should be covered by the Act." Accordingly, the Court concluded that there is no Board jurisdiction in these instances. Instead, the Court stated that the Act must be construed to exclude church-operated schools because to do otherwise "will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission." *Catholic Bishop,* 440 U.S. at 502. The Board's entanglement in such inquiry would violate the First Amendment. *Id.* Although it invoked the doctrine of constitutional

avoidance, the Court nevertheless posited that Board assertion of jurisdiction over church-operated schools would "'give rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid."' *Id.,* at 503 (quoting *Lemon v.Kurtzman,* 403 U.S. 602 (1971)). The Court declined to reach "difficult and sensitive" constitutional questions presented by an application of Board jurisdiction.

For many years, the Board applied a "substantial religious character" test to assess whether, under *Catholic Bishop,* exercise of the Board's jurisdiction presents a significant risk of infringing on the First Amendment. *See, e.g., Trustees of St. Joseph's College,* 282 NLRB 65, 68 (1986), in which the Board concluded that the concerns of the *Catholic Bishop* court were applicable to colleges and universities, reversing a line of cases that had limited *Catholic Bishop* to elementary and secondary schools. Subsequently, in *University of Great Falls,* the Board rejected the contention of a religiously sponsored university, that the exercise of Board jurisdiction would violate the Religious Freedom Restoration Act. 331 NLRB 1663 (2000).[13] See also *Carroll College, Inc.,* 345 NLRB 254 (2005), reaffirmed at 350 NLRB No. 30 (2007).[14]

This year, in *Pacific Lutheran University,* the Board adopted a new, two- pronged standard for this jurisdictional inquiry. The Board will not decline to exercise jurisdiction over faculty members at a university that claims to be a religious institution unless it is demonstrated that: (1) the university holds itself out as providing a religious educational environment; and (2) the university holds out the petitioned-for faculty as performing a specific role in creating or maintaining the university's religious educational environment. *Pacific Lutheran University,* 361 NLRB No.157, slip op. at 6-8.

The first prong of the *Pacific Lutheran University* test is identical to the first step of the D.C. Circuit's three-part test for exemption from Board jurisdiction. *See University of Great Falls,* 278 F.3d 1335. The Board noted that it also agreed with the D.C. Circuit's requirement that, to be exempt from the Board's jurisdiction, the institution must be organized as a nonprofit. 361 NLRB No. 157, slip op. at 7. However, instead of treating this as an independent second step, as the D.C. Circuit had, the Board stated only that it was "relevant in an examination of how a university holds itself out." *Id.*

In evaluating the first prong, which is a threshold showing, the Board will give more weight to contemporary self-presentation than to founding and historical documents. *Id.* Documents demonstrating this self-presentation would include "handbooks, mission statement, corporate documents, course catalogs, and documents published on a school's website." *Id.,* slip op. at 6. This initial showing is "minimal," and "does not impose a heavy burden." *Id.,* slip op. at 7.

The more significant aspect of inquiry is in the second prong, and focuses on the petitioned-for faculty members, rather than on the university as a whole. Similar to the first prong, the examination is on how the university *holds out* these faculty, but strictly avoiding an intrusive inquiry into the nature of the religious tenets of the institution. *Id.,* slip op. at 8. The Board will not look behind publicly available documents to assess the university's actual practice

[13] Decision vacated by *University of Great Falls v. NLRB,* 278 F. 3d 1335 (D.C. Cir. 2002).
[14] Decision vacated by *Carroll College, Inc. v. NLRB,* 558 F.3d 568 (D.C. Cir. 2009).

nor will any individual teacher's specific actions be investigated. *Id.,* slip op. at 9. Further, the inquiry is demanding. The faculty must be *held out* as performing a *specific religious function* and "[g]eneralized statements that faculty members are expected to, for example, support the goals or mission of the university are not alone sufficient." *Id.,* slip op. at 8.

When the Board applied the new standard to the facts of *Pacific Lutheran University* itself, it examined the statement in the faculty constitution that a faculty member "'becomes a member of a community of scholars who respect and uphold the principles of Lutheran Higher Education "' *Id.,* slip op. at 12, fn. 22. Upon reflection, the Board found this statement to be merely aspirational in nature and that it did not demonstrate that faculty members were required to perform any specific religious role or function. *Id.*

Conversely, evidence showing that faculty members are required to integrate the institution's religious tenets into coursework, serve as religious advisors to students, propagate those tenets, engage in religious training, or conform to the tenets in a manner specifically linked to their job duties will be sufficient to exempt an institution from Board jurisdiction. *Id.,* slip op. at 9. Such evidence will be found in the school's statements to students, faculty, and the public, including on its website and in its handbooks, employment contracts, and job descriptions. *Id.,* slip op. at 10. The relevant issue in the test for the second prong is whether a reasonable prospective employment applicant "would conclude that performance of their faculty responsibilities would require furtherance of the college or university's religious mission." *Id.,* slip op. at 9. The required evidence should show that prospective applicants would be expected to perform specific religious functions different from functions performed at other similar institutions or that the evaluation of their success in fulfilling these goals would be any different. *Id,* slip op. at 9, fn. 16.

The Employer argues that the two-pronged test described above entails the same improper, unconstitutional inquiry as its "substantial religious character" predecessor and fails to avoid the entanglement that the Court in *Catholic Bishop* strove to avoid. Thus, the Employer urges that the Board should adopt the *Great Falls* test, and abandon its recent determinations in *Pacific Lutheran University.* I will not address this contention by the Employer as this argument must await consideration by the Board. Pursuant to Section 102.67(c)(1) of the Board's Rules and Regulations, my obligation is to apply Board precedent and not to determine whether that precedent should be varied.

B. The Employer holds out the Religious Nature and Environment of the University

The Employer consistently identifies itself as a Catholic Spiritan institution and publicly describes those values as inspiring the standard of education it provides. It prominently features Catholic themes on its website and in its publications. Its Mission, Motto, and Seal also invoke these Catholic themes and are in the public domain available to all through internet or its publications.

The Employer discusses its Spiritan educational environment in student recruitment materials and during its new student orientation. The Employer promotes its Catholic identity in leaflets, letters, and speeches, which are distributed and disseminated both internally and external to the University. The Employer not only claims itself to be a Catholic university but is

officially recognized and registered as such and proclaims this fact in its advertisements and outreach to the public.

The Employer provides regularly scheduled Catholic religious services on campus, albeit non-mandatory, and includes Catholic symbols and icons in diverse locations on its campus. The Employer sponsors Bible study groups and religious lectures, recruits for and participates in Catholic relief work and community service projects, and supports Catholic mission work among students and faculty. While these endeavors are not mandatory, participation is encouraged by the Employer's administration. The Employer is organized as a non-profit institution and recognized as such by the IRS.

Based on the above and the record as a whole, I find that the Employer holds itself out as providing a religious educational environment to students, applicants, and the general public. Therefore, the Employer meets the first prong of the standard established in *Pacific Lutheran University*. *Id.,* slip op. at 6-7.

C. The Employer does not hold out the Petitioned-for Unit Members as Performing Functions which relate to Its Religious Environment

The Board in *Pacific Lutheran University* stated that when, as here, the threshold requirement of prong one of its jurisdictional inquiry has been satisfied, "the university must show that it holds out the petitioned-for faculty members themselves as performing a specific role in creating or maintaining the college or university's religious educational environment. " *Id.*, slip op. at 11. [Emphasis added] I find that the record here does not support a conclusion that the Employer holds out its adjunct professors as performing any religious function in creating or maintaining its religious educational environment.

While there is voluminous evidence in the record concerning the Employer's religious identity and its stated Mission, there is scant evidence that adjuncts are expected to act in any way to advance the Employer's religious message or to do anything with regard to it, other than to not be openly hostile to it. The record is replete with descriptions of the Employer's religious nature and examples of the proclamation and dissemination of its Mission in various ways as have been mentioned above. It would be disingenuous for anyone to argue that the adjuncts would not be aware of the religious environment developed by the Employer but awareness is not the equivalent of contributing to it or advocating for it. Although there may be evidence that "faculty" in the broad sense may be charged with certain responsibilities, there is no evidence that adjuncts have any such responsibilities. Moreover, the record supports a finding that the petitioned-for adjunct professors do not have the same standing and are not treated by the Employer in the same manner as the full-time faculty are treated, whether they are tenured or non-tenured.

In its website and publications, the Employer makes no claim that the adjunct instructors who are members of the petitioned-for unit play any role in contributing to the University's mission or religious environment. The Employer's advertisement for an adjunct instructor which is included in the record does not reference any duties that the applicant will support and/or be knowledgeable about the Employer's religious aspirations. There is no mention of any such religious duties in the adjuncts' employment contracts and there is no evidence that adjuncts

are personally informed that they have these types of responsibilities. Neither are the adjuncts evaluated on performance of any religious functions nor is there any evidence of adjuncts having been disciplined for failure to perform any such functions. Therefore, a reasonable candidate for an adjunct teaching position with the Employer would not conclude that any religious responsibilities were required by their job duties.

The Faculty Handbook contains a section on the aspirational mission and goals of the Employer but does not mention God, Catholicism, or even religion, in connection with adjunct faculty duties. The evidence does not reveal that adjuncts are expected to serve as religious advisors to students, engage in religious training, educate students regarding any tenets of religious faith, or conform to any tenet of Catholicism in the course of their teaching duties.

In its brief, the Employer argues that it meets prong two of the *Pacific Lutheran University* test because (1) its mission is religious and it consistently communicates to all existing and prospective faculty that their participation in the mission is integral and (2) its religious mission affects adjunct faculty hiring, teaching, its definition of academic freedom, and grounds for non- renewal. [Employer brief at 33] I cannot agree. There is a lack of evidence that adjuncts are informed of any requirement of participation with respect to conveying or supporting the Employer's mission. Further, as I stated above, there is no evidence that such religious duties are conveyed to adjuncts, or are a consideration in hiring, job performance, the course content of adjuncts, or the continued contractual renewal of any adjunct. In the absence of specific substantial evidence, generalized statements concerning "faculty" in the Employer's publications or on its website are the type that the Board found insufficient in *Pacific Lutheran University* and are unpersuasive here. *Id.,* slip op. at 8.

Based on the above, I find that the Employer does not hold out its petitioned-for adjunct faculty members as performing any religious function as is required by the second prong of the *Pacific Lutheran University* test.

D. Conclusion

In accordance with my findings detailed above, I have found that the Employer holds itself out as a religious educational institution and, thus, meets the criteria of the first prong of the Board's test in *Pacific Lutheran University.* However, I have not found that the Employer holds out its adjunct professors who are members of the petitioned-for bargaining unit as serving any role in creating or maintaining the Employer's religious educational environment. Therefore, the second prong of *Pacific Lutheran University* test has not been satisfied.

Accordingly, based on all of the above and the record as a whole, I conclude that the Board may properly assert jurisdiction over the Employer in this case.

IV. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter. The Employer, a Pennsylvania nonprofit membership corporation with its sole facility located in Pittsburgh, Pennsylvania, operates a university of higher education. During the past twelve-month period, the Employer derived gross revenues in excess of $1 million from the operation of its facility. During that same period, the Employer purchased and received directly from points located outside of the Commonwealth of Pennsylvania for use at its Pittsburgh, Pennsylvania, facility, goods and materials valued in excess of $50,000.
3. The Petitioner, a labor organization within the meaning of the National Labor Relations Act, claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

V. RECOMMENDATION and ORDER

IT IS RECOMMENDED that the Employer's Objection to the Conduct of Election dated September 25, 2012 be overruled.[15]

IT IS HEREBY ORDERED that if the Board adopts my findings, conclusions and recommendation, an appropriate Certification of Representative issue in the following appropriate unit, in accordance with the Tally of Ballots dated September 20, 2012, which was served upon the parties and which sets forth that a majority of the valid ballots has been cast for United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC.

> All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

---

[15] Pursuant to the provisions of Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, exceptions to this Decision with respect to the Objection may be filed with the Executive Secretary's Office in Washington, D.C. Exceptions must be received in Washington, D.C. by June 19, 2015. *Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.*

VI. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this Decision by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by June 19, 2015.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: June 5, 2015

Nancy Wilson
Regional Director
National Labor Relations Board
Region 06
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222-4111

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SIX

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT, Employer, and UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC, Petitioner.	Case No. 06-RC-080933

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND RECOMMENDATION TO OVERRULE OBJECTION TO ELECTION AND ISSUE CERTIFICATION

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STATEMENT OF THE CASE

Pursuant to Section 102.67(b) and (c) of the National Labor Relations Board Rules and Regulations and the June 5, 2015 Decision and Recommendation to Overrule Objection to Election and Issue Certification by Region 6 in this matter (the "June 5 Order"), Duquesne University of the Holy Spirit ("Duquesne" or the "University"), by its attorneys, Hogan Lovells US LLP and Glankler Brown, PLC, hereby requests review of the June 5 Order. The Board should grant review because the Region's decision departed from the Board's decision in *Pacific Lutheran University*, 361 NLRB No. 157 (Dec. 16, 2014) ("*PLU*"), affirmed erroneous, prejudicial evidentiary rulings, and is grounded in prejudicial clearly erroneous factual findings. *See* 29 C.F.R. § 102.67(c)(1)–(3). The Board should also grant review because the record in this case demonstrates that *PLU* involves the same unconstitutional inquiry as its substantial religious character test predecessor and should be abandoned. *Id.* § 102.67(c)(4).

SUMMARY OF ARGUMENT

Duquesne University of the Holy Spirit is a Catholic, Spiritan university, founded and still ultimately controlled by priests and brothers of the Congregation of the Holy Spirit ("Spiritans"). Duquesne is deeply committed to the Catholic Church's teachings on labor and to providing its workers fair wages and just treatment. This case is not about Catholic social teaching. This case is about whether the National Labor Relations Board ("Board" or "NLRB") may assert jurisdiction and thereby insert itself between the Congregation of the Holy Spirit—which retains exclusive ultimate authority over Duquesne's Catholic, Spiritan mission and philosophy—and a group of faculty crucial to achieving that mission. In *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), the United States Supreme Court ruled that the

National Labor Relations Act ("NLRA") does not cover teachers at church-operated schools. Applying *Catholic Bishop*, the NLRB has no jurisdiction over Duquesne.

In *Pacific Lutheran University*, 361 NLRB No. 157 (Dec. 16, 2014) ("*PLU*"), a Board majority announced a new two-prong test for determining whether *Catholic Bishop* applies. Under that test the Board has no jurisdiction when an institution (1) holds itself out as providing a religious educational environment; and (2) holds out petitioned-for unit employees as performing a specific role in creating or maintaining that environment. The new test perpetuates the unconstitutional entanglement of its "substantial religious character" predecessor by licensing the Board to determine (or assume) what is or is not a "religious function" and then to judge whether the institution sufficiently holds out its faculty members as performing that function. Duquesne asks the Board to avoid entangling itself in the University's religious beliefs by assessing jurisdiction under the Constitutional test articulated by the United States Court of Appeals for the District of Columbia Circuit in *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002) and reaffirmed in *Carroll College, Inc. v. NLRB*, 558 F.3d 568 (D.C. Cir. 2009).

However, even applying *PLU*, the Board has no jurisdiction here. There is no dispute that Duquesne holds itself out as providing a religious educational environment. Duquesne also holds out that its faculty[1] "serve God by serving students" and are indispensable if Duquesne is to achieve its Catholic, Spiritan mission. Moreover, Duquesne holds out that its Catholic, Spiritan mission affects the terms and conditions of faculty employment: it factors in hiring decisions; faculty deliver curricula designed to further the mission in a religious environment, which includes a crucifix in every classroom; academic freedom is subject to the mission; and

[1] A reference to "faculty" in this brief includes all adjunct faculty unless otherwise specified.

the University may terminate or decline to rehire faculty for trampling it. To assert jurisdiction here would result in the very entanglement the *Catholic Bishop* decision exists to avoid.

The Region asserted jurisdiction in the June 5 Order. That decision is based on a misunderstanding and misapplication of *PLU* and clearly erroneous fact-finding. Where the *PLU* inquiry is supposed to begin and end with an institution's own representations, the Region ignored altogether or discounted Duquesne's representations about the adjunct faculty role and instead demanded "specific substantial evidence" of particular instances involving particular adjunct faculty members. For instance, although the Region conceded Duquesne's definition of academic freedom is subject to its Catholic, Spiritan mission, the Region ignored that principle because Duquesne did not describe specific instances of faculty violations of it. The record in this case and the June 5 Order also demonstrate why the Board should abandon *PLU*.

PROCEDURAL HISTORY

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("Union" or "Steelworkers") filed a petition on May 14, 2012 seeking to represent a unit of all part-time adjunct faculty employed in Duquesne's McAnulty College and Graduate School of Liberal Arts ("McAnulty College") located in Pittsburgh, Pennsylvania. The bargaining unit therefore would include professors who teach a wide range of liberal arts subjects, including theology, Catholic theology, philosophy, ethics, science, history, and literature, just to name a few. *See* Er. Ex. 65 at 2010-11 Catalog, 60.[2] On June 14, 2012, Duquesne moved to withdraw from a stipulated election agreement because it is not subject to the Board's jurisdiction under *Catholic Bishop*. The Region denied the motion, and Duquesne appealed to the Board.

[2] Citations to Employer Exhibits are abbreviated "Er. Ex."

On appeal, the parties briefed whether Duquesne had waived its challenge to jurisdiction by entering into the stipulated election agreement. *E.g.*, Tr. 161. On December 16, 2014, the Board decided *PLU*. By order dated February 12, 2015, the Board remanded this case to the Region for proceedings consistent with *PLU*. The Region held a hearing on April 27–29, 2015. The hearing focused exclusively on whether the NLRB has jurisdiction over Duquesne under *Catholic Bishop* and *PLU*. *See* Tr. 9, 162, 166–67.

In the June 5 Order, the Region concluded that (1) Duquesne holds itself out as providing a religious educational environment, but that (2) Duquesne does not hold out petitioned-for unit employees as performing a specific role in creating or maintaining that environment.

RELEVANT FACTS

I. Duquesne is a Catholic University, Ultimately Controlled by the Congregation of the Holy Spirit.

Spiritans founded Duquesne in 1878 to serve poor, often Catholic, Irish and German immigrants. *See* Tr. 22. Duquesne's legal name is "Duquesne University of the Holy Spirit", and its motto is "It is the Spirit Who Gives Life." Tr. 22–23. The Holy Spirit is one component of the Catholic conception of God—the Trinity, and the University's motto is taken from the Nicene Creed, in which Catholics affirm the Holy Spirit as "Lord, the giver of life." Tr. 23. Today Duquesne remains a Catholic, Spiritan university. It is organized as a nonprofit Pennsylvania membership corporation, Tr. 23, 29; Er. Ex. 2 (Articles of Incorporation); Er. Ex. 3 (Bylaws).[3] And it is accredited by the Middle States Commission on Higher Education ("MSCHE"). Tr. 337.

[3] The Parties also stipulated that Duquesne is a nonprofit corporation. Tr. 8. *Accord* Er. Ex. 2, art. II ("The University is organized, and shall be operated, exclusively for religious, charitable, scientific, literary and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or the corresponding provision of any future United States Internal Revenue Law."); Tr. 201.

As a membership corporation, Duquesne's corporate Members retain exclusive, reserved powers as set forth in Duquesne's Articles of Incorporation and Bylaws (both available on the University's website). Tr. 29, 32, 35; *see* Er. Ex. 2; Er. Ex. 3. Only vowed Spiritan priests and brothers in good standing can serve as Duquesne's Members. Tr. 32; Er. Ex. 2, art. VII; Er. Ex. 3 art. III. A Provincial Superior governs the Spiritans in the United States and appoints the Spiritans who serve as Members of the corporation. Tr. 357–58; Er. Ex. 2, art. VII.

The Members have eleven "fundamental," reserved powers. *See* Tr. at 32; Er. Ex. 2, arts. VIII, IX; Er. Ex. 3, art. 4. The Members' "full and exclusive reserved powers" include the power to elect or remove any member of the Board of Directors; to amend, alter, modify or repeal the Articles of Incorporation or the Bylaws; and to dissolve the University. *See id.* The Members also have exclusive authority to "determine or change the mission, the philosophy, objectives or purpose of the University" and to "issue to the Board, from time to time, a statement of policy concerning the philosophy and mission of the University." *Id.* In sum, the Members—all vowed Spiritan priests and brothers—retain ultimate control over the University, including exclusive control over the Catholic, Spiritan mission, philosophy, and objectives of the University. *See id.*

Duquesne is a Catholic university, officially recognized by the local Bishop and listed in the *Official Catholic Directory*. Tr. at 42–44; Er. Ex. 4 (Official Catholic Directory Excerpt). The Catholic Church is a hierarchical church. *See* Tr. at 45. As a Catholic university, Duquesne is dependent on the local Bishop for recognition. Tr. 42. The Bishop or the Bishop's designee has an *ex officio* seat on Duquesne's Board of Trustees, and Duquesne cultivates its relationship with the Bishop. Tr. 41–42; Er. Ex. 3, art. VI, § 6.2. As President Charles Dougherty testified,

Duquesne's "teaching, research and student life function are consistent with the teachings of the Catholic church." Tr. 42.

Duquesne is also subject to the guidelines the Church has handed down for universities: *Ex Corde Ecclesiae* ("*Ex Corde*"), given by Saint Pope John Paul II in 1990, and the Application of *Ex Corde Ecclesiae* for the United States ("USCBB Application"), promulgated by the U.S. Conference of Catholic Bishops in 2000. *See* Tr. at 45–50; Er. Ex. 5 (*Ex Corde*); Er. Ex. 6 (USCCB Application); Er. Exs. 7, 7(a) (letter to Bishop David Zubik of the Diocese of Pittsburgh enclosing report regarding compliance with USCCB Application); Er. Ex. 8 (letter regarding compliance with Mandatum requirement for theology faculty); Er. Ex. 32 at 8 (brochure titled "Duquesne University: A Catholic University in the Spiritan Tradition" and containing the text of Duquesne's Board of Directors' handbook, Tr. 222, which states: "Duquesne University also affirms its complete adherence to the teachings of *Ex Corde Ecclesiae* . . . ."). Duquesne links to *Ex Corde* on its website. Tr. 69–70. Translated, *Ex Corde Ecclesiae* means "From the Heart of the Church," which points to Catholic universities' "particularly close relationship to the church." Tr. 47.

Ex Corde and the USCCB Application proclaim that Catholic universities contribute to the work of the Catholic Church by uniting two orders of reality that "too frequently tend to be placed in opposition as though they were antithetical"—faith and reason. See Er. Ex. 5, Introduction. Rather, because God is the ground of all existence, there can be no real inconsistency between faith and reason. *See id.* Introduction, § 4; *accord* Tr. 48. Therefore, it is the "responsibility of a Catholic University to consecrate itself without reserve to the cause of truth. This is its way of serving at one and the same time both the dignity of man and the good of the Church, which has 'an intimate conviction that truth is (its) real ally . . . and that knowledge

and reason are sure ministers to faith'(7)." Er. Ex. 5, Introduction § 4. "[E]ach Catholic University makes an important contribution to the Church's work of evangelization," and "all the . . . academic activities of a Catholic University are connected with and in harmony with the evangelizing mission of the church . . . ." *Id.* §§ 4, 49.

Thus, the Catholic Church teaches and Duquesne holds out that the work of the University—including academic work in secular disciplines—is the work of the Church and contributes to the Church's mission of evangelization. *See id.*; *see also id.* §§ 7, 10; *id.* Part I, §§ 14–15. Consistent with the Church's view that faith and reason are "'sure ministers to faith'" and that all individuals are children of God entitled to freedom of conscience, *Ex Corde* and the USCCB Application require academic freedom and responsibility, encourage ecumenism, and discourage proselytizing. *E.g.*, Tr. 56, 59–60, 67; Er. Ex. 5, Part I, §§ 22, 29; Er. Ex. 6, Part 2, art. 2, §§ 3–4; *id.* n.27. Catholic universities are to invite everyone to the faith, but to coerce no one. *See id.* However, academic freedom and ecumenism do not mean anything goes: "all professors are expected to be aware of and committed to the Catholic mission and identity of their institutions" and to demonstrate "respect for Catholic doctrine." Er. Ex. 6, Part 2, art. 4, § 4(a)–(b); *accord* Er. Ex. 5, Part II, art. 4, § 2.

II. Duquesne's Religious Educational Environment.

Ex Corde and the USCCB Application are the most basic documents that hold out Duquesne's religious educational environment. *E.g.*, Tr. 69–70 (Duquesne's website links to *Ex Corde*). The record contains much more, starting with Duquesne's mission statement. Duquesne's mission is well-publicized on its website and elsewhere. Distinctively Catholic and Spiritan, it reads:

> Duquesne University of the Holy Spirit is a Catholic university founded by members of the Congregation of the Holy Spirit, the Spiritans, and

> sustained through a partnership of laity and religious. Duquesne serves God by serving students through:
>
> - Commitment to excellence in liberal and professional education;
> - Profound concern for moral and spiritual values;
> - Maintaining an ecumenical atmosphere open to diversity;
> - Service to the Church, the community, the nation, and the world;
> - Attentiveness to global concerns.

See, e.g., Er. Ex. 1 (mission and identity webpage); *accord* Er. Ex. 11 (student handbook); Union Ex. 9 (faculty handbook); Er. Ex. 32 (brochure containing Board of Directors handbook text). Thus, consistent with *Ex Corde* and the USCCB Application, the mission seeks to unite academic excellence, moral and spiritual values, and service to the Church in an ecumenical environment. *See* Er. Ex. 31; *Compare* Er. Ex. 1, *with* Er. Ex. 5 (*Ex Corde*), *and* Er. Ex. 6 (USCCB Application).

The mission is also distinctly Spiritan. Duquesne's website explains that the Congregation of the Holy Spirit's charism is to evangelize the poor, with a preference for those who have "not yet heard the Gospel message or those who have scarcely heard it." Tr. at 358–61; Er. Ex. 50 (Duquesne webpage titled "The World of Spiritans"). For Spiritans, "[e]ducation, both formal and informal, is an integral part of our mission of evangelization." Er. Ex. 50; *accord* Tr. at 360–61 (explaining that this principle is applicable to Duquesne today because "too few students" have "authentically heard the Gospel"). Duquesne's mission and goals also link directly to the Spiritan Rule of Life. *See, e.g.*, Er. Ex. 32 at 5–13 (linking goal of academic excellence to the Spiritan Rule of Life and service to the Church). All members of the Duquesne community share in the Spiritan charism, including adjunct faculty. Tr. 361. Father James McCloskey, a former Spiritan Provincial Superior and current Member of the corporation,

testified that the "religious mission of the university is vitally important, its mission as Catholic and Spiritan, to me, and to members of the corporation." Tr. 363; *see also* Er. Ex. 32 ("Numerous ideas and proposed actions have been rejected because they were not in keeping with the Mission and Goals of the University").

Duquesne's Catholic, Spiritan mission expresses itself in many ways, including the presence of Spiritan priests and ubiquitous Catholic symbols. *See, e.g.*, Tr. 85 –86, 92 –93; Er. Exs. 9, 10, 25. The cabinet-level Vice President for Mission and Identity serves *ex officio* on the Board of Directors. *See, e.g.*, Er. Ex. 3, art. 6, § 6.2. Each of the University's strategic plans prioritizes achieving the Catholic, Spiritan mission as the first area of focus. *E.g.*, Tr. 143; Er. Ex. 18 (2003–2008 Strategic Plan); Er. Ex. 19 (2010–2013 Strategic Plan). In the words of the most recent strategic plan: "Our extraordinary and pervasive sense of MISSION as a Spiritan Catholic university will be the guide for all Duquesne University does." Er. Ex. 19 at 6.

The *Code of Student Rights, Responsibilities and Conduct 2014–2015* opens with a letter from President Dougherty encouraging students to "[a]ttend religious services and programs" and to "[s]erve God by serving others," and explaining that "Duquesne faculty, staff, and administrators believe that the education you receive here is not only for your mind, but for your heart and Spirit." Er. Ex. 11 at 1. "The whole Duquesne family is concerned with your academic, moral, and spiritual growth." *Id.* Duquesne's student expectations include: "[g]row spiritually, preparing for life, not just a career" and "[b]e at peace with God and with yourself." *Id.* at 4. The University reserves the right to refuse recognition to student organizations that are not in accordance with the "Mission and Expectations of the University," such as a club to promote atheism. *See* Er. Ex. 11 at 10; Tr. 99; Er. Ex. 15 at 3.

A report to Bishop David Zubik of the Diocese of Pittsburgh on Duquesne's compliance with the USCCB Application captured "highlights" of the implementation of Duquesne's Catholic, Spiritan mission. Tr. 73; Er. Ex. 7 at Encl. For example, Duquesne offers daily celebration of Catholic sacraments, service programs, alternative spring break trips, faith formation and retreat programs, and mission-related academic centers and institutes, endowed chairs, and conferences and symposia. *Id.*; *see also* Tr. 73–78 (President Dougherty testifying that all faculty are invited to attend events such as Bible studies, Libermann Lunch talks about Spiritan issues, and service trips with prayer components). Each year Duquesne celebrates "Founders Week" to focus the entire community on the University's Spiritan nature. Er. Ex. 7 at Enclosure; *see also* Tr. at 229–30; Er. Ex. 30 (describing the February 2015 Founders Week activities). The report noted "[m]ission orientation programs for faculty, staff, administrators and students." Er. Ex. 7 at Enclosure. It concluded that Duquesne is "[d]eeply committed to the founding vision . . . as Catholic and Spiritan, the university attempts to build a culture of faith and service—in its classrooms and residence halls, among its alumni and friends, and for the wider Church of the Diocese of Pittsburgh and the world." *Id.* "[R]everence for the Catholic Intellectual Tradition—and attempts to inform the curriculum and form faculty and students in this tradition—are strong." *Id.*

The Catholic, Spiritan mission is critical to Duquesne's portrayal of itself to the world. *See* Tr. 208–11 (testimony of Vice President for University Advancement responsible for University communications and fundraising). Duquesne publishes its mission "broadly" and "across all platforms," including student and faculty recruitment and alumni giving. *Id.*; *e.g.*, Tr. 211–12, 215–16, 222–23; Er. Exs. 22–24, 26; *id.* Er. Ex. 23 at 10 (major student recruitment

piece holding out that "[f]aculty, administrators and staff aspire to 'serve God by serving students' so they in turn can serve others"); Er. Ex. 27 at 33.

As for faculty recruitment, the University's recruitment brochures and website emphasizes its Catholic, Spiritan mission. *E.g.*, Tr. 236; Er. Ex. 33 (human resources recruitment brochure highlighting that "[o]ur employees contribute to our vision of enhancing our culture of academic excellence dedicated to our mission of serving God by serving students, led by a profound concern for moral and spiritual values in an atmosphere that welcomes all and excludes none."); Er. Ex. 34 (website welcome letter from human resources director stating "[a]pplicants must be willing to contribute actively to the mission and to respect the Spiritan Catholic identity of Duquesne University.").

III. Role of Duquesne's Adjunct Faculty in Creating or Maintaining its Religious Educational Environment.

Precisely because Duquesne is Catholic, it welcomes diversity, encourages professional academic autonomy and free pursuit of the truth, and imposes no requirement that faculty indoctrinate students or participate in Catholic sacraments.[4] In countless ways, Duquesne holds out to current and prospective faculty their important role in Duquesne's Catholic, Spiritan mission. Duquesne (a) proclaims that faculty serve its Catholic, Spiritan mission; (b) designs curricula around it and encourages and rewards faculty who embrace it; (c) factors it in hiring; (d) orients new faculty to it; and (e) defines terms and conditions of employment, including academic freedom, as subject to it.

[4] The Board must understand that it is contrary to Catholic teaching to force faculty to advocate Catholicism or religion in general in their classrooms. Thus, while the University invites and indeed strongly encourages faculty to bring faith into their classroom in whatever subject they teach, and provides the tools to do so through programs such as the Center for the Catholic Intellectual Tradition, the University does not compel faculty to proselytize on behalf of the Catholic or any other religion. *See* Er. Exs. 5–6; *supra* pp. 5–7. The Board states in *PLU* that proselytizing is not required to meet its two-part test. *PLU*, 361 NLRB No. 157 at *12 n.14.

A. Duquesne Proclaims that Faculty Serve Its Catholic, Spiritan Mission.

Duquesne consistently proclaims through events and communications that its faculty and academic endeavors are integral to its Catholic, Spiritan mission. *E.g.*, *supra* pp. 4–12. Duquesne's academic year starts with two such events to which all faculty are invited: the Mass of the Holy Spirit and Convocation. The Mass of the Holy Spirit is the largest Mass in the Diocese. The Bishop presides, and the Mass opens the new academic year. *See* Tr. 81, 88–89; Er. Ex. 7, Enclosure at 2.

Academic convocation is an annual "major academic meeting," which also is typically held near the start of the year. Tr. 108. Duquesne's president gives a "major speech on issues facing the university." Tr. 86, 108. "And, all members of the university community are invited to attend, with special emphasis on the faculty, including the adjunct faculty." Tr. 109, 201. Each of the president's convocation speeches is distributed to all faculty, Tr. 195, is currently published on the University's website, and addresses the University's religious mission. Tr. 109. The following excerpts show how the University President holds out the role of faculty in Duquesne's Catholic, Spiritan mission at an important University academic meeting:

- *2010 Academic Convocation*. "Our core religious faith is Catholic, carried in a special way for us by our Spiritan sponsors. This means there will be moments when concerns that are especially Catholic will have to dominate—in health care coverage, in some hiring, in the curriculum, for example." Er. Ex. 13 at 3.
- *2011 Academic Convocation*. "[O]f all the things that unite us, the most important is our purpose for being here . . . our mission . . . ." Er. Ex. 14 at 1. "We are a university. We teach. We conduct research. We contribute service. All of these activities are suffused with our overarching-self-understanding that we are serving God by serving students."

Id. at 3. President Dougherty details that the Church teaches that faith and reason are "ultimately compatible." *Id.* at 9. "Our belief, beyond full understanding, is that God is at once a loving Creator, a self-sacrificing Redeemer, and a Spirit that guides our lives. As a Catholic university, we must remain true to these beliefs even as our understandings of them—and our rational knowledge of the world—evolve." *Id.* at 9. As President Dougherty testified, "we" comprises the entire University community, including adjunct faculty. Tr. 116.

- *2012 Academic Convocation.* President Dougherty explains that the University's Catholic, Spiritan mission—"we serve God by serving students"—distinguishes Duquesne from other universities. "We serve God by serving students. This is a phrase we repeat to ourselves as a reminder of the overarching goal of Duquesne University and all of our individual efforts. It is the ultimate context for what we do together." Er. Ex. 15 at 3. Service to students is "true of virtually all universities," but Duquesne's "motivation for service is far deeper." *Id.* The "goal for us" is "service to students as a means of serving God." *Id.* "[T]he link between serving God and serving students is a close one" that lies "in our tradition's foundational assumption that each human being is endowed with human dignity by God." "[E]ach of our students' dignity is the spark of the Holy Spirit within them. Our service to God is reverence to the Holy Spirit in the life of every one of our students." *Id.* at 4. "Our service to students is primarily educational," and that role is "most clear in the case of faculty." *Id.* at 6.
- *2013 Academic Convocation.* The University's strategic plan is "organized to draw attention to the fact that the heart of what we are is a trinity involving students, faculty and a mission that binds them together. To put it in more dramatic terms, who we are at

> our core is best illustrated when one faculty member assists one student to grow in knowledge and maturity within a Catholic, Spiritan context. The academic commitment at the core of this trinity has been part of the Spiritan tradition since the very beginning." Er. Ex. 16 at 1. President Dougherty specifically thanks "all those in Academic Affairs," including the "faculty" in particular, because "[y]ou are a critical part of the trinity at the heart of who we are as you bring our students an education for a lifetime in our Catholic, Spiritan tradition. You serve God by serving our students." *Id.* at 17.

Other communications from President Dougherty similarly emphasize the faculty's critical role in the Catholic, Spiritan mission. *See, e.g.*, Tr. 151–153; Er. Ex. 20 at 1 (letter addressing this litigation posted to Duquesne website and explaining that "in the case of faculty who are central to the core of who and what we are," our religious mission is paramount); Er. Ex. 21 (President Dougherty's retirement message, thanking all faculty because "[o]ur mission is vibrant, alive and woven into every aspect of life at Duquesne").

The record is full of other ways the University communicates the same basic message. Faculty and staff can attend alternative spring break service trips described as a "journey of faith" where participants "overcom[e] fear and doubt to answer God's call." Er. Ex. 29 (describing such trips); *see, e.g.*, Tr. at 227–28 (faculty invited to attend). Bishop Zubik made a pastoral visit in 2011 specifically to the faculty to address a papal encyclical. Tr. 365–67; *see* Er. Ex. 51 (Mission Advisory Committee Meeting Minutes describing plans for faculty reading groups of the encyclical). The University invited all faculty to attend, and "several hundred" did. Tr. 366.

B. Duquesne Designs Curricula to Achieve Its Catholic, Spiritan Mission, and Encourages and Rewards Faculty Who Embrace It.

The faculty are responsible for delivering the curricula, Tr. 329, which is one area in which "concerns that are especially Catholic" must "dominate," Tr. 120; Er. Ex. 13 at 3. Duquesne has structured curricula to implement its Catholic, Spiritan mission. The focus is most obvious in Catholic theology, where the University works with the local diocese so that the Bishop will give professors teaching in that subject a Mandatum, which recognizes the professor's commitment and responsibility to teach authentic Catholic doctrine. *See* Er. Ex. 6, Part II, art. IV, § 4(e); Er. Ex. 8; *see also* Tr. 55. However, the influence of the University's mission on the curriculum extends well beyond theology.

The University has developed and publishes on its website a document titled "Dimensions of a Duquesne University Education" (the "Dimensions"). Er. Ex. 46 (Dimensions); *see* Tr. 327–33. "All active [academic] programs, graduate and undergraduate, use the Duquesne dimensions to link their curriculum and student learning outcomes with the mission of the University." Tr. 328. One of the Dimensions is "Ethical, Moral, and Spiritual Development." Er. Ex. 46. Its "academic components" include: "Recognize the importance of faith and spiritual values; [a]pply ethical, moral and spiritual principles in making decisions and interacting with others." *Id.* Another Dimension is "Leadership and Service." Its "academic components" include: "[u]nderstand the moral and ethical framework necessary to be a just leader." *Id.* The faculty are responsible for delivering academic programs and for achieving these dimensions in the curriculum. Tr. 329–30.[5]

All undergraduates must complete a "Core Curriculum" ("Core"). Tr. 332. Developed by a group of Duquesne faculty, Tr. 335, the Core "uniquely expresses the Spiritan-Catholic

[5] The University's philosophy department teaches all diocesan seminarians as part of its generally available academic programs. *See* Tr. 82.

identity of Duquesne University." Er. Ex. 47 (Core Curriculum Website Page); *see also* Tr. 87–88. The vision is education that "informs the mind, engages the heart, and invigorates the spirit," and that vision takes its inspiration from the University's mission, including "concern for moral and spiritual values." Er. Ex. 47. The Core Curriculum's "educational values" include "[s]piritual and moral development and ecumenical openness that fosters inter-religious understanding." *Id.* Students must take three credits in theology and three credits in ethics. Tr. 336. The Academic Core Founding Document identifies "general goals and student learning outcomes," such as to "[c]omprehend fundamental human questions through the study of selected texts and figures in philosophy and theology;" "[e]xplain how religion can inform personal, societal, and professional life through study of and reflection on theological sources and questions;" "[i]dentify some of the unique perspectives provided by faith and reason in the pursuit of truth;" and "[l]ink academic theory and community-based practice through service." Er. Ex. 48 at 1–2. It is the responsibility of the faculty teaching in the Core to achieve these learning goals. Tr. 336. Adjunct faculty play a significant role in the Core, teaching an average of 44 percent of the credit hours over the past five years, ranging from a high of 49 percent to a low of 43 percent. *Id.*

Duquesne holds out that its curricula cannot be divided into courses in which the University's Catholic, Spiritan tradition is relevant and courses in which it is not. *E.g.*, Tr. 396–97. The Catholic Church and Duquesne (1) hold that faith and reason are two paths with the same end, Tr. 48, and (2) emphasize the unity of academic disciplines as part of one, eternal truth, Tr. 394–95. *See, e.g.*, *supra* pp. 5–7. Though faculty are generally free to design the courses they teach, the University encourages and expects them to embrace the University's Catholic, Spiritan mission in doing so. Thus, President Dougherty has informed the faculty that

"[a]nything related to the Spiritan and Catholic intellectual traditions cuts across all our disciplines and should be a focus for us." Er. Ex. 16 at 8 (2013 Convocation Address). Indeed, many of the University's endowed chairs—a "recognition" given to "outstanding faculty members" who serve as role models for all faculty—are named for Spiritan priests or Catholic intellectual giants. Tr. 101–02; *See* Er. Ex. 12 (listing Duquesne's endowed chairs).

Duquesne has also created academic centers and programs to encourage all faculty to focus on the Catholic, Spiritan mission in their teaching and research. *E.g.*, Tr. 131. For example, in 2012 Duquesne created the Center for the Catholic Intellectual Tradition ("CCIT") to "'support but also to highlight and showcase the ways in which the work already being done [at Duquesne] engages the Catholic intellectual tradition.'" Er. Ex. 57; Tr. 390–91. The Catholic intellectual tradition "animates Duquesne University," Er. Ex. 58 at 1, and is "founded on an affirmation that truth is one . . . that there is a universality of truth . . . the complementarity of faith and reason." Tr. 394; *see also* Er. Ex. 58 at 1–2. The Catholic intellectual tradition encompasses all branches of human knowledge and all areas of professional practice, each contributing through a particular skill set to a holistic unity. Tr. 394–95. A "Catholic understanding of education is essentially integrative, and holistic, so it is not something that can be compartmentalized." Tr. 394. Thus, natural sciences faculty are expected to achieve the mission-related learning goals quoted above in the Core. *See* Tr. 336; Tr. 397, 430–31 (explaining on cross examination that even a class on planets taught by an atheist professor at Duquesne contributes to the Catholic, Spiritan mission). And it would be a mistake to think "that only courses which are taught by theology faculty or offered by the Theology Department would qualify as mission related courses in the core." Tr. 397; *see also* Tr. 420–421 (an anatomy class can contribute to the Catholic, Spiritan mission).

Through CCIT, all faculty, including adjunct faculty, are invited and "strong[ly] encourage[ed]" to engage with the Catholic intellectual tradition. Tr. 441, 445; *see* Tr. 401–14; Er. Exs. 59–63 (evidencing examples of CCIT programming to which all faculty are generally invited). Many adjunct faculty members do. For example, adjunct faculty have joined an "ongoing, open-ended interdisciplinary conversation exploring the intersection of teaching and the Spiritan charism" to articulate a "Spiritan pedagogy." Er. Ex. 59; *see* Tr. at 402. Adjunct faculty also have participated in the CCIT's Catholic Artistic Imagination series, including a discussion of Rublev's Icon of the Trinity. Tr. 405–40; Er. Ex. 60. And they have engaged in the "Rice on the Road" lecture series held off-campus and related to social justice. Tr. at 408–09; Er. Ex. 61. A "Rice on the Road" program always starts by talking about what is "Spiritan about the process of going out into community" because the "Spiritans are a missionary organization." Tr. 409–410. The event is always framed explicitly "in reference to the Catholic and Spiritan identity and mission." Tr. 410.

Adjunct faculty also have applied for and received the CCIT's "Part-time Faculty Mission Micro-Grant[s]." Tr. 410–12; Er. Exs. 62–63. The website announcement states that "Part-time Faculty contribute to the mission of Duquesne University" and that the grants are intended to support "scholarly, curricular and professional development opportunities that reflect Duquesne's mission and engage resources in Catholic intellectual tradition." Er. Ex. 62 at 2. Winners have come from multiple disciplines in the McAnulty College. *See* Er. Ex. 63.

C. Duquesne Hires Faculty for Its Catholic, Spiritan Mission.

Given the integral relationship between Duquesne's Catholic, Spiritan mission and its academic offerings, Duquesne hires all faculty for mission and publicizes that it does so. Section 1.1 of Duquesne's first strategic plan read: "Commitment to the mission will be a factor in hiring

and performance evaluations. A candidate's understanding of and willingness to contribute to the mission will be a part of the hiring process. Annual performance evaluations will include a discussion of mission." Er. Ex. 18 at 2. This goal was first because, as President Dougherty testified, "unless we have personnel, administrators and faculty committed to mission, the rest of it is impossible." Tr. 142. The plan is still published on the University's website, and President Dougherty testified that the University is still implementing Section 1.1 today and looking for ways to improve it. Tr. 144, 146, 151.

Provost Timothy Austin, Duquesne's chief academic officer, Tr. 249, testified that mission-hiring is critical for all faculty because the "Spiritan Catholic education that we deliver, is entrusted to our faculty. The task of representing our values, and our priorities, is something that our faculty convey to our students, and we must be satisfied in employing a faculty member that she or he is able to fulfill that responsibility." *See* Tr. 252. The University implements hiring for mission differently for full-time faculty than it does for adjunct faculty. *See* Tr. 251. However, the bottom line is the same: the University does not intend to hire faculty who cannot support the University's Catholic, Spiritan mission or express hostility to it. Tr. 263–64 (Provost Austin testimony that "[t]he University is not able to hire anybody who is unable to support the mission of the institution."); *accord* Tr. 113 (President Dougherty testified: "if we identified a candidate who was extremely indifferent or hostile to the mission, that would be a reason not to hire them.").

An Associate Provost interviews finalists for full-time faculty positions and prepares a report for consideration by the hiring committee, the Provost, and the President. Tr. 253–54. The Provost considers the report in making the hiring decision. *See. id.* By contrast, the hiring process for adjunct faculty is more decentralized, with discretion left to department chairs due to

timing and volume. Tr. 254. As described below, the Provost's job is to "make sure that those who will be involved in that process are appropriately prepared." Tr. 251; *accord* Tr. 312 (Provost Austin "set[s] the stage").

For adjunct faculty, to the extent a job posting is used,[6] it is Duquesne's policy and practice to include a description of Duquesne's Catholic, Spiritan identity. *See* Tr. 256; *accord* Union Ex. 23 (job posting, which identified Duquesne as a Catholic, Spiritan University). The University's "Faculty and Staff Employment Application"—which is the human resources "application form" for all adjunct faculty—quotes the University's mission statement and in bold text asks the applicant to "Please describe how you would support and contribute to the University Mission." Er. Ex. 36; *see* Tr. 257–58, 297.

Further, Provost Austin testified that the University expects that adjunct faculty candidates "will be asked to remark on how they see themselves relating to the mission of the university, and that a decision about employment will be made in that context." Tr. 258–59. The Provost communicates this expectation to chairs at hiring workshops and at new department chair orientations. Tr. 259, 263–64 (hiring workshops); *id.* 261, 263–64 (new chair orientations). Duquesne also publishes and distributes guidelines for departments on how to interview for mission. *See* Tr. 260–61; Er. Ex. 37. The guidelines state that "in order to advance in the search process, candidates must fully understand and be willing to support the University Mission Statement." Er. Ex. 37. The guidelines also include sample questions such as: "[a]t Duquesne, we take the mission seriously. Rather than being just a 'statement' on paper, we strive to 'live' it proactively. How do you see yourself as embodying the mission;" and "While teaching performance and qualifications are central to our educational mission, we are also part of a

[6] Provost Austin testified that department chairs receive unsolicited curriculum vitae through the mail and solicit local Ph.D. departments when seeking to hire adjunct faculty. Tr. 256.

religious tradition here at Duquesne. What are your thoughts about the relationship between faith and reason in the academic environment?" *Id.* Duquesne instructs department chairs that the University cannot hire anyone who is unable to support its Catholic, Spiritan mission. Tr. 264.

D. Duquesne Orients New Adjunct Faculty to Its Catholic, Spiritan Mission.

Duquesne communicates its Catholic, Spiritan mission to new adjunct faculty hires. For example, the University publishes a website titled "Getting Started: Adjunct Faculty at Duquesne." Tr. 264–65; Er. Ex. 38 ("Getting Started: Adjunct Faculty at Duquesne"). The "Getting Started" website links to a welcome from Provost Austin. Tr. 266–67. Provost Austin's message explains the University's mission and communicates Duquesne's expectation that "each individual to bring his or her gifts as a teacher, as a scholar to the task of furthering that university mission." Tr. 267. Under bold text titled "First Things," the "Getting Started Website" proclaims that the University's mission "provides a context and guide for all that we do at Duquesne" and links to the University's mission and identity webpage. Tr. 267, 269 (describing Employer Exhibit 1 as the mission and identity webpage); Er. Ex. 38.

The mission and identity webpage, in turn, embeds a YouTube video that addresses the University's Catholic, Spiritan mission. *See* Er. Ex. 40 (video). The video says: "you can tell that people genuinely care, they put their heart and soul into a lot of different initiatives, it's very apparent it's mission driven . . . the mission is definitely what . . . is focused on here at Duquesne." *Id.* The video concludes by declaring that "Serving God by serving students permeates all aspects of campus life . . . our hope is that Duquesne graduates will in turn serve God by serving others because they have witnessed the many ways the Duquesne community lives that mission" and that "You are Invited to Live the Mission." *Id.* The welcome website also links to certain important documents such as the *Faculty Handbook*. *See* Er. Ex. 38.

In addition to the website, Duquesne offers new adjunct faculty orientation sessions and encourages participation. Tr. 269–72; Er. Ex. 41 (letter from Provost Austin encouraging attendance). The orientations include a presentation devoted to the University's mission, typically given by the Vice President for Mission and Identity or that individual's designee. Tr. 270.

Father McCloskey served as Vice President for Mission and Identity from 2009 to 2013. Tr. 356. A typical new adjunct faculty orientation addresses the mission front-and-center, immediately after the initial welcome. *See* Tr. 369; Ex. 52 (example of "typical" agenda (Spring 2013)). Father McCloskey's presentation focused on the Catholic identity of the University, its Spiritan mission and history, and the role of adjunct faculty in Duquesne's Catholic and Spiritan identity. Tr. 375. Father McCloskey typically distributed three documents: (1) a wallet-sized pocket card containing the University's mission statement and faculty and staff expectations, Er. Ex. 53; (2) a document titled "The Spirit Who Gives Life, Duquesne University," Er. Ex. 54; and (3) an article titled "Distinctively Catholic," Er. Ex. 55. *See* Tr. 370–75.[7]

The wallet-sized, pocket card contains the University's mission statement on one side and "Faculty and Staff Expectations" on the other. The "Faculty and Staff Expectations" include: "1. Accept and commit to the values expressed in the mission statement. 2. Work towards understanding the Spiritan values expressed in the mission statement and strive to incorporate them into your daily work. . . . 7. Recognize and be committed to the importance of service to others. 8. Be respectful of the Catholic tradition on which our university is founded." Er. Ex. 53.

[7] The Director of CCIT, Dr. Darlene Weaver, testified that she has provided the mission portion of the adjunct faculty orientation more recently. Much like Father McCloskey, she informs faculty that the University's Catholic, Spiritan mission belongs to them because of the "ultimate unity of faith and reason, the complementarity, the implementation of different branches of knowledge." Tr. 417.

"The Spirit Who Gives Life" document states that at Duquesne: "[o]utstanding teacher-scholars and scientists are hired, rewarded and retained to support the mutual enrichment of faith and reason." Tr. 372; Er. Ex. 54. Father McCloskey held out the "Distinctively Catholic" article as a good article on the role of faculty. *See* Tr. 373–74. The article emphasizes that morality at a Catholic university is not a "bland humanism," but a "deeper and more profound tradition of Catholic moral teaching for which the university and faculty is responsive." Tr. 374. It also describes the Catholic conception of faith and reason and the Catholic intellectual tradition. *See, e.g.*, Er. Ex. 55 at 4 ("Seeking the truth of things, whether in science or the humanities is a religious act."); *id.* at 2 ("A Catholic intellectual community does not lead students to decide who they *want* to be; it helps them discover who they have been *called* to be. The key concern is not personal identity but dedication to God and to others.") (emphasis in original). Finally, the article states that "[f]aculty who are skeptical about the intellectual relevance of a Catholic university's religious mission pose [a] problem." *Id.* at 3.

E. Duquesne's Catholic, Spiritan Mission Affects the Terms and Conditions of Faculty Employment.

Duquesne's Catholic, Spiritan mission affects the terms and conditions of faculty employment. Provost Austin testified that the terms and conditions of adjunct faculty employment are set forth in numerous documents including: the letter of appointment, the *Faculty Handbook*, the Executive Resolutions of the Board of Trustees, and the Administrative Policies ("TAPs"). Tr. 272, 295.

Duquesne's *Faculty Handbook* applies to "all faculty of the university; it is the standard resource that faculty members of all kinds should go to." Tr. 273; *see* Union Ex. 9. The *Faculty Handbook* states in bold text that the "Executive Resolutions and relevant sections of the Faculty Handbook are part of the faculty member's contractual agreement with the University." Union

Ex. 9 at 2. For adjuncts the relevant sections are those sections that do not "explicitly refer to such matters as tenure, or . . . to full-time employment." Tr. 274.

Per the *Faculty Handbook*, Duquesne is a Catholic, Spiritan university with a commitment to ecumenism. "[W]e take great pride in our Catholic character and ambience, and we subscribe to the teachings of the Roman Catholic Church." Union Ex. 9 at 2; *see* Tr. 273–74. "We" includes the faculty as a whole. Tr. 274. "Our teaching of the moral and ethical foundations of thought and action reflect our Catholic heritage and should pervade the university." Union Ex. 9 at 2.

The *Faculty Handbook* also provides that individual members of the faculty "shall be deemed to agree to pursue and uphold the purpose of the University as stated in the Second Article of the Charter and to comply with the University's Bylaws and Executive Resolutions." Union Ex. 9 at 13; Tr. 275–76. The *Faculty Handbook* defines the "essential role of the faculty" as "implicit in the stated goals and mission of the University." Union Ex. 9 at 10; Tr. 275–76. "Without the faculty, the University would be unable to prepare its students intellectually, professionally, aesthetically, spiritually, or ethically for the ordinary responsibilities of life and for leadership in a free, complex, and changing society." Union Ex. 9 at 10; Tr. 275–76. And the *Faculty Handbook* contains Duquesne's mission statement and goals, including that "[i]t is Duquesne University's special trust to seek truth and to disseminate knowledge within a moral and spiritual framework." Union Ex. 9 at 3; *accord* Er. Ex. 5, Introduction § 4 (*Ex Corde*).

Duquesne's Catholic, Spiritan identity also affects its definition of academic freedom. Tr. 276, 279–81. In relevant part, the *Faculty Handbook* defines academic freedom in teaching as follows: "Academic freedom is essential to teaching. The teacher is entitled to freedom in the classroom. The teacher should not, however, interject opinions which have no relation to the

subject and should not impose personal views of the subject upon the students. *The teacher should respect the religious and ecumenical orientation of the University*." Union Ex. 9 at 12 (emphasis added); *accord* Er. Ex. 6, Part 2, art. IV, § 4(b). The Executive Resolutions, which control in the event of a conflict with the *Faculty Handbook*, Union Ex. 9 at 3, elaborate that academic freedom in the classroom is "subject to the principles and values expressed in the Duquesne University Mission Statement." Union Ex. 6, Executive Resolutions of the Board § V.A (defining academic freedom in teaching).[8] The Provost explained that "academic freedom is an important and foundational value, as in all academic institutions, but that . . . must be constrained by the faculty member's ability to conform his or her behavior to the mission orientation of the university." Tr. 281; *see also* Tr. 56 (testimony from President Dougherty that "[v]irtually all of our documents will say academic freedom within the constraints of Catholic doctrine").[9]

Duquesne's most recent MSCHE accreditation Self Study is posted to the University's website and similarly describes Duquesne's approach to academic freedom:

> The Mission Statement defines Duquesne as "a community dedicated to the discovery, enhancement, and communication of knowledge and to the free and diligent pursuit of truth . . ." (appendix MS, p. 2). Duquesne is open to the exploration and discussion of new and controversial ideas. The University places a premium on intellectual autonomy and integrity, and the pursuit of truth through scholarly research. By fostering an atmosphere of openness, the University provides the ecumenical community "for the dialogue of students and teachers of all beliefs." The search for truth within an atmosphere of openness is a central theme that informs Duquesne as both a University and a Catholic University.
>
> It does not follow, however, that Duquesne's openness to dialogue will lead it to relinquish those core beliefs that constitute its

[8] The Executive Resolutions are available on the University's website. *See* Tr. 176.

[9] Similarly "[r]esearch proposals [for funding] must be consistent with the goals and objectives of the university." Tr. 295; Er. Ex. 42 (TAP 44).

> specifically Catholic identity. *Hence, ecumenism does not mean that everything is acceptable*. In fact, while academic freedom is essential to teaching at Duquesne, the Faculty Handbook also states that "the teacher should not . . . interject opinions which have no relation to the subject and should not impose personal views of the subject upon the students. The teacher should respect the religious and ecumenical orientation of the University" (appendix FHB, p. 12).
>
> The central conclusion with respect to academic freedom is that *academic autonomy is preserved within the context of Duquesne's mission statement*. One can have a commitment to Duquesne's mission and identity and to the values upon which the University was founded without sacrificing academic excellence. Duquesne's commitment to the scholarly norms of excellence expected within any University is also operationalized through its "goal of hiring, rewarding, and retaining outstanding teacher-scholars" (appendix SSD, p. 19). *Newly appointed faculty are encouraged to conceptualize academic freedom against the backdrop of a vibrant Catholic intellectual tradition and a critical dialogical exchange of ideas*.

Union Ex. 10 at 82–83 (emphasis added); Tr. 341–42 (the quoted discussion is still accurate and on the University website); *accord* Er. Ex. 49 at 11 (the most recent MSCHE evaluation report noting that academic freedom operates "within the context of mission").

Duquesne's Catholic, Spiritan identity also informs the grounds on which the University may terminate faculty or decline to rehire adjunct faculty for a subsequent semester. The University employs adjunct faculty for one semester at a time and may refuse to rehire them for any reason. *See, e.g.*, Tr. 108. At Duquesne, the *Faculty Handbook* makes clear that the University may revoke tenure and terminate even full-time faculty for "Serious Misconduct," defined to include "failure to observe the principles of the Mission Statement of Duquesne University or elaborations thereof approved by the Board of Directors [and] conduct involving moral turpitude . . . ." Union Ex. 9 at 19 n.2. Provost Austin testified that if an adjunct faculty member failed to "respect the religious and ecumenical orientation of the university," the

University would reserve the right to take adverse employment action. *See* Tr. 293–95; *see also* Tr. 117 (testimony of President Dougherty that "we expect [faculty] to respect [Catholic] belief[s] as part of what the community believes, even if they don't believe them themselves"); *id.* Tr. 125 (testimony of President Dougherty that if an adjunct faculty member mocked the notion of serving God by serving students "seriously, to try to undermine what we stand for . . . [, such conduct] would be grounds for not renewing an adjunct, for example").

Duquesne's Catholic, Spiritan mission also affects available employee benefits. For example, Duquesne "has never provided [healthcare] coverage for abortion, contraception or sterilization" and "won't." Tr. 112–13.

* * * *

Duquesne's most recent MSCHE Self Study titled "Education for the Mind, Heart, and Spirit" and corresponding MSCHE evaluation report—both published on the University's website—summarize the many ways in which Duquesne expresses its Catholic, Spiritan mission. *See* Tr. 338–43; Union Ex. 10 ("Education for the Mind, Heart, and Spirit Duquesne University Self Study"); Er. Ex. 49 (2008 MSCHE evaluation report). For example, the Self Study stated and Duquesne's accreditation liaison officer confirmed as still accurate that:

- "Duquesne's students, faculty, staff, and administrators have many opportunities in which to learn about and engage the mission." Union Ex. 10 at 11; Tr. 338–39;
- "An understanding of the mission and a willingness to contribute to it are emphasized as part of the hiring process." Union Ex. 10 at 11; Tr. 338–39;
- Duquesne takes steps to provide "Mission Orientation and Programming for All Constituencies." Union Ex. 10 at 12 –13; Tr. Tr. 338–40; and

- "Duquesne's faculty play a critical role in achieving the University's mission and the strategic plan goal to develop Duquesne's reputation for national excellence. They communicate the mission and values of the University to students, serve as role models with regard to ethical standards and openness to diversity, and demonstrate commitment to excellence in liberal professional education in teaching, scholarship, and service." Union Ex. 10 at 70; *see also* Tr. 341.

The MSCHE evaluation report affirmed the centrality of Duquesne's Catholic, Spiritan mission and the role of faculty in achieving it: "The Board of Directors, the president, and his entire leadership team have embraced and promoted the mission; and faculty, staff, and students have enthusiastically and sincerely taken it to heart. It is also clear that mission drives many of Duquesne's goals and objectives, as can be seen in the 2003-2008 strategic plan that places mission front and center. It is clear that the University community has sought, with considerable success, to imbue all its activities with a sense of mission. . . . A sense of mission pervades recruitment, hiring, and performance evaluations of faculty and staff." Er. Ex. 49 at 4. Accordingly, the MSCHE evaluation report "commend[ed] Duquesne for its embrace of the Spiritan mission and for its many successes at implementing that mission." *Id.* at 5.

ARGUMENT

The record in this case demonstrates that *PLU* entails the same improper, unconstitutional inquiry as its "substantial religious character" predecessor and fails to avoid the entanglement the *Catholic Bishop* decision exists to avoid. The Board should grant review and abandon *PLU* and adopt the constitutional *Great Falls* test, which Duquesne also satisfies. Nevertheless, as we show below, the Board lacks jurisdiction over Duquesne even under *PLU*.[10]

[10] Although the Board need not reach this issue, the *PLU* test, depending on its application, could also substantially burden Duquesne's free exercise rights in violation of the Religious Freedom Restoration Act, 42

I. THE REGION'S APPLICATION OF *PLU* TO DUQUESNE DEPARTED FROM BOARD PRECEDENT AND WAS BASED ON CLEARLY ERRONEOUS FACT-FINDING.

Under *PLU*, the NLRB has no jurisdiction over a religious-affiliated higher education institution that (1) holds itself out as providing a religious educational environment ("Prong One"), and (2) holds out the petitioned-for faculty members as performing a specific role in creating or maintaining its religious educational environment ("Prong Two"). The Steelworkers conceded and the Region properly held that Duquesne satisfies Prong One. However, the Region misunderstood and misapplied Prong Two and ignored crucial facts and evidence. The NLRB has no jurisdiction under *PLU*.

A. The Region Misunderstood Prong Two.

The Region misunderstood Prong Two. Prong Two asks whether the university holds out petitioned-for faculty as performing a specific role in creating or maintaining its religious educational environment. *PLU*, 361 NLRB No. 157 at *10. *PLU* imagines examples of such a function, including integrating religious teachings into coursework, serving as religious advisors, engaging in religious indoctrination, or conforming to its religious doctrine. *Id.* at *11–12. But *PLU* cautions that these examples are not required and "intended only to demonstrate that there must be a *connection* between the performance of a religious role and faculty members' employment requirements." *Id.* at *12, n.14 (emphasis in original). Prong Two bottoms on whether the "religious nature of the university *affects* faculty members' job duties or requirements"—whether the "religious nature of the university will have any impact at all on their employment." *Id.* at *11 (emphasis added).

U.S.C. § 2000bb-1 (2000). The *PLU* test allows for a jurisdictional analysis based in part on how individual faculty members further religious mission in practice. This analysis risks forcing Duquesne's faculty members to choose between furthering Duquesne's religious mission on the one hand and joining a Board-approved bargaining unit on the other. This dilemma would impede Duquesne's pursuit of its religious educational mission by discouraging faculty who may want to be represented by a Board-approved bargaining unit from taking an active role in creating and maintaining Duquesne's religious educational mission.

Among other things, the Board will consider whether faculty members "are hired, fired, and assessed under criteria that . . . *implicate* religious considerations." *Id.* at *11 (emphasis added). The Board will also consider whether faculty roles are different from those that "they would be expected to fill at virtually all universities." *Id.* at *12. Relevant evidence includes, but is not limited to "communications to current or potential students and faculty members and the community at large," *id.* at *11, as well as job descriptions, employment contracts, and faculty handbooks, *id.* at *12. The Board will "rely on the institution's own statements about whether its teachers are obligated to perform a religious function, without questioning the institution's good faith or otherwise second-guessing those statements", and "focus[ ] on whether a reasonable prospective applicant would conclude that performance of [his or her] faculty responsibilities would require furtherance of the college or university's religious mission." *Id* at *12–13. The Board underscored that its "holding out" inquiry is "limited:" the Board will not examine faculty members' actual performance of their duties. *Id*. at *11, *13.

In sharp contrast, the Region viewed the Prong Two inquiry as "demanding." June 5 Order at 9. Where *PLU* focuses on an institution's "expectations" for faculty communicated to the general public,[11] the Region thought spoon-fed requirements necessary. *See, e.g.*, *id.* at 10–11 (acknowledging but disregarding evidence that "'faculty' in the broad sense may be charged with certain [religious] responsibilities" and deeming significant whether adjuncts are "personally informed" of such responsibilities). Where *PLU* focuses on an institution's own

[11] *E.g.*, *PLU* at *10 (reasoning that "where faculty members are not *expected* to play such a role in effectuating the university's religious mission and are not under religious control or discipline, the same sensitive First Amendment concerns of excessive entanglement...are not implicated") (emphasis added); *id*. at *11 ("Faculty members who are not *expected* to perform a specific role . . . .") (emphasis added); *id*. at *13 n.16 ("We are again not convinced that requiring faculty members to support widely shared university values, such as a commitment to diversity and academic freedom, provides prospective applicants with any indication that they would be *expected* to perform any specific religious function that would differ from their functions at virtually any university") (emphasis added); *id*. at *18 n.25 ("As discussed above, this type of representation does not communicate the message that employees are *expected* to perform a specific religious function and is not specifically linked to any job duties to be performed by the faculty.") (emphasis added).

statements about the faculty role, the Region concluded the University failed Prong Two for lack of "specific substantial evidence" regarding the hiring, evaluation, and performance of particular adjunct faculty members. *E.g.*, *id.* at 5–7, 11. Where *PLU* concluded that requiring faculty members to support a university's mission is insufficient when that mission is not uniquely religious, *PLU* at 13, n.25, the Region viewed as insufficiently religious Duquesne's mission to "serve God by serving students" including by "service to the Church". *E.g.*, *id.* at 11.

Duquesne more than satisfies Prong Two for two overarching reasons. First, Duquesne's mission is religious, and Duquesne consistently communicates to all existing and prospective faculty that their participation in the mission is integral. Second, Duquesne's religious mission affects adjunct faculty hiring, teaching, its definition of academic freedom, and grounds for non-renewal. Duquesne's religious mission also conflicts with the requirements of collective bargaining under the NLRA.

1. Duquesne's Mission is Religious, and Duquesne Holds Out Adjunct Faculty as Performing an Integral Role in Achieving It.

Duquesne's Catholic, Spiritan mission is a religious mission. It is to "serve[] God by serving students" as a Catholic, Spiritan university "sustained through a partnership of laity and religious" by, among other things, "excellence in liberal and professional education," "profound concern for moral and spiritual values," ecumenism, and "[s]ervice to the Church, the community, the nation, and the world." *E.g.*, Er. Ex. 1; *accord* Er. Ex. 11; Union Ex. 9. Duquesne holds out all aspects of the mission as contributing to the mission of both the Church and the Spiritans. *See, e.g.*, Er. Ex. 1; Er. Ex. 5; Er. Ex. 6; Er. Ex. 50; Tr. 68; *supra* pp. 4–9.

The Region's conclusion that "[i]n its website and publications, the Employer makes no claim that the adjunct instructors who are members of the petitioned-for unit play any role in contributing to the University's mission or religious environment," June 5 Order at 10, is clearly

erroneous. Duquesne's physical campus, its website, statements to faculty at academic convocations, and many other communications hold out that all faculty play an indispensable role in this mission. *E.g.*, Er. Ex. 15 at 3–4; *see supra* pp. 13–30. For example, students walk past ubiquitous Catholic symbols to arrive in classrooms in which professors of all disciplines, from adjunct to tenured, teach under a crucifix. *See, e.g.*, Tr. at 220–22; Er. Ex. 9; Er. Ex. 25.

More, Duquesne's webpage titled "Getting Started: Adjunct Faculty at Duquesne" states under a bold header titled "First Things" that the University's religious mission "provides a context and guide for all that we do at Duquesne." Tr. 267, 269; Er. Ex. 38. Duquesne publicly proclaims on its website to all faculty that "who we are at our core is best illustrated when one faculty member assists one student to grow in knowledge and maturity within a Catholic, Spiritan context." Er. Ex. 16 at 1. Duquesne also communicates publicly on its website to all faculty that "you are a critical part of the trinity at the heart of who we are as you bring our students an education for a lifetime in our Catholic, Spiritan tradition. You serve God by serving our students." *Id.* at 17. Contrary to the June 5 Order, such representations plainly hold out the faculty as playing a "role in contributing to the University's religious mission or environment," and certainly that the University expects adjunct faculty members to play that role. Duquesne has many categories of faculty, and nothing in the record suggests that a reference to the "faculty" as a whole would exclude adjuncts. Indeed, the record contains evidence, totally ignored by the Regional Director, that "faculty" includes adjuncts. *E.g.*, Tr. 315-16, 329; Er. Ex. 11 at 5. As service to God is a quintessential "specific religious function," the inquiry should end here.[12]

2. Duquesne Holds Out that Its Catholic, Spiritan Mission Affects Adjunct Faculty Hiring, Job Duties, the Definition of Academic Freedom, and

[12] *PLU* states unequivocally that the Board considers "communications to current or potential students and faculty members, and the community at large." *Id.* at *11.

Grounds for Non-Renewal, and the Region's Contrary Conclusion Misapplied* PLU's *Limited Holding Out Requirement.

Duquesne's Catholic, Spiritan mission affects adjunct faculty employment in concrete ways: who is hired, the curricula taught, the University's definition of academic freedom, and grounds for non-renewal. The Region reached a contrary conclusion by misapplying *PLU*'s limited holding-out requirement.

(a) Who is hired.

As an initial matter, Duquesne holds out that its Catholic, Spiritan mission affects adjunct faculty hiring. The Region ruled that "there is no evidence" that the University's religious mission is "a consideration in hiring." June 5 Order at 11. To reach that conclusion, the Region had to ignore the University's strategic plans, its human resources website and recruitment brochures, its adjunct faculty application for employment, and its instruction, guidelines, and expectations for how department chairs are to interview adjunct faculty candidates. The record is clear that Duquesne holds out that it hires for mission, and the Region's contrary decision is based on clearly erroneous fact-finding and failure to apply *PLU's* limited holding out analysis.

The first goal of Duquesne's first strategic plan reads: "1.1 Commitment to the mission will be a factor in hiring . . . A candidate's understanding of and willingness to contribute to the mission will be a part of the hiring process." Er. Ex. 18 at 2. The plan is currently published on the University's website. Tr. 144, 146, 151. The Region ignored this clear evidence of how the University holds itself out because the Region deemed it "clearly...goals, as opposed to established facts." June 5 Order at 5, n.12. But a reasonable prospective faculty member would research the University, review the strategic plans, and understand that a top University priority is hiring for its religious mission. The Region's apparent preference for specific evidence of 100% success in implementation has no basis in *PLU*. In any event, the record is clear that the

University has implemented Section 1.1.'s call for mission hiring, continues to do so, and looks for ways to improve such hiring. *E.g.*, Tr. 144 (President Dougherty testimony that Goal 1.1. was implemented and "is still being done today"); *id.* at 146–47 (President Dougherty testimony that the University looks for ways to improve mission hiring); *id.* at 151.

The Region's claim that the University produced "no evidence" that its religious mission factors in adjunct faculty hiring is contrary to other evidence in the record. For example, the University's website contains its accreditor's independent evaluation report, which states "[a] sense of mission pervades recruitment, hiring . . . ." Er. Ex. 49 at 4. Duquesne's Human Resources website states that "[a]pplicants must be willing to contribute actively to the mission and to respect the Spiritan Catholic identity of Duquesne University," Er. Ex. 34, and its recruitment brochure states that "[o]ur employees contribute to our vision of enhancing our culture of academic excellence dedicated to our mission of serving God by serving students," Er. Ex. 33.

Moreover, Duquesne's "Faculty and Staff" application form for adjunct faculty in the McAnulty College specifically asks applicants to "describe how you would support and contribute to the University Mission." Er. Ex. 36; *see* Tr. 258. The Region ignored the application because it is "not always utilized." June 5 Order at 5. But again, under *PLU's* limited holding out inquiry whether the application is "always utilized" is irrelevant and improper trolling into how well the University implements its religious mission. Even if relevant, there is no contemporary evidence in the record for the Region's claim.

Finally, Duquesne trains academic department chairs in the University's expectation that they will take the University's Catholic, Spiritan mission into account in the adjunct faculty interviewing and hiring process, and the University distributes guidance about how to do so.

See, e.g., Tr. 259–60. The guidelines include sample questions such as "[w]hile teaching performance and qualifications are central to our educational mission, we are also part of a religious tradition here at Duquesne. What are your thoughts about the relationship between faith and reason in the academic environment?" Er. Ex. 37. Duquesne instructs department chairs that the University cannot hire anyone who is unable to support its Catholic, Spiritan mission. Tr. 264. The guidelines state unequivocally that "in order to advance in the search process, candidates must fully understand and be willing to support the University Mission Statement." Er. Ex. 37. The Region ignored this evidence because "there is no evidence in the record from any department chair as to how the hiring is actually accomplished and what information is communicated to the adjunct applicant." June 5 Order at 5. Again, that sort of inquiry is improper and irrelevant trolling into how well the University implements its religious mission. It is the University's "expectations" that count under *PLU*.

As Provost Austin testified, "[t]he University is not able to hire anybody who is unable to support the mission of the institution." Tr. 263–64; *accord* Tr. 113 (President Dougherty testified: "if we identified a candidate who was extremely indifferent or hostile to the mission, that would be a reason not to hire them."). The reason is that the "Spiritan Catholic education that we deliver, is entrusted to our faculty. The task of representing our values, and our priorities, is something that our faculty convey to our students, and we must be satisfied in employing a faculty member that she or he is able to fulfill that responsibility." Tr. 252. In short, Duquesne publicly reserves the right to hire a candidate best suited for its Catholic, Spiritan mission, not the candidate with other qualities that the Steelworkers or secular institutions might prefer (such

as years of service).[13] The Region's contrary conclusion on this point stems from improper, intrusive extension of *PLU* and clearly erroneous fact-finding.

(b) How and what is taught.

The University's religious mission affects how and what is taught by adjunct faculty members. In reaching a contrary decision on this point, the Region improperly ignored or discounted the University's *Faculty Handbook*, which is a part of each adjunct faculty member's contract with the University, the University's website, and the University's orientations for adjunct faculty members. The Region also disregarded evidence that certain adjunct faculty members require a Mandatum from the local Bishop and that adjunct faculty teach curricula specifically designed to serve the University's religious mission.

Once hired, Duquesne's adjunct faculty are contractually obligated through the *Faculty Handbook* to support the purposes of the University. Union Ex. 9 at 13; Tr. 275–76. Their role is also defined contractually through the *Faculty Handbook* as implicit in the University's mission and goals, which include a "special trust to seek truth and to disseminate knowledge within a moral and spiritual framework." *See* Union Ex. 9 at 10; *id.* at 3; Tr. 276. The Provost confirmed that this language applies to adjunct faculty, Tr. 274, and adjunct faculty therefore have a contractual obligation to execute their responsibilities within such "moral and spiritual framework." The *Faculty Handbook* states unequivocally that "we take great pride in our Catholic character and ambience, and we subscribe to the teachings of the Roman Catholic Church," and that "[o]ur teaching of the moral and ethical foundations of thought and action

[13] Two Steelworkers witnesses testified that they were not asked about Duquesne's mission when hired in 2007 and 2008, respectively, long before the hearing in this case. *See* Tr. 457, 460, 487-88. Even assuming these statements were true, they prove nothing other than that Duquesne's approach to achieving its clear and public goal of hiring for mission had not achieved 100-percent effectiveness as of more than half a decade ago. Duquesne unquestionably holds out that its Catholic, Spiritan mission affects adjunct faculty hiring. While the Board considered adjunct faculty testimony in *PLU* to show religion did not factor in hiring, unlike here, the Board had no public PLU documents stating that it did. *See* 361 NLRB No. 157 at *12 (citing no such documents).

reflect our Catholic heritage and should pervade the university." Union Ex. 9 at 2. The Region's finding that "[t]here is no mention of any . . . religious duties in the adjuncts' employment contracts," June 5 Order at 10, either rests on an improper assumption about what is "religious" or is clearly erroneous because the *Faculty Handbook* is part of an adjunct faculty member's contract with the University. Union Ex. 9 at 2.

Duquesne provides new adjunct faculty orientations in part to emphasize the University's mission expectations. For example, new adjunct faculty received literature explaining that "[o]utstanding teacher-scholars and scientists are hired, rewarded and retained to support the mutual enrichment of faith and reason." Tr. 372; Er. Ex. 54. New adjuncts also received wallet-sized pocket cards listing a series of "Faculty and Staff Expectations," such as "[w]ork towards understanding the Spiritan values expressed in the mission statement and strive to incorporate them into your daily work" and "[b]e respectful of the Catholic tradition on which our university is founded." Er. Ex. 53; *see* Tr. 372. The Region completely ignored evidence about orientation, apparently because such orientation is not mandatory. June 5 Order at 5, 10–11. However, a reasonable new adjunct faculty member would attend orientation and learn that the University expects adjunct faculty to understand the University's religious mission and incorporate it into their daily work. The Region's assertion that "[t]here is a lack of evidence that adjuncts are informed of any requirement of participation with respect to conveying or supporting the Employer's mission" is clearly erroneous and a misapplication of *PLU*. *See* June 5 Order at 11.

Adjunct faculty who teach Catholic theology are required to have a Mandatum from the Bishop, and at least one adjunct faculty member who voted in the election has one. *See* Er. Ex. 8 (adjunct faculty member S. Patrick Doering). The Region inexplicably ignored the Mandatum requirement altogether and failed to carve out even this subset of adjuncts from jurisdiction.

All adjunct faculty, of course, teach courses as part of curricula, and the University holds out curricula as one area where "concerns that are especially Catholic must dominate." Er. Ex. 13 at 3. Indeed, all curricula are explicitly linked to Duquesne's Catholic, Spiritan mission through the Dimensions. *See* Tr. 327–33; Er. Ex. 46. By, among other ways, linking to *Ex Corde* on its website and through the work of CCIT, Duquesne holds out that its entire academic endeavor serves its religious mission. *See, e.g.*, *supra* pp. 4–8, 12, 13–20, 23–30; Er. Ex. 65 at 2010-2011 Catalog, 60 (describing the McAnulty college as "at the center of Duquesne University's Education for the Mind, Heart and Spirit," as embodying "both Duquesne's Catholic tradition and its ecumenical atmosphere," and as striving for "respect for the dignity of the human person"). Without any explanation, the Region ignored that the University holds out that the curricula that adjunct faculty help deliver serves its religious mission. June 5 Order at 10–11.

Furthermore, adjunct faculty teach extensively in Duquesne's Core, teaching an average of 44 percent of core credit hours over the past five years. Tr. 336. University website documents show that the Core "uniquely expresses the Spiritan-Catholic identity of Duquesne University." Er. Ex. 47 (Core Curriculum Website Page). Faculty in all disciplines who teach in the Core are responsible for achieving student learning outcomes such as "[i]dentify some of the unique perspectives provided by faith and reason in the pursuit of truth." *See* Union Ex. 14 at 1–2; Tr. 336. Again, the Region inexplicably ignored that adjuncts are responsible for teaching a curriculum and achieving student learning outcomes uniquely designed to further its Catholic, Spiritan mission. June 5 Order at 10–11.

Crucifixes in every classroom serve as a tangible reminder of the unity between the academic endeavor and the religious mission. *E.g.*, Tr. at 221. By word, example, and reward,

Duquesne encourages adjunct faculty to deepen the already present connection between their work and the Catholic intellectual tradition, and many have done so. *See, e.g.*, *supra* pp. 16–20 (discussing the CCIT's programming and opportunities, including the "Part-time Faculty Micro-Mission Grant"). In short, as President Dougherty testified, the University encourages faculty to make the connection between faith and reason. Tr. 56. Although Duquesne does not "force faculty to do anything related to Catholicism," we "invite them in, we expect them to participate." Tr. 131. And it is the University's expectations that count under *PLU* and that the Region completely failed to consider.

c. The definition of academic freedom and grounds for nonrenewal.

Whatever else adjunct faculty may do, they may not improperly undercut Duquesne's Catholic, Spiritan mission. This principle is evident first in Duquesne's definition of academic freedom and, second, in Duquesne's definition of "Serious Misconduct." Although the Region recognized that adjunct faculty may not be "openly hostile" to the University's religious mission, June 5 Order at 10, the Region improperly failed to accept that for this and like reasons the Board must decline jurisdiction under *PLU*.

Duquesne adheres to principles of academic freedom and encourages faculty to pursue the truth wherever it leads in the context of its mission. Duquesne's terms and conditions of employment define academic freedom in teaching as "subject to the principles and values expressed in the Duquesne University Mission Statement" and require teachers to "respect the religious and ecumenical orientation of the University." Union Ex. 6, § V.A; Union Ex. 9 at 12.[14] The *Faculty Handbook* also states unequivocally that "we take great pride in our Catholic

[14] In relevant part, the 1940 Statement of Principles on Academic Freedom and Tenure of the American Association of University Professors ("AAUP") states: "Teachers are entitled to freedom in the classroom in discussing their subject, but should be careful not to introduce into their teaching controversial matter which has no

character and ambience, and we subscribe to the teachings of the Roman Catholic Church." Union Ex. 9 at 2; *see* Tr. 273–74. In short, though free professional and academic analysis is encouraged, Duquesne reserves the right to determine that an adjunct faculty member's purported exercise of academic freedom improperly violated or failed to respect Duquesne's Catholic, Spiritan mission. *See* Union Ex. 10 at 82–83 (Duquesne's Self Study describing academic freedom and underscoring that "[i]t does not follow, however, that Duquesne's openness to dialogue will lead it to relinquish those core beliefs that constitute its specifically Catholic identity. Hence, ecumenism does not mean that everything is acceptable"). Research proposals similarly "must be consistent with the goals and objectives of the university." Tr. 295; Er. Ex. 42 (TAP 44).

Duquesne employs adjunct faculty members on a semester-by-semester basis. *E.g.*, Tr. 464–65. Any reasonable prospective adjunct faculty member would understand that the University would not tolerate behavior from an adjunct that could result in revocation of a full-time faculty member's tenure. Under the *Faculty Handbook*, Duquesne may revoke tenure for "Serious Misconduct," defined to include the "failure to observe the principles of the Mission Statement of Duquesne University or elaborations thereof approved by the Board of Directors" and "conduct involving moral turpitude." Union Ex. 9 at 19, n.2. Indeed, Provost Austin testified without contradiction that failure to respect the religious and ecumenical orientation of the University could result in non-renewal of an adjunct faculty member's contract. *See* Tr. 295; *see also* Tr. 117 (testimony of President Dougherty that "we expect [faculty] to respect [Catholic] beliefs as part of what the community believes, even if they don't believe them themselves"); Tr. 125 (testimony of President Dougherty that if an adjunct faculty member

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relation to their subject. *Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.*" Union Ex. 11 at 14 ¶ 2 (footnotes omitted, emphasis added). The *Faculty Handbook* is written, applies, and is in force at the time of appointment.

mocked the notion of serving God by serving students "seriously, to try to undermine what we stand for . . . [, such conduct] would be grounds for not renewing an adjunct, for example").

Duquesne's approach to academic freedom and serious misconduct are consistent with *Ex Corde* and the USCCB Application. Those documents call for academic freedom and responsibility and respect for Catholic teachings. Er. Ex. 6, Part 2, Art IV, § 4(b) (USCCB Application, which states "[a]ll professors are expected to exhibit not only academic competence and good character but also respect for Catholic doctrine. When these qualities are found to be lacking, the university statutes are to specify the competent authority and the process to be followed to remedy the situation."); *accord* Er. Ex. 5, Part I, § 27 (*Ex Corde*, which states "[n]on-Catholic members are required to respect the Catholic character of the University . . . ."); *id.* Part II, art. 2, § 4 ("Catholic teaching and discipline are to influence all university activities, while the freedom of conscience of each person is to be fully respected."); *id.* Part II, art. 4, § 2 ("All teachers and all administrators, at the time of their appointment, are to be informed about the Catholic identity of the Institution and its implications, and about their responsibility to promote, or at least to respect, that identity.").

In sum, Duquesne draws a line—respect for the religious and ecumenical orientation of the University—and that line is dictated by and implicates Church teaching in *Ex Corde* and the USCCB Application. *PLU* makes clear that this religious boundary is exactly the type of line *Catholic Bishop* forbids the Board from policing. *See PLU*, 361 NLRB No. 157 at *13, n.19 ("We will decline jurisdiction so long as the university's public representations make it clear that faculty members are subject to employment-related decisions that are based on religious considerations.").[15] The Region admitted that this line exists at the University, but improperly

[15] The Steelworkers argued that the terms and conditions of faculty employment are no different at Duquesne than at secular universities, but the Board should understand that the AAUP and members of Duquesne's faculty

disregarded it apparently for lack of "evidence of any complaints concerning adjuncts who were 'hostile' or who have been disciplined." June 5 Order at 5. Straining to assert jurisdiction, the Region thus ignored that *PLU* explicitly forbids "look[ing] behind these documents" or "inspect[ing] the university's actual practice with respect to faculty members." *PLU* at *12. The Region misapplied *PLU's* limited holding out requirement.

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Given the powerful effect of Duquesne's Catholic, Spiritan mission on adjunct faculty employment, the Steelworkers argued that Duquesne's mission is not religious.[16] *See* Post-

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have expressed otherwise. The Hearing Officer improperly excluded on relevancy and hearsay grounds three e-mail messages from members of the Duquesne faculty addressing these issues, including one enclosing an AAUP analysis. *See* Tr. at 320–26. The AAUP, for example, analyzed the definition of "serious misconduct" in the *Faculty Handbook*. Rejected Er. Ex. 43, Attachment (Letter on Behalf of AAUP to Duquesne Professor); *see also* Tr. 315–17. The AAUP had "serious concerns" including "[w]hat would constitute 'a failure to observe the principles of the Mission Statement"? Rejected Er. Ex. 43 at Enclosure. Another professor—whom the Steelworkers' counsel labeled a "Union guy," Tr. 322—expressed concern that some faculty candidates were not hired for failing the "'mission and identity test.'" Rejected Er. Ex. 44; *see also* Tr. 322–24. Another explained that "Catholic Universities in America are at risk that Catholic authorities will seek to intervene inappropriately into academic discussions . . . [which] requires both vigilance and prudence as faculty members seek to engage all questions and issues but not in a way that misrepresents the identity, mission and value system to which the University subscribes to seek and attain." Rejected Er. Ex. 45; *see also* 324–26. The Hearing Officer's erroneous ruling does not foreclose the Board's consideration of these exhibits.

[16] The testimony of the Steelworkers' only witnesses demonstrates how Duquesne's religious mission affects adjunct faculty employment. Both teach in the Core. Tr. 456–57, 508. Professor Clint Benjamin teaches composition courses, and Professor Adam Davis teaches History of Science. Both witnesses could connect their classes expressly to the Catholic intellectual tradition and Duquesne's religious mission. Composition is obviously broad enough to do so. One of Professor Davis's own textbooks is apparently David Lindberg's *The Beginnings of Western Science*. *See* Tr. 509–10 (transcript refers to "David Lindbergh" and "The History of Western Science"). The 2007 edition of the Lindberg text contains many references to "Church" and "Catholic" and even refers to "transubstantiation" (i.e., the transformation of bread and wine into the body and blood of Christ during the Catholic Mass). It also states: "One of the charges frequently leveled against the church is that it was broadly anti-intellectual—that the leaders of the church preferred faith to reason and ignorance to education. In fact this is a major distortion." Lindberg, *supra* at 148. The church's mission "did not include the suppression of scientific investigations and ideas." *Id.* at 149.

Professor Benjamin testified that he teaches the same courses at public institutions and makes no effort to modify the content or engage with the University's mission. *See* Tr. 457, 478. Professor Davis testified that he believes mission is relevant to faculty only if it is articulated, Tr. 501, and implied that no one articulated it to him, *see* Tr. 490–95. Both witnesses' testimony is irrelevant because *PLU* is clear that the Board will not consider faculty members' actual performance of their duties. *PLU*, 361 NLRB No. 157 at *11. Regardless, today, Duquesne reserves the right not to rehire both professors and replace them with professors willing and/or better able to incorporate Duquesne's Catholic, Spiritan mission into their courses. If either were to undermine Duquesne's Catholic, Spiritan mission—for example, because his textbook mentions transubstantiation, if Mr. Davis improperly

Hearing Brief at 28 (characterizing the mission as ecumenical, not religious). Even if it were constitutional for a government agency to decide that question—as explained below, it is not—the plain text of Duquesne's mission plus *PLU's* focus on a reasonable prospective faculty member rebut the idea.

However, to suggest that Duquesne's mission is not religious is a problem for another reason of deep significance under *Catholic Bishop*. Only one group has the power to determine the mission and philosophy of the University: the Spiritan priests and brothers who are Members of the corporation. Er. Ex. 2, arts. VIII, IX; Er. Ex. 3, art. IV. The Region inexplicably ignored this fact. The Spiritan priests and brothers who are Members alone have the authority to define the mission, change it, and thus interpret it. *See id.* A former Spiritan Provincial Superior and current Member of the corporation testified that Duquesne's "religious mission . . . is vitally important, its mission as Catholic and Spiritan, to me, and to members of the corporation." Tr. 363; *see also* Tr. 359–62 (explaining that education is an integral part of the Spiritan mission of evangelization and that the entire Duquesne community, including faculty, shares in that charism). Therefore, there is an obvious and tremendous potential for entanglement if the Board asserts jurisdiction here—particularly when the Members' other exclusive, reserved powers include appointing the Board, amending the Articles of Incorporation, and closing the

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denigrated the sacrament of the Eucharist—Duquesne would have the right to take adverse action. *See* Tr. 478, 501 (denying denigration of Catholicism in class).

NLRB supervision of the relationship between Duquesne and its adjunct faculty would entail tremendous potential for entanglement. As just one example, if the Steelworkers claimed that Duquesne refused to rehire an adjunct professor who denigrated Duquesne's mission, and the Steelworkers argued that the refusal was actually driven by anti-union animus, the University's good faith would be put squarely at issue. This type of dispute is just what the Supreme Court in *Catholic Bishop* sought to avoid. *See* 440 U.S. at 502 (fearing that an unfair labor practice charge might force the Board to decide the "good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission"); *Universidad Cent. de Bayamon v. NLRB*, 793 F.2d 383, 401 (1st Cir. 1985) (en banc) (controlling opinion of Breyer, J.) ("One can imagine the University imposing sanctions upon faculty that relate, let us say, to counseling in the sensitive area of abortion; reviewing such sanctions would place the Board squarely in the position of determining what is 'good faith' Dominican practice in respect to such counseling.").

University. *See* Er. Ex. 2, arts. VIII, IX; Er. Ex. 3, art. 4. In this and many other respects, Duquesne is like the institution at issue in *St. Joseph's College*, a case in which the Board wisely declined jurisdiction even before *PLU*. 282 NLRB No. 9 at *3, *6 (1986) (declining jurisdiction when a religious order had ultimate authority over the college and the college required faculty to promote the objectives and goals of the order, although not to teach religious dogma).

II. THE SECOND PRONG OF *PLU* CREATES THE ENTANGLEMENT *CATHOLIC BISHOP* EXISTS TO AVOID, AND DUQUESNE EASILY SATISFIES THE CONSTITUTIONAL *GREAT FALLS* TEST.

For all of the reasons set forth above, Duquesne is not subject to NLRB jurisdiction under *PLU*. However, the record in this case demonstrates that the second prong of *PLU* repackages the former improper and entangling "substantial religious character test" without addressing the constitutional avoidance doctrine motivating *Catholic Bishop*. The Board should grant review to discard *PLU* and adopt and apply the constitutional *Great Falls* test, which Duquesne easily satisfies.

A. The Second Prong of *PLU* Creates the Unconstitutional Entanglement *Catholic Bishop* Exists to Avoid.

The Supreme Court decided *Catholic Bishop* on constitutional avoidance grounds: it was enough that the assertion of jurisdiction would raise "serious First Amendment questions." 440 U.S. at 504; *see also Great Falls*, 278 F.3d at 1340 ("*Catholic Bishop* was decided on grounds of constitutional avoidance"). By contrast, the Board in *PLU* improperly seeks to balance the First Amendment protections and the NLRA and to assert "the broadest jurisdiction constitutionally permissible." 361 NLRB No. 157 at *8. The record in this case demonstrates the folly of that attempted balancing: *PLU's* underlying assumptions and analytical framework are inherently entangling, and *PLU* fails to guard against the risk of future entanglement.

The analysis *PLU* demands is itself improperly entangling because the government decides what constitutes a "specific religious function." The First Amendment forbids the government from deciding what is secular and what is religious. *See Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 336 (1987) ("The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission.") (footnote omitted); *see also Town of Greece v. Galloway*, 134 S. Ct. 1811, 1822 (2014) (observing that analysis of whether legislative prayers were nonsectarian "would involve government in religious matters to a far greater degree"); *Mitchell v. Helms*, 530 U.S 793, 828 (2000) (plurality opinion) (concluding that inquiry into "whether a school is pervasively sectarian is not only unnecessary but also offensive"); *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 694 (1989) (rejecting proposal that "would force the IRS and the judiciary into differentiating 'religious' services from 'secular' ones").

PLU claims to avoid this problem by focusing only on an institution's own statements about the faculty role. But the Board has defined "specific religious function" based on its own assumptions about what is religious and what is not. The Board admitted in *PLU* that the inquiry is *not* simply whether the university holds out its faculty as performing a religious function, but whether the university holds out its faculty as "performing a . . . role that they would [not] be expected to fill at virtually all universities" as understood by the Board. 361 NLRB No. 157 at *12. The Board went so far as to cast aside the importance of academic freedom to Lutheranism and to presume that a commitment by a religious institution to "diversity and academic freedom" puts forth the message that "religion has no bearing on faculty members' job duties or

responsibilities." *Id.* at *11. The dangerous implicit assumption is that diversity and academic freedom are inconsistent with a genuinely religious endeavor—only fundamentalist religions and strident proselytizing count. *But see Great Falls*, 278 F.3d at 1346 ("That a secular university might share some goals and practices with a Catholic or other religious institution cannot render the actions of the latter any less religious."); *id.* ("Religion may have as much to do with why one takes an action as it does with what action one takes."). Similarly, the Board took it upon itself to determine that *PLU's* mission was not a religious mission. 361 NLRB at *18 n.25. The Board thus eviscerated whatever entanglement avoidance a holding-out requirement might achieve, arrogated to itself the job of determining what is and is not sufficiently religious based on its own assumptions, and improperly preferred "some religions (and thereby some approaches to indoctrinating religion) to others." *Great Falls*, 278 F.3d at 1346.

The record in this case reinforces the point. The Catholic Church teaches—and Duquesne holds out—that Catholic universities grow from the heart of the Church and contribute to its mission of spreading the Good News. However, they do so in part precisely by recognizing academic freedom and responsibility and welcoming diversity. Such values grow directly from *Ex Corde* and the USCCB Application, which teach that faith and reason are valuable and compatible and that all people are children of God, endowed with inherent human dignity and free to choose the faith (or not). *See, e.g.*, *supra* pp. 5–7. These principles are rooted in Catholic doctrine. For example, the *Catechism of the Catholic Church* states that: "methodical research in all branches of knowledge, provided it is carried out in a truly scientific manner and does not override moral laws, can never conflict with the faith, because the things of the world and the things of faith derive from the same God. The humble and persevering investigator of the secrets of nature is being led, as it were, by the hand of God in spite of himself, for it is God, the

conserver of all things, who made them what they are." § 159.[17] Thus, to rule that Duquesne does not hold out faculty as performing a religious function because it welcomes a diverse faculty and gives them academic freedom and responsibility would be based not on what Duquesne or the Church holds out, but rather on the Board's improper, entangling assumptions. It would also send an offensive and harmful official message from the United States government that whatever Duquesne and the Catholic Church say, Duquesne's academic endeavor is unconnected to its religious mission. Such governmental decisions about religious matters are exactly what the *Catholic Bishop* decision exists to prevent.

PLU invites the Board to determine what is and is not religious in another more subtle, but equally harmful way. Specifically, *PLU* focuses on whether a "reasonable" prospective applicant would understand an institution's public documents to communicate that religion has a bearing on employment. 361 NLRB No. 157 at *13. But the "reasonable" person is a federal agency interpreting a religious institution's documents on its own and deciding what is religious and what is secular. For example, in this case the Hearing Officer not infrequently forbade inquiry into how Duquesne[18] understood its own documents, not to mention its Catholic, Spiritan mission, its strategy to achieve it, and its understanding of how its mission would affect its ability to negotiate with a union. *E.g.*, Tr. 154–57 (ruling inadmissible that Duquesne would refuse to bargain over healthcare benefits for contraception and abortion and over the role of adjunct faculty in its religious mission); Tr. 294 (ruling inadmissible the University's chief academic officer's interpretation of the *Faculty Handbook*); *see also* Tr. 50, 141–42, 283–84. *PLU* thus leaves the Board to make its own interpretation and determination.

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[17] Apparently seeking to avoid entanglement, the Hearing Officer forbade any questions about the *Catechism*. Tr. 419. However, it is available on the Vatican's website and presents "the essential and fundamental contents of Catholic doctrine." *Catechism of the Catholic Church*, Prologue III, § 11, *available at* http://www.vatican.va/archive/ENG0015/_INDEX.HTM.

[18] Speaking through University officials, such as its president, provost, and a member of the corporation.

For similar reasons, the Board's approach in *PLU* also fails to guard against the risk of entanglement in the future. *See Universidad Cent. de Bayamon v. NLRB*, 793 F.2d 383, 401–02 (1985) (Breyer, J.) (explaining "'mandatory subjects of bargaining' . . . in the context of 'educational institutions' may concern the whole of school life") (citation omitted). What counts for entanglement purposes is the position the University would adopt when taking particular employment actions or in union negotiations—not the Board's *ex ante* interpretation of cold documents. For example, the June 5 Order ignored that the University's public goal is to consider its religious mission in faculty hiring because a goal is not a requirement. June 5 Order at 5 n.12. But if the Board asserts jurisdiction, Duquesne may be forced to defend a hiring decision in furtherance of that goal or its refusal to bargain over mission-related hiring criteria in an unfair labor practice proceeding before this agency. Again, this injection of the Board into the relationship between a religious-affiliated institution and its faculty is exactly what the *Catholic Bishop* decision exists to avoid.

Finally, *PLU* wrongly assumes that a religious institution's religious mission is frozen. *PLU* concludes that if a University does not at the time of a hearing require faculty to perform what the NLRB deems a specific religious function, then there is no entanglement problem, and the constitutional avoidance concern motivating *Catholic Bishop* is resolved. Far from it. Here, for example, the Spiritans control the University's mission and philosophy and have sole authority to change it or Duquesne's approach. President Dougherty's 2014 convocation address hinted at the potential need for change; at once calling for even greater "stress on our mission," Er. Ex. 17 at 6, while at the same time identifying two factors that "will affect the future on this score in unknown ways": vocations to the Spiritans have declined, and young Americans are "alienated from organized religion as never before," *id.* at 8. *See* Tr. 134–36.

In response to these factors, the University could decide to require more of its faculty regarding its Catholic, Spiritan mission, such as requiring participation in CCIT programs on Spiritan pedagogy. If a union existed, and if it sought to bargain over the University's decision regarding faculty professional development or argued that the University's new requirements were an unlawful unilateral change in terms and conditions of employment, the Board's supervision of such issues would create a First Amendment entanglement nightmare. *See Bayamon*, 793 F.2d at 402 (identifying a potential entanglement because certain faculty "objected to teaching so many theology and philosophy courses"). Similarly, there would be an entanglement nightmare if a union sought to bargain over a University decision to institute a formalized evaluation system to assess contributions to Duquesne's religious mission, with retention contingent on satisfactory performance. Thus, even if the Board concludes that Duquesne's current approach to achieving its Catholic, Spiritan mission is not religious enough or implemented well enough for the Board, it has not meaningfully solved the Constitutional avoidance concern motivating *Catholic Bishop*.

B. Duquesne Meets the *Great Falls* Test.

This case demonstrates the folly of *PLU's* attempt "to avoid entanglement by creating new, finely spun judicial distinctions" because the application of such distinctions results and here resulted in entanglement. *See Bayamon*, 793 F.2d at 402 (Breyer, J.). The Board should abandon *PLU* and apply *Great Falls*.

Under *Great Falls*, the Board cannot assert jurisdiction over a university that (1) holds itself out as providing a religious educational environment, (2) is organized as a nonprofit, and (3) is affiliated with a recognized religious organization. 278 F.3d at 1343–44. Here, it is stipulated that Duquesne is a nonprofit corporation, and it is indisputable that Duquesne is

affiliated with the Catholic Church and the Spiritan congregation. For all the reasons that Duquesne meets *PLU*, it satisfies the *Great Falls* requirement that it hold itself out as providing a religious educational environment.

CONCLUSION

For the foregoing reasons, the Board should grant review and decline to exercise jurisdiction over Duquesne University of the Holy Spirit.

Dated: June 19, 2015

Respectfully submitted,

/s/ Arnold E. Perl

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CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing was filed electronically and copies were served via e-mail on the following on this the 19th day of June, 2015:

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February 4, 2016

Gary Shinners
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Re: Duquesne University of the Holy Spirit, Case No. 06-RC-080933 – Supplemental Authority

Dear Mr. Shinners:

We represent Duquesne University of the Holy Spirit ("Duquesne") in the above captioned case. On June 19, 2015, Duquesne filed a request for review ("RFR") from a June 5, 2015 Decision and Recommendation to Overrule Objection and Issue Certification by Region 6 ("Decision"). This is a supplemental authority letter filed per *Reliant Energy*, 339 NLRB 66 (2003).

Region 19's recent decision in *Carroll College*, No.19-RC-165133 (Jan. 19, 2016) provides additional support for Duquesne's position that Region 6 misapplied *Pacific Lutheran University*, 361 NLRB No. 157 (Dec. 16, 2014) ("*PLU*"). Region 19 found that Carroll College satisfied not only prong one, but also prong two because the College could discharge faculty for serious cause, defined by the Faculty Handbook to include "'continued serious disrespect or disregard for the Catholic character or mission' of the College." 12.

As detailed in Duquesne's RFR, especially pages 23 to 28 and 39 to 44 (all lines), Duquesne's *Faculty Handbook* contains essentially the same standard. Duquesne holds out that whatever else adjunct faculty may do, they may not improperly undercut Duquesne's Catholic, Spiritan mission. *See, e.g.*, Union Ex. 9 at 19 n.2 (defining "Serious Misconduct" for even tenured faculty to include "failure to observe the principles of the Mission Statement of Duquesne University or elaborations thereof approved by the Board of Directors"); *id.* at 12 (defining "academic freedom"); *accord* Union Ex. 6, Executive Resolutions of the Board § V.A (defining academic freedom in teaching and explaining that "academic freedom in the classroom" is "*subject to* the principles and values expressed in the Duquesne University Mission Statement") (emphasis added); Tr. 293-95.

Significantly, Region 6's Decision conceded that Duquesne holds out that adjunct faculty may *not* be "openly hostile" to Duquesne's religious mission. Decision at 10. Region 19 declined jurisdiction for that very reason in *Carroll College*. The Union has filed a request for review in *Carroll College*, which only underscores the need for the Board to grant review in Duquesne's case to resolve the split and to reverse Region 6's error.

Respectfully submitted,

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DUQUESNE UNIVERSITY
OF THE HOLY SPIRIT
Employer

and Case 06-RC-080933

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC
Petitioner

DECISION ON REVIEW AND ORDER

The Employer's Request for Review of the Regional Director's Decision and Recommendation to Overrule Objections to Election and Issue Certification is granted solely with regard to the Regional Director's inclusion of the Department of Theology adjunct faculty in the unit found appropriate. Applying the Board's recent decisions in *Seattle University*, 364 NLRB No. 84 (2016) and *Saint Xavier University*, 364 NLRB No. 85 (2016), we find that the University holds out the part-time adjunct faculty in the Department of Theology as performing a specific role in maintaining the University's religious educational environment.[1] As in those cases, a reasonable prospective applicant for a position in the University's Department of Theology would expect that the performance of their responsibilities would require furtherance of the University's religious mission. The record shows that the part-time adjunct faculty in the Department of Theology teach courses that are presented as having religious content; undergraduates may take these courses to fulfill core academic requirements; and the part-time adjunct faculty in the department have an expertise in Catholic theology, other faith-based traditions, or other aspects of the religious experience. Id., slip op. at 3 in each decision.

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[1] Our colleague advances arguments similar to those he made in his dissents in *Seattle University* and *St. Xavier University*. For the reasons given in those decisions, we are not persuaded by those arguments. In particular, we disagree with his view that *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), forbids the Board from making a distinction between faculty who teach religious and secular courses because this type of inquiry alone raises First Amendment concerns. To the contrary, excluding the part-time adjunct faculty in the Department of Theology does not mean that we have assessed the religious content of the courses they teach or otherwise compared the content of those courses to those taught by faculty in other departments. Rather, we have assessed only the University's presentation of those courses to the faculty, students, and public at large. *Seattle University*, 364 NLRB No. 84 (2016), slip op. at 2-3 fns. 4-6; *Saint Xavier University*, 364 NLRB 85 (2016), slip op. at 2-3 fns. 3-5.

Although Member Pearce did not participate in *Seattle University* and *Saint Xavier University* and expresses no view as to whether they were correctly decided, he agrees to apply them as precedent in this case.

Accordingly, the part-time adjunct faculty in the Department of Theology are excluded from the unit found appropriate,[2] and the University's Request for Review is denied in all other respects.[3]

ORDER

This case is remanded to the Regional Director for further appropriate action.

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., April 10, 2017.

Acting Chairman Miscimarra, dissenting.

Contrary to my colleagues, I would grant in its entirety Duquesne University of the Holy Spirit's Request for Review of the Regional Director's Decision and Recommendation to Overrule Objections to Election and Issue Certification, in which the Regional Director asserted jurisdiction over the University and recommended overruling the Employer's objection to the conduct of the election and issuing a Certification of Representative in a unit of all part-time adjunct faculty employed by the University in its McAnulty College and Graduate School of Liberal Arts. My colleagues deny review of the Regional Director's finding that the Board should exercise jurisdiction over most of the petitioned-for part-time adjunct faculty; however, they grant review, reverse the Regional Director's assertion of jurisdiction over the part-time adjunct faculty in the Department of Theology, which necessitates remanding the case to the Regional Director for further action in order to determine whether a certification of representative should issue. For three reasons, I believe there is a substantial issue regarding whether the Board lacks jurisdiction over the entire petitioned-for unit.

First, as I explained in my dissenting opinions in *Seattle University*, 364 NLRB No. 84, slip op. at 3–5 (2016) (Member Miscimarra, dissenting), and *Saint Xavier University*, 364 NLRB

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[2] Because we have excluded the Department of Theology part-time adjunct faculty from the unit, the Petitioner should not be certified as the bargaining representative unless the Regional Director determines that it achieved a majority of countable ballots without those of the excluded employees. If she so determines, we direct the Regional Director to amend the certification to exclude those employees from the unit.

[3] We also adopt the Regional Director's recommendation to overrule the Employer's objection to the assertion of jurisdiction, except as otherwise provided in this decision.

In its Response in Opposition to Employer's Request for Review, filed 21 days after the Regional Director's decision, the Petitioner also contends that the Regional Director erred in failing to find that the Employer waived its objection to the Board's jurisdiction when it initially entered into a stipulated election agreement prior to the election prior to withdrawing from the agreement and asserting that it was entitled to a religious exemption from the Board's jurisdiction. We find this contention to be an untimely request for review under Sec. 102.67(c) of the Board's Rules and Regulations, which requires filing within 14 days of the Regional Director's decision, and accordingly dismiss this argument.

No. 85, slip op. at 3–5 (2016) (Member Miscimarra, dissenting), the distinction my colleagues draw between part-time adjunct faculty who teach courses with "religious content" (who my colleagues find are exempt from the Board's jurisdiction) and the other petitioned-for unit faculty (who my colleagues find are subject to the Board's jurisdiction, presumably on the basis that those faculty teach courses with exclusively "secular" content) is forbidden by the main teaching of *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), where the Supreme Court emphasized that the "very process of inquiry" associated with this type of evaluation raises First Amendment concerns. Id. at 502.[2]

Second, as explained in my separate opinion in *Pacific Lutheran University*, 361 NLRB No. 157, slip op. at 26–27 (2014) (Member Miscimarra, concurring in part and dissenting in part), when determining whether a religious school or university is exempt from the Act's coverage based on First Amendment considerations, I believe the Board should apply the three-part test articulated by the Court of Appeals for the District of Columbia Circuit in *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002). Under that test, the Board has no jurisdiction over faculty members at a school that (1) holds itself out to students, faculty and community as providing a religious educational environment; (2) is organized as a nonprofit; and (3) is affiliated with or owned, operated, or controlled, directly or indirectly, by a recognized religious organization, or with an entity, membership of which is determined, at least in part, with reference to religion. Id. at 1343. In my view, the University has clearly raised a substantial issue regarding whether it is exempt from the Act's coverage under that three-part test. The Regional Director found that the University holds itself out to the public as providing a religious educational environment. Additionally, the University is organized as a nonprofit, and it is affiliated with the Catholic Church and the Congregation of the Holy Spirit, a Catholic religious order. Accordingly, I would grant the University's request for review because substantial questions exist regarding (i) whether the Board lacks jurisdiction over the University as a religiously affiliated educational institution, and (ii) whether the *Pacific Lutheran* standard is unconstitutional under the First Amendment. I would consider these jurisdictional and constitutional issues on the merits.

Third, even if one applies *Pacific Lutheran*, I would grant review because I believe there is a substantial issue regarding whether the University is an exempt religiously affiliated educational institution on the basis that (1) it holds itself out as providing a religious educational environment (as found by the Regional Director), and (2) individuals in the petitioned-for unit play a specific role in creating or maintaining the University's religious educational environment. As to this last question, I believe substantial questions exist with respect to the specific role played by part-time adjunct faculty, regardless of department, in providing students

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[1]My colleagues say that they have not assessed the religious content of the courses taught by part-time adjunct faculty in the University's Department of Theology, but "only the University's presentation of those courses to the faculty, students, and public at large." However, whether the content of a course is examined by looking at a syllabus distributed only to students taking the course or at publicly available documents is beside the point. Either way, it is the content of the course that is being evaluated. Assessing the University's "presentation" of a course means assessing the course's content as set forth in that presentation. See *Seattle University*, above, at 5 fns. 16-17 (Member Miscimarra, dissenting); *Saint Xavier University*, above, at 5 fns. 17-18 (Member Miscimarra, dissenting).

exposure to diverse viewpoints, which is an important aspect of a Catholic education. See *Great Falls*, supra, 278 F.3d at 1346 ("That a secular university might share some goals and practices with a Catholic or other religious institution cannot render the actions of the latter any less religious."); *Pacific Lutheran University*, supra, slip op. at 31 (Member Johnson, dissenting) ("The majority also errs fundamentally here by assuming a false dichotomy between 'religious' and 'secular' instruction.").

For these reasons, I believe the Board should grant review of the Regional Director's decision that the Board has jurisdiction over the petitioned-for part-time adjunct faculty members. Accordingly, I respectfully dissent.

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6

Duquesne University of the Holy Spirit

Employer

and

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

Petitioner

Case 06-RC-080933

TYPE OF ELECTION: STIPULATED

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. Pursuant to the Board's Decision On Review And Order which issued on April 10, 2017, I hereby issue this Certification of Representative, as amended, in the following unit:[1]

Unit: All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

April 19, 2017

NANCY WILSON
Regional Director, Region 6
National Labor Relations Board

[1] The Board's Decision On Review And Order specified that the Petitioner should not be certified as the bargaining representative unless it is determined that the Petitioner obtained a majority of votes at the election without the inclusion of the Department of Theology part-time adjunct faculty. As the Employer stated that there were seven employees on the voter eligibility list who were employed in the Department of Theology, I have determined that the inclusion of this classification was not sufficient to affect the results of the election as reported on the Tally of Ballots issued on September 20, 2012.

NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,[1] an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

[1] Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT

and **Case 06-CA-197492**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC (Charging Party). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Duquesne University of the Holy Spirit (Respondent or Employer) has violated the Act as described below.

1. The charge in this proceeding was filed by the Charging Party on April 24, 2017, and a copy was served on Respondent by U.S. mail on April 25, 2017.

2. At all material times, Respondent, a Pennsylvania corporation with its sole facility in Pittsburgh, Pennsylvania, has been operating a private nonprofit university of higher education.

3. During the 12-month period ending March 31, 2017, Respondent, in conducting its operations described above in paragraph 2, derived gross revenues in excess of $1 million.

4. During the same 12-month period, Respondent, in conducting its operations described above in paragraph 2, purchased and received at its Pittsburgh, Pennsylvania facility, products, goods and materials valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania.

5. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

7. At all material times, Ken Gormley held the position of Respondent's President and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

8. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

9. On April 19, 2017, the Union was certified as the exclusive collective-bargaining representative of the Unit in Case 06-RC-080933.

10. At all times since April 19, 2017, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

11. About April 19, 2017, the Union, by letter, requested that Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

12. Since about April 21, 2017, Respondent, by letter, has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

13. By the conduct described above in paragraph 12, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

14. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before May 22, 2017, or postmarked on or before May 21, 2017.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an

answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on August 28, 2017, at 10:00 a.m., at the National Labor Relations Board, William S. Moorhead Federal Building, 1000 Liberty Avenue, Room 904, Pittsburgh, PA, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint.

The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: May 8, 2017

NANCY WILSON
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 06
1000 Liberty Ave Rm 904
Pittsburgh, PA 15222-4111

Attachments

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SIX

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT, Employer, and UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC, Petitioner.	Case No. 06-CA-197492

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT'S AMENDED ANSWER TO THE COMPLAINT AND NOTICE OF HEARING

Respondent, Duquesne University of the Holy Spirit ("Duquesne" or the "University") for its Answer to the Complaint and Notice of Hearing ("Complaint") filed by the Regional Director of Region 6 ("Regional Director") of the National Labor Relations Board ("Board"), states as follows:

GENERAL DENIAL

Except as expressly admitted herein, the University denies each and every allegation contained in the Complaint, including, without limitation, any allegations contained in the preamble, headings, or subheadings of the Complaint, and the University specifically denies that it violated the National Labor Relations Act ("the Act") in any of the manners alleged in the Complaint or in any other manner. Averments in the Complaint to which no responsive pleading is required shall be deemed as denied. The University reserves the right to seek to amend and/or supplement its Answer as may be necessary.

DEFENSES

Without assuming any burden of proof, persuasion or production not otherwise legally assigned to it as to any element of the violations alleged in the Complaint, the University asserts the following defenses:

1. The University has not violated Section 8(a)(1) of the Act because the University is a Catholic university operated and controlled by The Congregation of the Holy Spirit (the "Spiritans") and as such the Board has no jurisdiction under the Act pursuant to *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) and its progeny.

2. The University has not violated Section 8(a)(5) of the Act because the University is a Catholic university operated and controlled by the Spiritans and as such the Board has no jurisdiction under the Act pursuant to *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) and its progeny.

3. The Board's exercise of jurisdiction would substantially burden the University's free exercise rights in violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 (2000).

4. The Board's test for asserting its jurisdiction as set forth in *Pacific Lutheran University*, 361 NLRB No. 157 (Dec. 16, 2014) constitutes an unconstitutional intrusion into Duquesne's religious liberty as protected by the First Amendment of the U.S. Constitution.

5. The Board's refusal to consider the University's evidence in Representation Case No. 06-RC-080933 violated the University's rights, including its right to due process.

RESPONSE TO SPECIFIC ALLEGATIONS OF THE COMPLAINT

Incorporating the foregoing, the University states as follows in response to the specific allegations of the Complaint:

1. The University admits the allegations contained in Paragraph 1.

2. The University denies the allegations contained in Paragraph 2, except that it admits that it is organized as a Pennsylvania Membership Corporation, maintains its sole facility in Pittsburgh, Pennsylvania, and operates a private, Catholic nonprofit university of higher education.

3. The University admits the allegations contained in Paragraph 3.

4. The University admits the allegations contained in Paragraph 4.

5. Paragraph 5 states legal conclusions to which no response is required. To the extent a response is required, the University denies the allegations contained in Paragraph 5.

6. Paragraph 6 states legal conclusions to which no response is required. To the extent that a response is required, the University admits the allegations contained in Paragraph 6.

7. Paragraph 7 states legal conclusions to which no response is required. To the extent a response is required, the University denies the allegations of Paragraph 7, except that it admits that Kenneth G. Gormley has served as President of Duquesne University since July 1, 2016 and is an agent of the University.

8. Paragraph 8 states legal conclusions to which no response is required. To the extent a response is required, the University denies the allegations of Paragraph 8.

9. The University admits the allegations of Paragraph 9.

10. Paragraph 10 states legal conclusions to which no response is required. To the extent a response is required, the University denies the allegations of Paragraph 10.

11. The University admits that the University received a letter from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC dated April 19, 2017 demanding that the University recognize it and bargain with it as the exclusive-bargaining representative for certain of the University's adjunct faculty as defined by the Regional Director's "Certification of Representative" dated April 19, 2017.

12. The University admits the allegations of Paragraph 12.

13. Paragraph 13 states legal conclusions to which no response is required. To the extent a response is required, the University denies the allegations of Paragraph 13.

14. Paragraph 14 states legal conclusions to which no response is required. To the extent a response is required, the University denies the allegations of Paragraph 14.

The University reserves the right to raise any additional defenses not asserted herein of which it may become aware through investigation, as may be appropriate at a later time.

WHEREFORE, Duquesne requests that the Complaint be dismissed in its entirety.

Dated: May 25, 2017

Respectfully submitted,

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Counsel for Employer Duquesne University

CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing was filed electronically and copies were served via e-mail and first class mail on the following on this the 25th day of May, 2017:

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Mr. Nathan L. Kilbert
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Pittsburgh, Pennsylvania 15220-3608
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Ms. Nancy Wilson, Regional Director
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Joel D. Buckman

Joel D. Buckman

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SIX

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT, Employer, and UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC, Petitioner.	Case No. 06-CA-197492

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO NOTICE TO SHOW CAUSE

Duquesne University of the Holy Spirit ("Duquesne" or the "University"), by its attorneys, Hogan Lovells US LLP and Glankler Brown, PLC, hereby responds to the May 31, 2017 "Order Transferring Proceeding to the Board and Notice to Show Cause." In this test of certification case, Duquesne lawfully refused to bargain with a unit of adjunct faculty certified by Region 6 because the National Labor Relations Board (the "Board") has no jurisdiction under *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) and its progeny. That is true under either the United States Court of Appeals for the District of Columbia Circuit's ("D.C. Circuit") Constitutional *Great Falls* test[1] or the flawed, unconstitutional test the Board announced in *Pacific Lutheran Univ. & SEIU, Local 925*, 361 NLRB No. 157 (2014) ("*PLU*"). Accordingly, Duquesne has not violated § 8(a)(1) or § 8(a)(5) of the Act. Region 6 certified the union that

[1] *See Univ. of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002); *Carroll Coll., Inc. v. NLRB*, 558 F.3d 568 (D.C. Cir. 2009).

appears in the above caption (the "Steelworkers") as the exclusive bargaining agent for a unit of adjunct faculty in Representation Case No. 06-CA-080933 (the "R-case"). Duquesne relies on its Position Statement and Amended Answer in this case and incorporates by reference as if fully set forth herein all of the issues, reasons, legal arguments and evidence it submitted to the Board in, and the entire record from, the R-case, including, without limitation, its Request for Review of the Regional Director's Decision (June 19, 2015) (the "RFR").[2] This response therefore indicates Duquesne's "firm indication" not to abandon any of its positions or arguments in the R-case and to press those issues on appeal, making it unnecessary to detail all of those arguments again here. *See Nathan Katz Realty, LLC v. NLRB*, 251 F.3d 981, 986-87 (D.C. Cir. 2001); *NLRB v. FedEx Freight, Inc.*, 832 F.3d 432, 437-39 (3d Cir. 2016).

However, this is not a routine test of certification case and the Board should not casually grant the General Counsel's Motion for Summary Judgment ("MSJ"). Rather, this case presents important questions about the outer reaches of the Board's jurisdiction and the First Amendment limitations on that jurisdiction. Given the gravity of those issues, and the special circumstances present here, it is imperative that the Board get this right. The Board should therefore deny the MSJ and cure its erroneous assertion of jurisdiction.

Duquesne recognizes that the Board generally prohibits litigation of "issues which were or could have been litigated in a prior representation proceeding." *See, e.g.*, *Warren Unilube, Inc. & Teamsters Local 667*, 357 NLRB 44, 46 n.3 (2011). Yet that rule does not apply when there is "newly discovered or previously unavailable evidence or special circumstances." *Id.* As the Board stated in *Sub-Zero Freezer Co.*, "[w]hile we share our dissenting colleague's concern with stability in law and finality in litigation, at the same time we believe that the just resolution of questions presented to the Board is our primary duty." 271 NLRB 47 (1984). Surely that

[2] *Available at* http://apps.nlrb.gov/link/document.aspx/09031d4581cbfcbd.

principle applies where adherence to a decision made at the representation case level would result in an unconstitutional governmental intrusion into the religious freedom of one of the nation's leading Catholic universities. There are three separate reasons why the exception applies here and the Board should rescind its assertion of jurisdiction.

I. THE ISSUES HERE ARE JURISDICTIONAL AND CONSTITUTIONAL AND, IN ANY EVENT, THE BOARD'S ASSERTION OF JURISDICTION IS INCONSISTENT WITH THE FUNCTIONAL EQUIVALENT OF AN INTERVENING BOARD DECISION.

The Board must decide whether it may assert statutory jurisdiction over Duquesne University of the Holy Spirit—a Catholic university controlled by a religious order with plenary authority over its religious mission—consistent with the Constitutional principles the Supreme Court announced in *Catholic Bishop*. There are special circumstances here both because the *PLU* test goes to that statutory jurisdictional question and because the Board's application of *PLU* to Duquesne in the R-case is inconsistent with the functional equivalent of an intervening Board decision.

A. The Board's Application of *PLU* Demonstrates That It Merely Repackages The Flawed "Substantial Religious Character Test."

This is a jurisdictional case involving the application of a new legal test. Because the Board cannot act without statutory jurisdiction, the Board must affirmatively determine at every stage of the proceedings that it has jurisdiction. *See e.g.*, *Gateway Motor Lodge*, 222 NLRB 851, 852 (1976) ("[A] question concerning the Board's statutory jurisdiction may be raised at any time"). Accordingly, the Board may not refuse to consider Duquesne's arguments about jurisdiction at this stage.[3] When coupled with the Board's relative lack of experience with the

[3] Duquesne acknowledges that in *Hanna Boys Center*, 293 NLRB No. 39 (1989), the Board applied its standard no-relitigation rule to a host of issues raised by the employer, including a jurisdictional challenge. However, Duquesne respectfully submits that *Hanna Boys Center*, in which the Board did not provide any reasoning for ignoring the jurisdictional issue, is inconsistent with the principle that the

new *PLU* test—which many universities have argued violates the First Amendment—the statutory and Constitutional issues that undermine the Board's very power to act qualify as special circumstances that merit a second look. That second look reveals that *PLU* is an unworkable, unconstitutional intrusion that does not solve the fundamental problems of the substantial religious character test.

In *Catholic Bishop*, the Supreme Court ruled that the Board does not have jurisdiction over units of faculty at church-operated schools and rejected the Board's attempt to distinguish "completely religious" from "merely religious associated" schools. 440 U.S. at 495, 507. The Court worried that the sweep of the Board's power would inevitably result in the Board adjudicating matters that no government agency should, such as matters of religious doctrine and the bona fides of an assertion that a particular action or inaction is motivated by religion. *Id.* at 502-03. There was no reason for the Board to go there, the Court explained, because there was no indication that Congress intended for the National Labor Relations Act to reach such faculty. *Id.* at 497, 505-07. The Board has always resisted the force of that ruling. Initially it refused to apply *Catholic Bishop* to the higher education setting at all. Then it attempted to cabin it to institutions the Board deemed sufficiently religious under the flawed "substantial religious character" test. *See, e.g. Pacific Lutheran Univ.*, 361 NLRB No. 157 at 1.

Among a chorus of voices, the D.C. Circuit criticized the test. The Court explained that the substantial religious character test required the Board to "troll[] through the beliefs of the University, making determinations about its religious mission, and that mission's centrality to the 'primary purpose' of the University." *Univ. of Great Falls*, 278 F.3d at 1342. The Court

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Board must always have jurisdiction, especially when the basis for that jurisdiction is a relatively new statutory test and the Board's application of that test in the underlying representation case reveals that it is flawed and intrudes on the Constitution.

explained that the "nature of the Board's inquiry boils down to 'is [the university] *sufficiently* religious.'" *Id.* at 1343.

The Board attempted to solve these problems with the *PLU* test it announced in 2014. Under that test, the Board will decline jurisdiction when a university: (1) holds itself out as providing a religious environment; and (2) holds out the petitioned-for faculty members as performing a specific role in creating or maintaining the college or university's religious environment, as demonstrated by its representations to stakeholders. 361 NLRB No. 157 at 14. The Board explained that the "'holding out' inquiry will not entangle the Board . . . into the institution's religious beliefs and practices." *Id.* at 13. Moreover, "[o]ur test will not require or permit the Board [to] decide any issues of religious doctrine. We will decline jurisdiction so long as the university's public representations make it clear that faculty members are subject to employment-related decisions that are based on religious considerations." *Id.* at 13 n.19.

In fact, as this case demonstrates, the Board's test solved very few of the problems (certainly as applied) and instead repackaged the substantial religious character test and narrowed its focus from the entire institution to faculty. Where, as *Great Falls* put it, the substantial religious character test asked "is [the institution] *sufficiently* religious," 278 F.3d at 393-94, *PLU* as applied asks "is [the faculty role] *sufficiently* religious?" 361 NLRB No. 157 (Member Johnson, dissenting). As explained in part I.B, below, the Board here essentially adopted all of the Regional Directors' findings and conclusions. Duquesne's RFR details all the ways in which the Regional Director, and therefore the Board, trolled through Duquesne's beliefs and substituted their own ideas about Duquesne's religious mission and the faculty's role in it for Duquesne's.

Duquesne offers the Board three examples in the hope that the Board will review and actually address on the record the arguments put forth in Duquesne's RFR. First, the Regional Director and therefore the Board consistently failed to limit their focus to Duquesne's own public statements and expectations about the relationship between adjunct faculty employment and Duquesne's religious mission. Take, for example, hiring. The Regional Director and therefore the Board said that Duquesne's "website" makes "no claim that the adjunct instructors who are members of the petitioned-for unit play any role in contributing to the University's mission or religious environment." *Duquesne Univ. of the Holy Spirit*, No. 06-RC-080933, Regional Director's Decision and Recommendation to Overrule Objection to Election and Issue Certification (June 5, 2015) ("June 5 Order"), 10.[4]

Duquesne produced a mountain of evidence to the contrary, yet the Regional Director and therefore the Board ignored it, claiming that although "'faculty' in the broad sense may be charged with certain responsibilities," there is no evidence that adjuncts have any such responsibilities. *Id.* But "faculty" in the "broad sense" is the generic term for all types of faculty—the *Faculty Handbook* identifies at least 10 types at Duquesne, which includes adjunct faculty. In any event, Duquesne's Human Resources website states that "applicants must be willing to contribute actively to the mission and to respect the Spiritan Catholic identity of Duquesne University," RFR at 11, Er. Ex. 34, and its recruitment brochure states that "our employees contribute to our vision of enhancing our culture of academic excellence dedicated to our mission of serving God by serving students." RFR at 11; Er. Ex. 33. Any prospective adjunct faculty member would understand that those statements applied to all applicants and all faculty, including adjuncts. Duquesne's "Faculty and Staff" application form for adjunct faculty in the McAnulty College specifically asks applicants to "describe how you would support and

[4] *Available at* http://apps.nlrb.gov/link/document.aspx/09031d4581c8e4a9 .

contribute to the University Mission." RFR at 20; Er. Ex. 36; Tr. 258. The Regional Director ignored the application because it is "not always utilized." June 5 Order at 5. Along similar lines, while the Regional Director acknowledged that Duquesne's goal is to consider mission in hiring and that it trains department chairs (who hire adjunct faculty) about that expectation and how to do it, the Regional Director ignored that evidence because "there is no evidence . . . from any department chair" as to implementation. RFR at 35.

But under *PLU's* limited holding out inquiry whether the application is "always utilized" is irrelevant and improper trolling into how well the University implements its religious mission. 361 NLRB No. 157 at 11. The same is true for the hiring practices of department chairs: Duquesne's expectation is that department chairs will hire for mission. What percentage of the time that actually happens is irrelevant under *Catholic Bishop*. If even one adjunct challenges a hiring decision that Duquesne defends by reference to its religious mission, the Board would have to adjudicate Duquesne's bona fides, which *Catholic Bishop* forbids. The same goes for firing and nonrenewal decisions.

Second, the Regional Director found that the "Faculty Handbook contains a section on the aspirational mission and goals of the Employer but does not mention God, Catholicism, or even religion in connection with adjunct faculty duties," June 5 Order at 11. But Duquesne's mission is by its terms a religious mission. It is to "serve[] God by serving students" as a "*Catholic*," "Spiritan" university "sustained through a *partnership of laity and religious*" by, among other things, "excellence in liberal and professional education," "profound concern for moral and *spiritual values*," ecumenism, and "*[s]ervice to the Church*, the community, the nation, and the world." *E.g.*, RFR at 31; Er. Ex. 1 (emphasis added); *accord* Er. Ex. 11; Union Ex. 9. And the *Faculty Handbook* is full of statements like the "essential role of the faculty" in

the educational mission of Duquesne is "implicit in the stated goals and mission of the University." RFR at 24; Union Ex. 9; Tr. 275–76. So either the Regional Director ignored the record evidence that the *Faculty Handbook* is part of an adjunct faculty member's contract with the University and that all general sections of the *Handbook* apply to adjuncts,[5] or the Regional Director concluded that Duquesne's mission is not really religious. Either way, the "holding out" requirement fell by the wayside, and, if the latter, so too did the First Amendment, which forbids government agencies from deciding what is secular and what is religious.[6]

Third, the Regional Director and therefore the Board found that Duquesne holds out that adjunct faculty may "not be openly hostile" to Duquesne's "religious message." *Id.* at 10; *see also id.* at 7 ("The Provost testified that faculty could not be 'hostile' to the Employer's mission and, if such a person was brought to his attention, he would take disciplinary action . . . ."). That requirement obviously goes beyond a "general and aspirational statement," *PLU*, 361 NLRB No. 157 at 16 n.22, and means that "faculty members are subject to employment-related decisions that are based on religious considerations." *Id. at* 13 n.19. The Board therefore should have "decline[d] jurisdiction." *Id.* The Regional Director and therefore the Board refused to do so, however, apparently because there is "no evidence of any complaints concerning adjuncts who were 'hostile' or who have been disciplined." RFR at 7. Once again the Board is trolling, in effect asking how well Duquesne enforces that religious line rather than recognizing that it exists

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[5] *E.g.*, RFR at 23-24.

[6] *See Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 336 (1987) ("The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission."); *see also Town of Greece v. Galloway*, 134 S. Ct. 1811, 1822 (2014) (observing that analysis of whether legislative prayers were nonsectarian "would involve government in religious matters to a far greater degree"); *Mitchell v. Helms*, 530 U.S 793, 828 (2000) (plurality opinion) (concluding that inquiry into "whether a school is pervasively sectarian is not only unnecessary but also offensive"); *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 694 (1989) (rejecting proposal that "would force the IRS and the judiciary into differentiating 'religious' services from 'secular' ones").

and the Board can have no role in adjudicating disputes that may stem from it under *Catholic Bishop*.

The lack of soundness of the Board's *PLU* test is further illustrated by the Board's reflexive carving out religious studies or theology departments from its jurisdiction while asserting jurisdiction over faculty in other departments in this case and in a series of post-*PLU* cases. *See Seattle Univ. & SEIU, Local 925*, 364 NLRB No. 84 (2016); *Saint Xavier Univ. & St. Xavier Univ. Adjunct Faculty Org., IEA-NEA*, 364 NLRB No. 85 (2016); *Manhattan Coll. Employer & Manhattan Coll. Adjunct Faculty Union*, No. 02-RC-023543, Decision on Review and Order (Apr. 20, 2017). The faculty in religious studies and theology departments undoubtedly play a role in furthering a Catholic university's religious mission and the Board therefore has no jurisdiction over them. The problem, though, is that at a Catholic university the faculty in all of the other departments also undoubtedly play a role in furthering the university's religious mission. Proposing to students that reality—the compatibility of faith *and* reason, that there are laws of nature because there is a lawgiver—is at the heart of how a Catholic university, comprised of all its faculty, serves the Catholic Church in a modern, secular world. Duquesne's RFR explains this in detail. *See, e.g.*, RFR 6-7, 46-47. With the Board's decision in the R-case, the U.S. government has now undermined Duquesne's message with the Board's own false assumptions about what's religious and what's not, and which faculty play a role in furthering Duquesne's religious mission and which do not.

The Board's attempt to rationalize the creation of yet another test that involves trolling through a university's application of its religious mission utterly fails to comprehend the nature of the Catholic faith and of religion in general in a university setting. Simply put, the Board would assume that faith and reason do not intersect, create a division between faith and reason in

teaching, and divide faculty into those that teach faith and those that teach reason. Put another way, the Board would conclude that faith has nothing to do with biology, or philosophy or mathematics. But for Duquesne, faith and reason are continuously intertwined, and that is how faculty are expected to fulfill or at least not undermine it Catholic and Spiritan mission. The same is true at other Catholic universities. As Chairman Miscimarra stated in his dissent in *Manhattan Coll.*:

> I believe substantial questions exist with respect to the specific role played by part-time faculty, regardless of department, in furthering the College's religious mission, including by systematically promoting the emphasis on the interplay of faith and reason and by encouraging dialogue with other traditions to help accomplish the Catholic Church's intellectual work, which the College asserts is an important aspect of a Lasallian Catholic education.

No. 02-RC-02354, Decision on Review and Order (April 20, 2017). The time has come for the Board to recognize that it is folly to attempt "to avoid entanglement by creating new, finely spun judicial distinctions" because the application of such distinctions results and here resulted in entanglement. *See Univ. Cent. de Bayamon v. NLRB*, 793 F.2d 383, 402 (1st Cir. 1985) (Op. of Breyer, J.). The Board should abandon *PLU* and apply *Great Falls*.

Under *Great Falls*, the Board cannot assert jurisdiction over a university that (1) holds itself out as providing a religious educational environment, (2) is organized as a nonprofit, and (3) is affiliated with a recognized religious organization. 278 F.3d at 1343-44. Here, it is stipulated that Duquesne is a nonprofit corporation, and it is indisputable that Duquesne is affiliated with the Catholic Church and the Spiritan congregation. For all the reasons that Duquesne meets *PLU*, it satisfies the *Great Falls* requirement that it hold itself out as providing a religious educational environment.

B. The Board's Assertion Of Jurisdiction In The R-case Is Inconsistent With The Functional Equivalent Of An Intervening Board Decision.

The Board's application of *PLU* to assert jurisdiction over Duquesne here is also inconsistent with the functional equivalent of an intervening Board decision. The Board has recognized that an intervening Board decision in another case on an issue decided in the underlying representation case constitutes "special circumstances" warranting the reexamination of that issue. *See Brooklyn Psychosocial Rehab. Inst., Inc.*, 264 NLRB 114, 114-15 (1982) ("[W]e agree that our intervening decisions in *Ithaca College*, *Thiel College*, and *Duquesne University* constitute sufficient 'special circumstances' to warrant review of the determination made in the representation proceeding concerning the alleged managerial status of counselors/managers . . . .").

That same principal should apply here. The Board, functioning with only three members, decided the R-case on April 10, 2017 in a divided "Decision on Review and Order".[7] The two-member majority granted review only to declare that the "part-time adjunct faculty in the Department of Theology are excluded from the unit," and denied the RFR "in all other respects." *Id.* at 1-2. The majority specifically "adopt[ed] the Regional Director's recommendation to overrule the Employer's objection to the assertion of jurisdiction, except as otherwise provided in this decision." *Id.* at 2 n.3. In other words, for all adjunct faculty other than in the Theology Department, the majority's decision relied entirely on the recommendation and reasoning of the Regional Director.

The problem is that the Regional Director did not and could not have considered the Board's subsequent decision in *Carroll Coll. and Assoc. Faculty of Carroll Coll.*, No. 19-RC-165133. In the *Carroll Coll.* case, Region 19 ruled that the college there satisfied both prongs of

[7] *Available at* http://apps.nlrb.gov/link/document.aspx/09031d45823f7bd3.

PLU because the college reserved the right to discharge faculty for serious cause, defined by the Faculty Handbook to include, "'continued serious disrespect or disregard for the Catholic character or mission' of the College." No. 19-RC-165133, Decision and Order, 12 (Jan. 19, 2016).[8] The Board affirmed, explaining that "we agree that the Regional Director properly declined jurisdiction under *Pacific Lutheran University*, 361 NLRB No. 157 (2014)." No. 19-RC-165133, Order, n.1 (May 25, 2016).[9] Thus, in *Carroll Coll.* the Board held that it has no jurisdiction under *PLU* when an institution prohibits faculty from engaging in "'continued serious disrespect or disregard for the Catholic character or mission'" of an institution. But here, by incorporating as its own the reasoning of the Regional Director, the two Member majority asserted jurisdiction over Duquesne despite finding that Duquesne holds out that its adjunct faculty likewise may not be "openly hostile" to its religious mission. *See* June 5 Order at 10.

Duquesne brought the Regional Director's decision in the *Carroll College* case and the potential conflict to the Board's attention in a *Reliant* letter filed on February 4, 2016.[10] The letter focused not only on Region 6's finding that adjunct faculty at Duquesne may not be "openly hostile" to Duquesne's religious mission, but also traced that finding to its roots in the terms and conditions of adjunct faculty employment at Duquesne. The Board affirmed the regional director in *Carroll College* on May 25, 2016. Nevertheless, in the R-case here, the Board completely ignored the *Reliant* letter and the *Carroll College* decision. Because the majority instead specifically reached back and incorporated the Regional Director's earlier recommendation, the Board should treat *Carroll College* as an intervening decision that constitutes "special circumstances" and take the opportunity to cure the conflict in its precedent now.

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[8] *Available at* http://apps.nlrb.gov/link/document.aspx/09031d4581f95787.
[9] *Available at* http://apps.nlrb.gov/link/document.aspx/09031d45820f563f.
[10] *Available at* http://apps.nlrb.gov/link/document.aspx/09031d4581fd2a6b.

The Board should cure the conflict not only because it is a conflict, but also because it has important implications for the new *PLU* test. In *Catholic Bishop*, the Supreme Court made clear that the Board has no business adjudicating whether a religious-affiliated institution took a particular employment action as a result of its religious mission. *See* 440 U.S. at 502 (fearing that an unfair labor practice charge might force the Board to decide the "good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission"). In other words, when a religious affiliated university draws a line that employees may not cross related to its religious mission, only the religious-affiliated university may police that line, not the NLRB.

In *PLU*, the Board seemed to recognize as much, explaining that the question is whether faculty members "are hired, fired, and assessed under criteria that . . . implicate religious considerations." 361 NLRB No. 157 at 11. If not, and if *PLU* actually means that the Board will assert jurisdiction even where a religious-affiliated institution forbids faculty from contravening its religious mission, that should be crystal clear both for the sake of the Board's precedent and appellate review of this case. Similarly, if the basis for the Board's decision to assert jurisdiction here is its own judgment that Duquesne's religious mission actually is not religious at all, that too should be crystal clear for the sake of appellate review. The Board should treat *Carroll College* as an intervening case, find special circumstances, and at least rule that it has no jurisdiction under *PLU* where, as here, the terms and conditions of faculty employment prohibit faculty from acting in ways that are openly hostile to a university's religious mission. But even more to the point, the Board should take this opportunity to reconsider its *PLU* test altogether, and recognize that the only way to avoid the constitutional issues that this test creates is to adopt the three prong test articulated by the D.C. Circuit in *Great Falls*.

However, even if the Board refuses to treat *Carroll College* as an intervening case, there are multiple potential intervening cases now pending before the Board or before the Regions that should cause the Board to at least stay its resolution of the MSJ. Multiple religious-affiliated institutions have challenged the Board's *PLU* test as unworkable and inconsistent with Supreme Court precedent, and there are at least two requests for review making those arguments pending with the Board. *See, e.g.*, *Saint Martin's Univ. Employer and SEIU, Local 925*, 19-RC-173933; *Loyola Univ. Chicago*, 13-RC-189548 (involving graduate students).

With these cases in the pipeline, it is certainly possible and may be likely that the Board will either abandon the *PLU* test altogether or issue a decision that would call into question the Board's split opinion in the R-case here. That would leave the Board in the awkward position of being "compelled in enforcement proceedings to urge a legal argument which [the Board] do[es] not believe," and cause the Board to "push a matter to its erroneous conclusion under the guise of procedural regularity." *Am. Broad. Co. (Los Angeles, Cal.)*, 134 NLRB 1458, 1459 n.1 (1961). The Board should at the very least hold this case in abeyance to assure that no intervening representation case renders futile the parties' further investment of resources into litigating it.

II. NOW THAT THE UNION IS CERTIFIED, THE BOARD'S ASSERTION OF JURISDICTION OVER DUQUESNE VIOLATES THE RELIGIOUS FREEDOM RESTORATION ACT.

Now that Duquesne has received a demand to bargain from the Union, it must either agree to bargain in good faith over all the terms and conditions of employment as defined by the NLRB, or face unfair labor practice charges and liability. *See United States v. Christie*, 825 F.3d 1048, 1055 (9th Cir. 2016) (explaining RFRA grants "each person" a "sword or a shield" and that "[i]f a person has a sufficiently realistic fear that the government is going to punish him for exercising his religious beliefs in defiance of the law, he may unsheathe the RFRA").

The Board's expansive definition of the "terms and conditions of employment" means there is a very realistic chance that the University will have to agree to negotiate in good faith over matters its religion commands are "non-negotiable," such as whether to provide abortion or contraception coverage or the relationship between the work of the University's faculty and its religious mission, Tr. 154–57, or face unfair labor practices. *See Bayamon*, 793 F.2d at 402 (explaining the "whole of school life" is arguably a term and condition of employment). Mere refusal to consider a proposal from a union has been held to violate § 8(a)(5). *See, e.g.*, *NLRB v. Katz*, 369 U.S. 736, 743 (1962) ("A refusal to negotiate *in fact* as to any subject which is within § 8(d), and about which the union seeks to negotiate, violates § 8(a)(5) though the employer has every desire to reach agreement with the union upon an over-all collective agreement and earnestly and in all good faith bargains to that end."); *Am. Can Co.*, 218 NLRB 102, 112 (1975) ("[T]he vice in Fraser's violation of Section 8(a)(5) was in imposing an illegal condition to consideration of the unions' proposals, not in refusing to grant them."). The union can also exercise its ultimate economic weapon—the strike—to pressure the University to accede to its bargaining demands. *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 182 (1967) ("The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms . . . ."). There can be no greater burden on a University's religious mission than a strike to prevent the University from carrying out that mission.

The University must then submit to the Board's adjudication as to whether it has violated the Act, which may well result in the Board either adjudicating the bona fides of the University's religious commitments or ignoring them altogether. Requiring an entity to choose between religion and violating the law is a substantial burden on the exercise of religion. *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2770 (2014). And unlike the union in *Carroll Coll.*,

Inc., the union here is now certified and the Board has a summary judgment motion before it to order the University to bargain. *See Carroll Coll., Inc. & Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. F UAW*, 345 NLRB 254, 259 (2005) ("Second, and more importantly, the Petitioner is not yet certified as the faculty's collective-bargaining representative and consequently, no specific religion-based conflicts have emerged.").[11] RFRA prohibits subjecting the University to this sort of double-bind, because there is no compelling reason for the government to assert jurisdiction over the faculty of religiously-affiliated Universities. As the Supreme Court explained, "Congress did not contemplate that the Board would require church-operated schools to grant recognition to unions as bargaining agents for their teachers." *Catholic Bishop*, 440 U.S. at 506.

III. THE RECORD IN THE REPRESENTATION CASE IS DEFICIENT.

The Board should also deny the MSJ and correct its erroneous assertion of jurisdiction because the record in the R-case is deficient. Courts have denied enforcement of unfair labor practice cases as a result of improper exclusion of evidence in underlying representation cases. *See Burns Elec. Sec. Servs., Inc. v. NLRB*, 624 F.2d 403, 409 n.9 (2d Cir. 1980) ("It is thus clear that *Pittsburgh Glass*, while generally sanctioning the Board's rule against relitigation, does not prevent this court from insisting in an appropriate case that the Board make the unit determination on the basis of a more complete record"). Accordingly, the Board should treat as special circumstances material deficiencies in a representation case record.

[11] To the extent *Carroll College* holds that an institution must wait until a union demands that it bargain over a non-negotiable topic to assert a RFRA claim, the Board should reexamine and abandon that holding. By the time the Union demands to bargain over such a topic it is too late, as a Union will have already gained a bargaining advantage, the University will incur unnecessary and substantial costs to defend its rights, and to obtain the relief it seeks will require the Board to troll through and judge the University's religious beliefs. In any event, *Carroll Coll.* and the Board's RFRA decisions warrant re-consideration in light of *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), because, among other reasons, it reduced the substantiality of the burden a plaintiff must demonstrate.

Here, the Steelworkers argued that the terms and conditions of adjunct faculty employment are no different at Duquesne than at secular universities. However, in addition to official Duquesne publications that demonstrated otherwise, Duquesne also proffered evidence which demonstrated that individuals in the Duquesne and the higher education community understood as much. *See* Tr. at 320-26. The Hearing Officer improperly excluded that evidence on relevancy and hearsay grounds. *See* RFR at 41 n.15; *NLRB Bench Book* § 16-802 (2015) ("[L]ike other administrative agencies, the Board does 'not invoke a technical rule of exclusion but admit[s] hearsay evidence and give[s] it such weight as its inherent quality justifies.'"); *Midland Hilton & Towers*, 324 NLRB 1141 n. 1 (1997).

The AAUP, for example, analyzed the definition of "serious misconduct" in the current *Faculty Handbook*. Rejected Er. Ex. 43, Attachment (Letter on Behalf of AAUP to Duquesne Professor); *see also* Tr. 315–17. The AAUP had "serious concerns" including "[w]hat would constitute a 'failure to observe the principles of the Mission Statement'"? Rejected Er. Ex. 43 at Enclosure. Another professor—whom the Steelworkers' counsel labeled a "Union guy," Tr. 322—expressed concern that some faculty candidates were not hired for failing the "'mission and identity test.'" Rejected Er. Ex. 44; *see also* Tr. 322–24. Another explained that "Catholic Universities in America are at risk that Catholic authorities will seek to intervene inappropriately into academic discussions . . . [which] requires both vigilance and prudence as faculty members seek to engage all questions and issues but not in a way that misrepresents the identity, mission and value system to which the University subscribes to seek and attain." Rejected Er. Ex. 45; *see also* Tr. 324-26. All of this only underscores that Duquesne's religious mission affects the terms and conditions of adjunct faculty employment and the conflict between the Board's decision in the R-case and the Board's decision in *Carroll Coll.*

What is more, the Hearing Officer in the R-case not infrequently forbade inquiry into how Duquesne understood its own documents, not to mention its Catholic, Spiritan mission, its strategy to achieve it, and its understanding of how its mission would affect its ability to negotiate with a union. For example, the Hearing Officer ruled inadmissible the testimony of the President of the University that Duquesne would refuse to bargain over healthcare benefits for contraception and abortion and over the role of adjunct faculty in its religious mission on the basis that he would be retiring more than a year from the date of the hearing and his testimony was therefore speculative; this was a patently absurd ruling. Tr. 154-57. Similarly the Hearing Officer ruled inadmissible the University's chief academic officer's interpretation of the *Faculty Handbook*. Tr. 294; *see also* Tr. 50, 141-42, 283-84. Instead of deferring to the University's good faith understanding of its own religious mission, the Regional Director and therefore the Board substituted its own beliefs and presumptions in contravention of *Catholic Bishop* and its progeny.

The Board's unexplained refusal to consider this evidence in the R-case left the record in that proceeding materially deficient. That evidence demonstrated that individuals both inside and outside Duquesne view the terms and conditions governing faculty employment as qualitatively different than the terms and conditions governing faculty employment at secular institutions. The Board should take the opportunity to correct that fundamental error now.[12]

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[12] The MSJ omits crucial facts related to that proceeding and pertinent to appellate review. MSJ Paragraph 6 leaves the impression that the Board denied Duquesne's Motion to Withdraw from the Stipulated Election Agreement, full stop. In fact, the Board denied the motion without prejudice on September 14, 2012, with leave for Duquesne to "renew its jurisdictional contention before the Board" if the Union won the election. Order (Sept. 14, 2012), *available at* http://apps.nlrb.gov/link/document.aspx/09031d4580c6c97c. Following the Regional Director's issuance of the "Tally of Ballots," indicating that the Steelworkers received a majority of the votes cast, Duquesne resubmitted it Motion to Order An Evidentiary Hearing, Vacate Election and Dismiss the Petition, in renewal of its contention that the Board lacked statutory jurisdiction. Available at http://apps.nlrb.gov/link/document.aspx/09031d4580cb5def. These additional facts explain the Board's

* * * *

In conclusion, for the reasons explained above, Duquesne has not violated § 8(a)(1) or § 8(a)(5) of the Act because the Board does not have jurisdiction over Duquesne under *Catholic Bishop* and its progeny. What is more, the special circumstances here warrant that the Board correct its erroneous assertion of jurisdiction before this case goes any further. When the Board decided the R-case, it consisted of only three members. One of the three, and now the Chairman of the Board dissented. The Constitutional issues in this case are important enough to merit full-Board consideration, particularly because this is one of the first cases applying *PLU*, and, as explained above, the Board's assertion of jurisdiction is in direct conflict with another of the Board's *PLU* cases. Duquesne respectfully requests that the Board deny the Motion for Summary Judgment, dismiss the Complaint in its entirety, and overturn the Union's certification. In the alternative, the Board should at the very least hold it in abeyance until the Board resolves all of the pending representation cases involving religious-affiliated institutions that challenge the Board's adoption and implementation of *PLU*.

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subsequent Order for the Regional Director to conduct a hearing following the issuance of *PLU*. However, they are absent from the MSJ.

Dated: June 28, 2017

Respectfully submitted,

/s/ Arnold E. Perl

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Counsel for Employer Duquesne University of the Holy Spirit

CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing was filed electronically and copies were served via e-mail on the following on this the 28th day of June, 2017:

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/s/ Joel D. Buckman
Joel D. Buckman

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Duquesne University of the Holy Spirit *and* United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO, CLC
Case 06–CA–197492

February 28, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on April 24, 2017 by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO, CLC (the Union), on May 8, 2017, the General Counsel issued the complaint alleging that Duquesne University of the Holy Spirit (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 06–RC–080933. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On May 26, 2017, the General Counsel filed a Motion for Summary Judgment. On May 31, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Regional Director for Region 6's certification of the Union on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the Board lacks jurisdiction over the Respondent, a Catholic university, pursuant to *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), and that the Board's test for asserting its jurisdiction, as set forth in *Pacific Lutheran University*, 361 NLRB 1404 (2014), constitutes an unconstitutional intrusion into the Respondent's religious liberty.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue that is properly litigable in this unfair labor practice proceeding. *See Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

Findings of Fact

I. JURISDICTION

At all material times, the Respondent has been a Pennsylvania corporation engaged in the operation of a private, nonprofit university of higher education.[2]

During the 12-month period ending March 31, 2017, in conducting its operations described above, the Respondent derived gross revenues in excess of $1 million, and purchased and received at the Respondent's facility, products, goods, and materials valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7), and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held by mail ballot between June 22, 2012 and July 9, 2012, in which a majority of the employees voted for the Union, the Regional Director for Region 6 certified the Union[3] on

[1] Chairman Kaplan and Member Emanuel did not participate in the underlying representation proceeding. They express no opinion on the merits of the Board's decision in that proceeding or on whether *Pacific Lutheran University*, 361 NLRB 1404 (2014), was correctly decided. Nonetheless, they agree that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

[2] In its amended answer, the Respondent denies the complaint allegation that it has been, at all material times, "a Pennsylvania corporation with its sole facility in Pittsburgh, Pennsylvania [and] has been operating a private nonprofit university of higher education." However, in its amended answer, it admits that "it is organized as a Pennsylvania Membership Corporation, maintains its sole facility in Pittsburgh, Pennsylvania, and operates a private, Catholic nonprofit university of higher education."

[3] By unpublished Order dated April 10, 2017, the Board issued an Order excluding part-time adjunct faculty in the department of theology

April 19, 2017, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated April 19, 2017, the Union requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit employees. Since about April 21, 2017, the Respondent has failed and refused to do so.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing, since April 21, 2017, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785, 787 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Duquesne University of the Holy Spirit, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO, CLC (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such

from the unit found appropriate and denied the Respondent's request for review in all other aspects. *Duquesne University of the Holy Spirit*, 06–RC–080933, 2017 WL 1330294.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 21, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 6 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February, 28, 2018

Marvin E. Kaplan, Chairman

Mark Gaston Pearce, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO, CLC (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

> All part-time adjunct faculty employed by us in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT

The Board's decision can be found at https://www.nlrb.gov/case/06–CA–197492 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

National Labor Relations Board Hearing Transcript
(Apr. 27-29, 2015) (excerpts)

[pp. 1, 22-23, 31-33, 40-56, 59-60, 67-69, 76-91, 106-108, 124-125, 171, 179-183, 195, 200, 208-209, 220, 251-281, 293-302, 308-309, 315-316, 327-336, 353-354, 359, 363, 371-372, 376-378, 390-392, 405-412, 429-430, 445-446, 456-474, 483-489, 493-494, 505-508, 554, 568]

1 UNITED STATES OF AMERICA

2 BEFORE THE NATIONAL LABOR RELATIONS BOARD

3 REGION SIX

4 _____

5 DUQUESNE UNIVERSITY OF THE HOLY SPIRIT

6 Employer

7 and | Case No. 06-RC-080933

8 UNITED STEEL, PAPER AND FORESTRY,
9 RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE
10 WORKERS INTERNATIONAL UNION, AFL-CIO, CLC

11 Petitioner

12 _____

13

14 The above entitled matter came on for hearing pursuant to notice, before DALIA E. BELINKOFF, Hearing Officer, in Room 904,
15 William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15219, on Monday, April 27, 2015,
16 commencing at 9:30 a.m.

17

18

19 MORSE, GANTVERG & HODGE, INC.
Suite 719, One Bigelow Square
20 Pittsburgh, Pennsylvania 15219
412/281-0189

21

22

23

24

25

1 the planning involves strategic planning at its heart.
2 Q. Okay.
3 Now, let's talk a little bit about Duquesne itself. You set
4 out, you know, that the formal name is Duquesne University of
5 the Holy Spirit.
6 Can you just briefly describe Duquesne itself?
7 Q. Its founding?
8 A. Yes.
9 In 1878, there was a large population in Pittsburgh of
10 Germans and Irish immigrants.
11 They were living near or below the poverty level. They were
12 facing injustice. And priests from both Germany and Ireland
13 came to serve them. And once they assessed their conditions,
14 they concluded quickly, as the Spiritans do all around the
15 world, that the best way out of that circumstance is through
16 education.
17 So, at that point they founded Duquesne University as a
18 means to lift immigrants out of those conditions.
19 And that's been our heritage ever since.
20 Q. Is Duquesne University a Catholic university?
21 A. Yes.
22 Q. Is it a Spiritan university?
23 A. It is.
24 Q. What is Spiritan about the university?
25 A. Well, the university was founded by the Spiritan

1 congregation, the congregation of the Holy Spirit, and they have
2 been our sponsors, religiously, ever since that point.
3 And in a quite literal sense, they own the university, and
4 in a practical way, they give it daily inspiration by the
5 community of Spiritans who live among us.
6 Q. Now, what is the motto of Duquesne?
7 A. The motto, which appears on our seal, and a number of other
8 places, it is -- in English, it is The Spirit who Gives Life.
9 Q. What does that mean?
10 A. It is a phrase taken from the Nicene Creed, sometimes called
11 the Apostles Creed, which is the oldest prayer and statement of
12 Christian belief, which talks about the various aspects of the
13 Trinity, and when it gets to the Holy Spirit, it says, "And we
14 believe in the Holy Spirit, the Lord and giver of life."
15 So the first aspect of the Holy Spirit is that the Holy
16 Spirit gives life.
17 Q. What is the Holy Spirit?
18 A. The Holy Spirit is, according to Christian belief, that of a
19 person of God, who is active in the world, who has a presence in
20 each person's life, that motivates us for the best, provides
21 inspiration, in the quite literal way it is a Spirit that
22 inspires.
23 Q. What is the purpose and importance of this motto?
24 A. Well, it's -- as I say, it's on our seal, the seal is
25 presented in -- across campus, in multiple, multiple ways, and

1 our proving our case, particularly with respect to prong one of
2 the test.
3 THE HEARING OFFICER: Doesn't Article VII define who the
4 members of the university are?
5 MR. BROWN: Well, I want to make sure that the record is
6 clear as to what that means. This will be read by people who
7 are non Catholic, who may not understand, and I think it would
8 be useful, and just take a moment for him to --
9 MR. KOVALIK: And again, we would just make it clear, that
10 under Pacific Lutheran what is relevant is how the university
11 publicly holds itself out. Again, that is contained in here, it
12 is on the website, which is fine, but we don't see any other
13 elaboration as relevant to that discussion.
14 THE HEARING OFFICER: I will permit limited questioning on
15 this.
16 MR. BROWN: All right. Thank you.
17 BY MR. BROWN:
18 Q. What does this particular article address?
19 A. Well, it addresses the fundamental organization of the
20 ownership of the university.
21 There are basically three kinds of Catholic universities.
22 There are ones that are diocesan, pretty much owned and
23 operated by a Bishop, those would be a minority.
24 Another group, the majority of the sponsoring congregation
25 would have several seats on the board of directors.

1 However, in our case the members are all members of the
2 corporation, they are all vowed religious of the Spiritan
3 congregation themselves, priests or brothers.
4 What it means, in effect, is that quite literally the
5 university is owned by the congregation of Holy Spirit.
6 Q. I see. And members, to make it clear, are essential --
7 well, are priests --
8 A. Correct.
9 Q. -- is that what you are saying?
10 A. Yes.
11 Q. All right. Thank you.
12 And what are the powers of the members?
13 A. The powers of the members are quite fundamental.
14 They are guardians of the mission, so to speak. The mission
15 cannot be changed without their approval.
16 They appoint board members, they appoint the president of
17 the university, they appoint the officers of the university,
18 they approve the annual budget, they approve any particular
19 expenditures over a certain amount of money.
20 Q. All right.
21 And, directing your attention to Articles VII and IX.
22 MR. KOVALIK: Continued objection on speaking about what the
23 document says. It speaks for itself.
24 THE HEARING OFFICER: Where are you going with this?
25 MR. BROWN: Basically, articulating where the powers of the

1 members are set out, and what that means, as a practical matter,
2 for the university.
3 THE HEARING OFFICER: And I'll permit that, for the
4 limited -- that limited purpose.
5 MR. BROWN: All right.
6 BY MR. BROWN:
7 Q. Will you answer the question.
8 Well, first of all, take a minute to address -- to, I'm
9 sorry, review this, and I'd like you to describe the cumulative
10 effect of the members' powers as set forth in these provisions.
11 MR. KOVALIK: Again, continuing objection on that.
12 THE HEARING OFFICER: We will have limited questioning.
13 A. Well, Article VIII describes the role of the -- of the
14 members, the Spiritan members, in appointing and reappointing
15 members of the board.
16 Article IX articulates the powers, the reserved powers of
17 the members.
18 I suppose the one that I haven't mentioned, was to approve
19 any new indebtedness incurred by the corporation.
20 Q. All right.
21 So, you testified that the Spiritan priests, who are
22 members, appoint the Board, determine the philosophy and mission
23 of the university, approve the hiring of the officers of the
24 university, including the president?
25 A. Correct.

1 determine or change the mission, the philosophy objectives, or
2 purpose of the university.
3 I simply want to elicit from this witness how the
4 philosophy of the university relates to its mission.
5 THE HEARING OFFICER: I don't think that needs to be done
6 through references to the bylaws.
7 I think, as I said, you can ask general questions about
8 that.
9 MR. BROWN: All right.
10 Q. So then, President Dougherty, how does the philosophy of the
11 university relate to its mission?
12 A. Well, the mission is our most fundamental
13 self-understanding, as a religious Spiritan university.
14 And any philosophical statement of it will be more
15 theoretical, it will be more detailed, it will attempt to apply
16 itself in different sets of circumstances, for example, in
17 academic programs, in student life, et cetera.
18 And those things may change over time, or at least their
19 expressions might change, but nothing can change the fundamental
20 mission of the university.
21 Q. Thank you.
22 I want to direct your attention to Article IV, 4.1, and ask
23 you to review each.
24 It says that the owners -- the members have the power to
25 issue to the Board from time to time a statement of policy

1 concerning the philosophy and mission of the university.
2 Do you know what the purpose of that provision is?
3 MR. KOVALIK: Again, I am going to object, on the same
4 grounds.
5 THE HEARING OFFICER: I am going to sustain that.
6 MR. BROWN: All right.
7 Q. Turning to 6.2, on page 7.
8 First of all, who appoints the directors?
9 A. It is the board -- the members of the corporation.
10 Q. So, the members appoint the directors of the board?
11 A. Yes.
12 Q. Okay.
13 Now, I see that there are a number of ex officio members
14 that include the Bishop of the Catholic Diocese of Pittsburgh.
15 Do you know why the Bishop is an ex officio member of the
16 board?
17 MR. KOVALIK: Same objection.
18 THE HEARING OFFICER: Sustained. It is not relevant.
19 MR. BROWN: It is, because what I'm trying to -- with all
20 respect -- to elicit, is the relation -- the ownership
21 relationship, and the relationship of the university, not only
22 to the members, who are the Spiritans that we talked about, but
23 to the bishop of the university, itself, and how that works.
24 So I would have to have some questions about -- that's a
25 very important part of a Catholic university, and how they are

1 Catholic, the Bishop's involvement in this.
2 So all I want to do is elicit that one, the answer to that
3 one question.
4 THE HEARING OFFICER: The question was why he is ex officio?
5 MR. BROWN: Yes, why he is ex officio.
6 THE HEARING OFFICER: I think the fact that is ex officio is
7 the most important thing here, and I am going to sustain the
8 objection.
9 MR. BROWN: Very well.
10 BY MR. BROWN:
11 Q. You testified that Duquesne University is a Catholic
12 university.
13 Can you describe what distinguishes a Catholic university
14 from a secular university?
15 A. Well, in its narrowest terms, we have a relationship with
16 the bishop of the local church, who recognizes us as a Catholic
17 institution in his diocese in the Catholic directory, so that we
18 are formally listed.
19 More broadly, it means that our teaching, research and
20 student life function are consistent with the teachings of the
21 Catholic Church.
22 Q. All right.
23 Now, so, who decides whether an institution may refer to
24 itself as Catholic?
25 A. The bishop.

1 Q. All right.
2 (Thereupon, Employer Exhibit No. 4 marked for identification.)
3 Q. I show you what has been marked for identification as
4 Employer Exhibit No. 4.
5 It is captioned The Official Catholic Directory for the Year
6 of Our Lord 2013.
7 And can you identify that document?
8 A. Yes, it's the official Catholic directory, it lists all of
9 the Catholic institutions in the diocese.
10 Q. All right.
11 Now, this isn't the directory -- this is not the entire
12 directory; is it?
13 A. No, this is a page from it.
14 Q. All right.
15 MR. BROWN: And I offer --
16 Q. And one more question: Is Duquesne listed in the directory?
17 A. It is.
18 Q. When is the directory published?
19 A. This is labeled 2013, I have the impression that is
20 annually, but maybe it's periodic.
21 Q. All right.
22 Now, can you review the document, and you see Duquesne is
23 listed there?
24 A. Yes.
25 Q. So that, what is the import of that?

1 MR. KOVALIK: Again, objection, it speaks for several.
2 THE HEARING OFFICER: I am actually going to permit this.
3 BY MR. BROWN:
4 Q. What is the import to that?
5 A. This announces to the entire Catholic community, and even to
6 others who are non Catholic in the diocese, that Duquesne
7 University is a Catholic institution, and is recognized as such
8 by the local ordinary, the other name for a bishop.
9 MR. BROWN: I move Employer Exhibit 4 into evidence at this
10 time.
11 MR. KOVALIK: No objection.
12 THE HEARING OFFICER: it's received.
13 (Thereupon, Employer Exhibit No. 4 was received into evidence.)
14 Q. President Dougherty, from an organizational chart
15 perspective, what is the structure of the Roman Catholic Church?
16 MR. KOVALIK: I'm going to object to that as well, as being
17 irrelevant.
18 THE HEARING OFFICER: What is the purpose of that?
19 MR. BROWN: Because it's going to tie into how the
20 university is connected to the church, and various church
21 doctrine that impacts on the university, that will be relevant
22 to both prongs of this test, as you will see.
23 MR. KOVALIK: I'm going to continue my objection.
24 THE HEARING OFFICER: Why don't you ask the other way
25 around, how the university connects to what place in the

1 Catholic church.
2 Q. How does the university connect to the Catholic church?
3 A. Well, we have an immediate relationship with the bishop in
4 the diocese, the bishop has a relationship to the College of
5 Cardinals, and then the College of Cardinals report directly in
6 the hierarchical structure to Rome and the Pope.
7 Q. All right. Thank you.
8 Now, has the Catholic church issued guidance for Catholic
9 universities?
10 A. Yes.
11 Q. Would you identify the guidance that it has issued?
12 A. There was an encyclical by John Paul II, called Ex Corde
13 Ecclesiae.
14 Q. Okay.
15 And, is there a document called the implementation?
16 A. Yes.
17 Q. What is that?
18 A. It is an attempt by the American Bishops to take that
19 document, which tends to be more theoretical, because it is
20 meant for the worldwide church, to apply that teaching to the
21 church in the United States.
22 Q. All right.
23 And, is Duquesne subject to Ex Corde, and the application of
24 Ex Corde?
25 A. We are.

1 Q. All right.
2 (Thereupon, Employer Exhibit No. 5 marked for identification.)
3 BY MR. BROWN:
4 Q. I show you what has been marked for identification as
5 Exhibit 5, Apostolic Constitution of the Supreme Pontiff John
6 Paul II on Catholic Universities.
7 Are you familiar with the document?
8 A. I am.
9 Q. Do you recognize it?
10 A. I do.
11 Q. Is it currently in effect?
12 A. It is.
13 Q. What is it?
14 A. It is an encyclical for a former Pope addressing the nature
15 of the Catholic university.
16 Q. And you have already testified, I think, that Duquesne is
17 subject to that document; is that right?
18 A. Correct.
19 MR. BROWN: I would move Exhibit 5 into evidence at this
20 point.
21 MR. KOVALIK: No objection.
22 MR. BROWN: All right.
23 THE HEARING OFFICER: It is received.
24 MR. BROWN: Thank you.
25 (Thereupon, Employer Exhibit No. 5 was received into evidence.)

1 Q. What does Ex Corde mean in English?
2 A. Literally "Born From the Heart of the Church."
3 It is typical of Catholic encyclicals to be named for the
4 first phrase. The double significance of this one is to stress
5 that universities have -- Catholic universities have a
6 particularly close relationship to the church.
7 Q. All right.
8 And I want to direct your attention to paragraph 4 on
9 page 2, and would you just read that to yourself.
10 Q. Okay.
11 What does that mean, in terms of how Duquesne operates?
12 MR. KOVALIK: Again. Objection as to characterization; this
13 document speaks for itself.
14 THE HEARING OFFICER: I think the point is to ask questions
15 that get at the question of how Duquesne is required to abide by
16 this document or not, and how it holds itself out to the public.
17 MR. BROWN: But how it abides by the document, one of the
18 things that it does to abide by the document, are part of that
19 holding itself out, and part of the operation of the university,
20 and I would respectfully say, relevant.
21 So, all I'm asking is, what is the practical impact of this
22 language. It is not -- you know, this is not a contract
23 document for the sale of an automobile, this is a complex
24 document that sets out various religious principles, and how
25 those principles impact on the university, and what it does as a

1 result of those principles is going to be a part of our showing
2 the religious nature of the university, and it also will tie-in
3 to how the faculty are held out as well.
4 Because this also addresses, these documents also address
5 faculty, and the duties of faculty.
6 THE HEARING OFFICER: I think, as a background, or an
7 underlying question, you need to ask how it is that Duquesne is
8 required to abide by this document.
9 MR. BROWN: Okay.
10 BY MR. BROWN:
11 Q. I would ask you that very question. How is it that Duquesne
12 is required to abide by this document?
13 A. Well, the meaning of this paragraph is that it's fundamental
14 teaching of the church and, therefore, an obligation by us to
15 respect both faith and reason.
16 And, because we believe that faith and reason are two paths
17 to the same goal, that goal being the truth, the truth both
18 oblation, but the truth that is discoverable by reason, that is
19 a very great endorsement of our academic life, because it
20 encourages people to use reason, knowledge, freely, but it also
21 talks about the significance of faith in relationship to the use
22 of reason and knowledge.
23 Q. Thank you.
24 THE HEARING OFFICER: Let me ask this, so I understand it.
25 Comes directly from the Pope, from the --

1 THE WITNESS: Correct.
2 THE HEARING OFFICER: Okay.
3 And, how -- and I understand it has a formal title, Ex Corde
4 Ecclesiae.
5 Is there a document that connects this to Duquesne, or is it
6 just more e femoral than that, that it's incumbent upon Duquesne
7 to follow the precepts of this document?
8 THE WITNESS: The implementation document, that has been
9 referred to, brings it down a step, and there are some aspects
10 of it that are quite specific in its application to Duquesne.
11 THE HEARING OFFICER: Okay. And, I'm sorry, remind again
12 what the implementation document --
13 MR. BROWN: That -- Ms. Hearing officer, that is going to be
14 our next exhibit, as a matter of fact.
15 THE HEARING OFFICER: Well, why don't we see that now, and
16 then we will --
17 MR. BROWN: Okay. That will be fine.
18 (Thereupon, Employer Exhibit No. 6 marked for identification.)
19 BY MR. BROWN:
20 Q. President Dougherty, I am showing you a document that is
21 captioned "United States Conference of Catholic Bishops, The
22 Application for Ex Corde for the United states."
23 Can you identify that document?
24 A. Yes, I can.
25 Q. All right. Is it currently in effect?

1 A. It is.
2 Q. And, is Duquesne subject to it?
3 A. We are.
4 MR. BROWN: I would move Employer Exhibit 6 into evidence at
5 this time.
6 MR. KOVALIK: No objection.
7 THE HEARING OFFICER: Received.
8 (Thereupon, Employer Exhibit No. 6 was received into evidence.)
9 MR. BROWN: Thank you.
10 BY MR. BROWN:
11 Q. Now, I want to direct your attention to Part Two, Article 4,
12 Section 4 on page 7.
13 All right.
14 So, what does that section entitled "Faculty" address?
15 MR. KOVALIK: I am going to again object, it speaks for
16 itself.
17 THE HEARING OFFICER: Sustained. It does.
18 Let's go off the record for a minute.
19 (Discussion off the record.)
20 THE HEARING OFFICER: All right.
21 I am going to permit general questioning about Duquesne's
22 obligations with respect to the document "Application for
23 Ex Corde," and the Ex Corde itself, but in a limited manner,
24 because I assume we will have greater testimony later about the
25 specific application to the faculty.

1 MR. BROWN: Thank you.
2 MR. KOVALIK: Can I just state our objection to the
3 record --
4 THE HEARING OFFICER: Yes.
5 MR. KOVALIK: -- to both Ex Corde, and this document,
6 Employer Exhibit 6.
7 We object to it, to the extent that it does not -- it is not
8 clear to us that it does show how Duquesne publicly holds itself
9 out.
10 It may be a public document in the sense it is on the
11 Internet but, you know, it is not on Duquesne's website, so it
12 is not clear that they do publicly hold themselves out as bound
13 by this Ex Corde in any way.
14 So we do object to the extent on relevancy grounds to both
15 of those documents.
16 THE HEARING OFFICER: Well, I am going to sustain the
17 objection to the extent that this is -- these documents are not
18 Duquesne's documents, specifically, nor are they on the website.
19 MR. BUCKMAN: May I --
20 MR. BROWN: They are publicly available, they were available
21 on the web, but whether they are on Duquesne's website --
22 MR. BUCKMAN: I believe Duquesne does link to Ex Corde on
23 its website, but I will check.
24 THE HEARING OFFICER: All right. Well, at the moment, they
25 are not.

1 So let's proceed.
2 MR. BROWN: Well, the documents though you have admitted
3 into evidence.
4 THE HEARING OFFICER: They are admitted.
5 MR. KOVALIK: Right.
6 MR. BROWN: So we can make our arguments from that.
7 MR. KOVALIK: And we can continue to make arguments as to
8 relevancy, and the import of them as well.
9 THE HEARING OFFICER: Okay.
10 MR. KOVALIK: Thank you.
11 THE HEARING OFFICER: Let's go off the record.
12 (Discussion offer the record.)
13 THE HEARING OFFICER: On the record.
14 BY MR. BROWN:
15 Q. All right.
16 So, I just briefly want to direct you, then, to page 7, that
17 talks about faculty, and specifically, that -- the statement
18 that all professors are expected to be aware of and committed to
19 the Catholic mission and identity of their institutions.
20 Is that something that applies to Duquesne?
21 A. It does.
22 MR. KOVALIK: Object to the extent that this is not publicly
23 held out as such.
24 THE HEARING OFFICER: Sustained to that extent. I will take
25 his answer.

1 Q. Please answer.
2 A. It does.
3 Q. All right.
4 And, how does Duquesne make its faculty aware of and
5 committed to the Catholic mission and identity of the
6 university?
7 A. Well, it's in all of our public statements, it's in multiple
8 pieces of literature that are distributed to all of our faculty,
9 it's shot throughout our website, in many ways it is pervasive
10 in our communications.
11 You can't walk across the campus without seeing the
12 university's mission commitments, because we are filled with
13 religious artwork.
14 All of the mission, I would say, is palpable.
15 There is references to it in the faculty handbook.
16 So all of these things would be aspects of faculty life,
17 through which they would learn about, know about, and realize
18 the expectations with respect to the mission.
19 MR. KOVALIK: I just want to object to that testimony, to
20 the extent that he is referring to documents given to faculty,
21 given to others, that we don't see, and are not admitted into
22 evidence.
23 THE HEARING OFFICER: That is correct.
24 MR. BROWN: Well, I think what the witness is doing, is
25 generally talking about what steps they do, and the things they

1 do, and the steps they take, and we are going to have documents
2 about these things.
3 But I don't see why the witness can't talk about what the
4 university does, what its policies are, without actually having
5 a document in his hand to do that.
6 That really would be very limiting.
7 MR. KOVALIK: To the extent that he is referring to
8 documents, and saying, "Oh, all these documents are showing,"
9 et cetera, we don't -- you know, no one has to accept that, if
10 the documents aren't produced and authenticated.
11 MR. BROWN: We can --
12 THE HEARING OFFICER: I am going to deny the objection, but
13 I will expect that documents are provided to sustain this.
14 And you can ask questions on cross examination as well, of
15 course.
16 MR. BROWN: Thank you.
17 THE HEARING OFFICER: That goes to the exact testimony he
18 just gave.
19 But I would expect the documents.
20 MR. BROWN: You will have documents.
21 THE HEARING OFFICER: Okay.
22 Q. Okay.
23 Last, c. and d., so what are the requirements of professors
24 to teach Catholic theology, in terms of on the contents of the
25 course?

1 MR. KOVALIK: Again, I am going to object, to the extent
2 that he is asking him to characterize the documents.
3 THE HEARING OFFICER: Well, I think he knows what he -- he
4 has knowledge of this, I am going to overrule that.
5 MR. BROWN: Thank you.
6 A. The presumption is that every Catholic university is
7 teaching --
8 THE HEARING OFFICER: Excuse me, I think you need to focus
9 this on Duquesne.
10 THE WITNESS: Okay.
11 A. Duquesne University, in accordance with the directive here,
12 has a Department of Theology that teaches Catholic theology, and
13 they are all made aware of their obligation to teach authentic
14 Catholic teaching.
15 Q. And would that obligation exist in a secular university?
16 A. No.
17 MR. KOVALIK: Again, I am going to object to the extent he
18 knows.
19 THE HEARING OFFICER: Sustained.
20 MR. KOVALIK: As far as I can tell, he has only been
21 associated with Catholic universities.
22 THE HEARING OFFICER: Sustained. We don't need that.
23 Q. Now, addressing faculty in general, are they permitted to
24 consider and discuss the connection with faith and reasoning in
25 their classrooms?

1 A. Yes.
2 Q. Can you tell me why that's encouraged?
3 A. It is. We even have courses in our core required courses
4 that focus on the relationship between faith and reason.
5 Q. Are faculty at Duquesne permitted to tell students that
6 reason leads to the existence of God?
7 A. Certainly.
8 Q. Would making the connection between faith and reason be
9 encouraged or discouraged, in a Duquesne classroom?
10 A. It would be encouraged.
11 Q. What do you understand Ex Corde and the application of
12 Ex Corde to teach regarding academic freedom?
13 A. Academic freedom is a vehicle in support of reason and
14 knowledge, which itself works in tandem with faith to seek the
15 same unitary truth.
16 Q. Does academic freedom have any limitations at Duquesne?
17 A. Yes.
18 Virtually all of our documents will say academic freedom
19 within the constraints of Catholic doctrine.
20 MR. KOVALIK: I am going to object to that response. Again,
21 to the extent it is referring to documents, those documents
22 should be put in evidence. We have seen many of them, and I
23 think truthfully, the way, precise way you characterized the
24 document is not accurate.
25 So we want to object to the extent that documents are being

1 Returning do Ex Corde, does Ex Corde require a Catholic
2 university to teach only Catholic students?
3 A. No.
4 Q. Does it require a Catholic university to mandate student
5 attendance at Catholic sacrements?
6 A. No.
7 Q. Does the application do that?
8 A. No.
9 Q. Does the application require a Catholic university to teach
10 only Catholic students.
11 A. No.
12 Q. Does Ex Corde require a Catholic university to employ only
13 Catholic professors?
14 A. No.
15 Q. Does the application do that?
16 A. No.
17 Q. Does Ex Corde require a Catholic university to maintain
18 faculty attendance at Catholic sacrements?
19 A. No.
20 Q. Does the application do that?
21 A. No.
22 A. Do all of the these questions -- well, you have answered no
23 to these questions. Why are those not required?
24 MR. KOVALIK: I am going to object to why.
25 Again, I think they are violating their own exemption

1 argument that they don't want the NLRB peeking behind the
2 sincerity of their religious views.
3 The why part is irrelevant.
4 MR. BROWN: We are not talking about the sincerity, we are
5 talking about --
6 THE HEARING OFFICER: I am going to sustain his objection.
7 Q. Let me ask this question: How can Duquesne have a religious
8 mission, if it doesn't do those things?
9 MR. KOVALIK: I am going to object, again, I don't think --
10 that question is so compound, it goes to the legal conclusion of
11 the case.
12 MR. BROWN: It is not compound at all.
13 MR. KOVALIK: I mean, it assumes, you know, the truth of
14 what you are supposed to be proving here today.
15 MR. BROWN: Miss Hearing Officer, this an important case
16 that has Constitutional implications, it is really important
17 that we have a full record on this case.
18 Counsel is basically trying to cut off, at every point and
19 explanation of Duquesne's religious identity, how Duquesne
20 operates as a religious institution, and why the Board should
21 not assert jurisdiction.
22 THE HEARING OFFICER: And those are not what's required
23 under Pacific Lutheran, the way I read it.
24 Do you have -- why are you suggesting that they are
25 required?

1 time.
2 MR. BROWN: Thank you.
3 Q. If you --
4 A. It is an explicit part of our mission to create and foster
5 an ecumenical community.
6 We have had other Christians on campus from the beginning,
7 we have had Jews among our student body on our faculty from the
8 beginning, over the last decade or so we have many Muslims who
9 are on our staff, and in our faculty.
10 And, this is a commitment on our part.
11 Q. Okay. Thank you.
12 And I want to ask you to turn back to Ex Corde, and I want
13 to direct your attention to page 12, and that is the section
14 called evangelization.
15 A. I'm sorry, what document were we --
16 Q. This is Ex Corde, this is Exhibit 5.
17 A. 5.
18 Q. Exhibit 5. Specifically page 12, and Section 4 -- or
19 Article 4, numbered paragraph 48.
20 Tell me when you have looked at that.
21 A. Yes.
22 Q. What is the church's primary mission, as it applies to the
23 university there?
24 MR. KOVALIK: I am just again objecting to the extent it is
25 in here, it is in here, and it is in evidence, and again, you

1 already ruled on that.
2 THE HEARING OFFICER: I overrule that, I think that question
3 actually goes to the heart of what we are talking about.
4 A. There are really two meanings of evangelization, and the
5 more common use of it is to try to convert people to your own
6 religious point of view, your own religious faith.
7 This is a broader meaning here, which means to bring the
8 good news of the gospel to the people, not only in our
9 community, because it is focused on Catholic universities and,
10 therefore, on us, but throughout the world, and in our case that
11 means through the work of the Spiritans.
12 Q. When you refer to "our community," what are you referring
13 to?
14 A. Well, I'm talking about faculty, staff, administration and
15 students.
16 Q. All right.
17 And paragraph 49, what is your understanding of the role of
18 Duquesne in the mission of evangelization, in that paragraph?
19 MR. KOVALIK: The same objection.
20 THE HEARING OFFICER: What is it -- is it your testimony,
21 that Duquesne must follow the precepts of the Ex Corde?
22 THE WITNESS: Yes.
23 THE HEARING OFFICER: Okay. Go ahead.
24 A. Well, what it is stating is that we are not a collection of
25 individuals who are doing this work, but we are doing it as an

1 institution. We are doing it as a formal community.
2 That community has institutional relationships to its
3 members. And that we are doing it in a way that primarily
4 respects the dignity of individuals, and the grounding for that
5 would be the sense of the life of the Holy Spirit in each
6 person's spark of God.
7 Q. Thank you.
8 By the way, there was a question about whether Ex Corde was
9 on the website. I want to show you a computer, a document
10 through the computer, just --
11 THE HEARING OFFICER: Show it to Mr. Kovalik.
12 MR. BROWN: Yes, of course. As long as he promises not to
13 take it.
14 MR. KOVALIK: Okay. Where? Can you just point to me where?
15 MR. BROWN: Where the link is?
16 Ex Corde, right here.
17 MR. KOVALIK: Okay.
18 MR. BROWN: Okay.
19 BY MR. BROWN:
20 Q. All right. I show you a section of the website, and if you
21 would look at the bottom right.
22 A. Yes.
23 Q. Is there a link to Ex Corde in that?
24 A. There is.
25 Q. Thank you.

1 A. As well as adjuncts.
2 Q. As well as adjuncts. Okay. good.
3 And you also have something, refer to page 4, called
4 Founder's Week. What is that?
5 A. Founder's week is a week of celebration, typically in the
6 beginning of February, in which we look at the life and
7 contribution of the two men who are identified as founders of
8 the order Spiritans.
9 And, sometimes, again, it is on their lives, more often it
10 is on the subsequent history and contribution of the Spiritans
11 around the world.
12 Q. All right. And are faculty invited to those?
13 A. Yes.
14 Q. And that includes adjunct faculty?
15 A. They do.
16 Q. And you refer to mission presentations on page 4. Can you
17 describe what that is?
18 A. There are multiple presentations throughout the semester, in
19 which mission is the focus, involving the Catholic character of
20 the university, the Spiritan nature of the university, a number
21 of them recently are on issues close to the heart of the
22 Spiritan congregation, which would be peace, justice and respect
23 for the environment.
24 And, those are open to faculty, all of our faculty, and they
25 are all encouraged to attend.

1 Q. And then there is a reference to Catholic relief services on
2 page 4.
3 Could you tell me a little, or tell us a little bit about
4 that, and what that involves?
5 A. Well, the Catholic relief services is one of the largest, I
6 believe the largest relief services that the Catholic Church
7 runs internationally.
8 We have a number of Spiritans who are involved with that
9 program, who work bringing food, healthcare services, and just
10 general relief to areas of natural disasters, places where
11 people are suffering, and there are presentations on this on
12 campus, and faculty, students, staff, are all invited to attend.
13 Q. All right.
14 And then, there is a reference to a program of study on
15 Catholic social thought, on page 4.
16 A. Yes.
17 Q. Can you describe what that is?
18 A. Well, there is a Catholic teaching on social issues, and
19 those are typically covered in these conversations, and again,
20 these are for all faculty and staff.
21 They are always grounded, of course, on respect for the
22 dignity of person, and what that means in various social
23 circumstances.
24 THE HEARING OFFICER: May I just ask a question. It says
25 here that this is a proposed program. Do you know if it's gone

1 into effect?
2 THE WITNESS: It did. Now it's been changed to Catholic
3 intellectual tradition, which makes it a bit broader.
4 THE HEARING OFFICER: Thank you.
5 BY MR. BROWN:
6 Q. Okay.
7 There is a reference on the first page to hiring for mission
8 being an important consideration in the university.
9 A. Yes.
10 Q. I want to put that off for now, but I want to talk to you
11 later about hiring for mission, and what that means.
12 But in the meantime, I want to direct your attention to the
13 second paragraph of your letter to the bishop, and can you
14 explain what a mandatum is, and what you are communicating about
15 to the bishop with regard to the mandatum?
16 A. The implementation of Ex Corde requires that all Catholic
17 universities, who have professors who teach Catholic theology,
18 have a formal letter of recognition from the bishop, saying that
19 they are teaching recognized Catholic theology.
20 And it's our responsibility, as administrator, to provide
21 that updated list to the bishop, because our faculty will change
22 periodically, to inform the individual faculty members in
23 theology that it is their obligation to approach the bishop, and
24 ask for the mandatum, but after that, it is a relationship
25 between the bishop and the individual faculty member in terms of

1 securing and sustaining the mandatum.
2 THE HEARING OFFICER: Are any adjunct faculty teaching
3 Catholic theology?
4 THE WITNESS: I believe there are, but I'm not certain.
5 MR. BROWN: Okay.
6 THE HEARING OFFICER: If we can just go off the record for a
7 minute.
8 (Discussion off the record.)
9 THE HEARING OFFICER: Let's go back on the record.
10 MR. BROWN: Okay. Sure.
11 THE HEARING OFFICER: President Dougherty, the document that
12 has been marked as Employer 7, appears to have one page.
13 THE WITNESS: Yes.
14 THE HEARING OFFICER: And it's not signed by you; is that
15 correct?
16 THE WITNESS: Yes.
17 I believe it's just that one page. It struck me as unusual
18 that it wasn't signed, but I think that obviously my letterhead
19 is at the top, so it's clearly from me.
20 But I think I maybe didn't sign it, because I refer in the
21 body of my cover that the document attached is really from
22 somebody else, it's from Father McCloskey.
23 THE HEARING OFFICER: And I have one other question. It
24 says in the second paragraph that you would add three points to
25 the report, and there are two, and I was just wondering if

1 that's the missing page, whether there was a third point.
2 THE WITNESS: Perhaps you are right, I mean, maybe there is
3 another page. Because --
4 MR. BROWN: What we will do --
5 THE HEARING OFFICER: Maybe you will make an effort to
6 search for that.
7 MR. BROWN: We will be glad to that, we will search for the
8 it, and if we find it, we will substitute it.
9 But as far as we can tell, there is just that one page.
10 All right.
11 (Thereupon, Employer Exhibit No. 8 marked for identification.)
12 BY MR. BROWN:
13 Q. I show you, President Dougherty, what has been marked for
14 identification as Employer Exhibit 8, a letter from the Very
15 Reverend Chris Stubna, to you, dated April 27th, 2014, and ask
16 if you can identify that document?
17 A. Yes.
18 Q. All right.
19 A. It is a letter I received from Father Stubna.
20 Q. And who is he?
21 A. He is an assistant to the bishop who, until recently, has
22 been his assistant on academic matters.
23 Q. I see.
24 And, what does that letter address?
25 A. That letter is asking me to update the list of faculty who

1 are required to receive the mandatum.
2 Q. I see.
3 The letter also refers to the Academic Council; what is
4 that?
5 A. There are three Catholic universities in Pittsburgh,
6 ourselves, La Roche and Carlow, therefore, there are three
7 presidents of those universities. Each of them is also
8 sponsored by a different religious congregation. And each of
9 them has a department of theology, or religious studies.
10 Those individuals, presidents, heads of congregations, and
11 heads of departments of theology, meet once a semester with the
12 bishop to discuss issues of common concern to hear from the
13 bishop, to organize the presence of the bishop, the bishop on
14 campus. The bishop, for example, has spoken several times on
15 our campus to faculty, to students, to staff, on various topics.
16 Q. All right.
17 And, can you just very briefly tell us what the relationship
18 is between Duquesne and the bishop?
19 A. Yes.
20 Very positive. The bishop happens to be a graduate of
21 Duquesne, and says so proudly.
22 He comes and celebrates the annual opening mass of our
23 university year, which is the biggest one in the diocese, its
24 called the mass of the Holy Spirit.
25 He celebrates it, along with the entire Spiritan community.

1 We also have the exclusive responsibility to teach all of
2 the diocese seminarians philosophy, so our philosophy curriculum
3 is organized in such a way that it supports the education of the
4 next generation of priests, for which the bishop is very
5 grateful.
6 Q. Have you talked to the bishop, or his representatives, about
7 the philosophy curriculum?
8 MR. KOVALIK: Again, I am going to object.
9 THE HEARING OFFICER: I sustain that, his objection. It's
10 not really relevant.
11 Q. Let me ask you this: The philosophy curriculum, is that
12 just for people who are seminarians, or do your, what I will
13 call regular students, attend as well?
14 A. Yes, these are courses open to others, too.
15 Q. All right.
16 And, does the bishop have an impact on what is in that
17 curriculum?
18 MR. KOVALIK: I am going to object. Same objection.
19 MR. BROWN: Goes to the religious nature of the university,
20 and what people are teaching, what faculty are teaching.
21 THE HEARING OFFICER: I am going to sustain that objection.
22 MR. BROWN: All right.
23 MR. KOVALIK: Can I ask a question about this letter? I
24 don't know if it was offered into admission, but it purports to
25 have some list attached it to, that would seem to be somewhat

1 relevant to our discussions.
2 Is there an attachment to that?
3 THE HEARING OFFICER: It hasn't been moved, so I was waiting
4 to hear about that.
5 MR. BROWN: Yeah. Obviously, there -- by its terms, it does
6 refer to a list. We don't have the attachment to it, we don't
7 think it is necessary, it just lists those who have received the
8 mandatum. And that's the answer.
9 MR. KOVALIK: I mean, it could be relevant, I mean, to
10 whether or not there are adjunct faculty involved in this
11 bargaining unit. I would think some bearing on the case,
12 anyway. Anyway, I think it is strange you put in the cover
13 letter, and not the list.
14 MR. BROWN: The cover letter was for the substance of it.
15 In terms of the list itself, I am glad to see if we can find
16 what the list was, and if that's the case, supplement this with
17 the list.
18 THE HEARING OFFICER: All right.
19 Well, I think we have described the substance of the letter,
20 but I think we are going to reserve admitting it into evidence
21 until there is either a definite answer if there is a list, or
22 not.
23 MR. BROWN: Very well.
24 THE HEARING OFFICER: I think it is relevant.
25 MR. BROWN: I move it at this time, with the understanding

1 you are going to reserve.
2 THE HEARING OFFICER: Reserve judgment.
3 MR. KOVALIK: And we will object to it at this time.
4 MR. BROWN: Okay.
5 BY MR. BROWN:
6 Q. All right. Now, you have testified that Duquesne is a
7 Catholic Spiritan university.
8 In what ways does Duquesne provide a Catholic Spiritan
9 educational environment?
10 A. It provides it through the general cultural ambience of the
11 campus, it provides it through our core curriculum, it provides
12 it through the publications the university puts out, it provides
13 it in the appearance of campus with religious art.
14 There are orientation programs for our new freshmen, for new
15 faculty, full and adjuncts, in which the mission is articulated.
16 There are a number of other ways.
17 Q. All right.
18 To what extent is that Catholic Spiritan environment
19 manifest on campus?
20 MR. KOVALIK: Again, I am going to object, because again we
21 are going back to Pacific Lutheran, the question is to what
22 extent the public can hold themselves out.
23 THE HEARING OFFICER: Well, I think it is -- I am going to
24 overrule that, the question goes to that.
25 MR. BROWN: Thank you.

1 Q. You can answer.
2 A. Can you repeat the question?
3 Q. Yes. to what extent is that Catholic Spiritan educational
4 environment manifest on the campus?
5 A. Well, I think it's manifest first and most concretely in the
6 lives of the Spiritans who live among us.
7 There are about 12 or 15 Spiritan priests who live on
8 campus, and they are in various capacities at the university;
9 some are on the faculty, some are administrators, some live in
10 the residence halls; and they function as priests, as advisors,
11 as reaching out to others with spiritual crises, when there are
12 deaths, particularly with a young population, when a young
13 person dies, the Spiritan community is very, very important to
14 us in holding students and the rest of the student body
15 together.
16 They also have a good working relationship with faculty
17 members; faculty members know them, and generally speaking --
18 MR. KOVALIK: I'm sorry, I have to object to some of this.
19 MR. BROWN: I think he has the right to finish his question
20 and --
21 THE HEARING OFFICER: Let him finish the answer --
22 MR. BROWN: Or the answer.
23 THE HEARING OFFICER: -- to this question, and then we will
24 go from there.
25 MR. BROWN: Yeah.

1 A. Generally speaking, faculty know them, and respect them,
2 because they provide some of the very same support for faculty
3 members.
4 Q. Well, are any of the Spiritans faculty members themselves?
5 A. Yes.
6 Q. And are any of the Spiritans adjunct faculty members?
7 A. I believe so.
8 Q. And, besides the Spiritan presence that you mentioned, are
9 there other ways in which the Catholic Spiritan educational
10 environment is manifest in the campus?
11 A. Well, our university magazine, which is directed at alums,
12 but distributed to all of our employees, including faculty, full
13 and adjunct, always features some aspect of our mission.
14 I would, on a regular basis, communicate to all of our
15 employees, including full and adjunct faculty members, letters
16 on various topics; they include elements of our mission.
17 Every fall there is a major academic convocation, in which I
18 give an annual public address.
19 And that includes, always includes our mission themes;
20 occasionally it is exclusively on the mission.
21 It would be hard to miss.
22 Q. All right.
23 In what ways does Duquesne, as an institution, practice the
24 Catholic faith?
25 MR. KOVALIK: The same objection as to it doesn't go to what

1 the public can hold themselves out as.
2 MR. BROWN: What they actually practice, and what they do,
3 what can be more public than that?
4 THE HEARING OFFICER: What do you mean, how do they
5 practice; you mean the university?
6 MR. BROWN: Well, what I want to elicit from the witness, is
7 the kind of liturgies they do, all public, all available to the
8 whole university.
9 THE HEARING OFFICER: I think you can elicit the fact that
10 those -- that those liturgies are available, and that kind of
11 information. But not the nature of the liturgy.
12 BY MR. BROWN:
13 Q. All right.
14 So again, in what ways does the -- does Duquesne, as an
15 institution, practice the Catholic faith, just focusing, as the
16 hearing officer says, on the kind of programs, or kind of
17 liturgies, and other faith-based activity take place?
18 A. Well, every day there are two masses in our chapel, the
19 Chapel of the Holy Spirit.
20 Every weekend there is a mass for students in the residence
21 halls.
22 There are regular masses and liturgies associated with major
23 events, like commencement, or the beginning of the school year.
24 At the other end of the spectrum, our whole core curriculum,
25 which is required of all of our undergraduates. It is motivated

1 by our mission and, therefore, it includes a deep commitment to
2 the liberal arts, philosophy, theology, history, English,
3 courses in faith and reason, and that would be an example of the
4 academic expression of it.
5 Q. All right. Thank you.
6 And going back to the things like masses, are people
7 required to participate in those?
8 A. No.
9 Q. Are they open to the university community?
10 A. Are they what?
11 Q. Open to the university community?
12 A. Yes. So everyone; everyone is invited, yes.
13 Q. Does that include faculty and adjunct faculty?
14 A. Of course it does, yes.
15 Q. And, are faculty required to participate in these?
16 A. No.
17 Q. Why not?
18 A. Well, because that would be incompatible with our sense of
19 our own mission.
20 We don't require people to do things that may be
21 incompatible with their own faiths, or even no faith at all.
22 Q. What is the Mass of the Holy Spirit, that you referred to
23 that?
24 A. It is the first ritual celebration, or liturgy at the very
25 beginning of the year.

1 It is the most popular -- it is the most widely attended
2 mass every year in the diocese.
3 It is, the mass is said by the bishop, there is probably
4 another 15 or so Spiritans on the altar with the bishop. It is
5 so big, it is put in our Palumbo Center, where we ordinarily
6 play basketball, and probably 1,500 to 2000 people come,
7 focusing on freshmen, but also including faculty, staff and
8 freshmen parents.
9 Q. Thank you.
10 What is the relationship between Duquesne's program of the
11 Catholic faith and academics?
12 A. Academic?
13 Q. And academics at Duquesne?
14 A. Well, it shapes -- it shapes, from the very beginning, what
15 we have chosen to be, which is a university that has both
16 liberal arts and professional programs.
17 But in order to proceed through the professional programs,
18 you have to be grounded in the liberal arts, and that is a
19 commitment that has a long history in Catholic universities, and
20 particularly in our own.
21 Going back to my earlier answer about lifting up
22 immigrants, we wanted to have the professions, because that
23 gives them the leg into the working world, but we knew that in
24 order to be effective at the professions in the long run, they
25 had to be effective thinkers, good writers, and all of those

1 things come from the liberal arts.
2 We wanted a strong emphasis on ethics, and so ethics is a
3 requirement, as is theology and philosophy.
4 We have some other areas of interdisciplinary concentration,
5 most recently, for example, on African studies, because the
6 Spiritans have long been missionaries to Africa; it is an
7 important part of their early history.
8 And so we have added that as an academic course.
9 Q. Do adjuncts and full-time faculty teach those kind of
10 subjects, theology, ethics, I think you testified earlier about
11 a relationship between faith and reason?
12 A. Yes, in fact, adjuncts are well represented in the core
13 courses.
14 Q. Okay. Thank you.
15 (Thereupon, Employer Exhibit No. 9 marked for identification.)
16 BY MR. BROWN:
17 Q. I show you what has been marked for identification as
18 Employer 9.
19 Can you identify that?
20 A. This is a brochure, which accompanied a tour of the
21 religious art on campus, that I conducted myself in September.
22 Q. So -- and, when was this -- is this distributed, this
23 brochure?
24 A. Yes. It was distributed, and I believe it's also on the
25 Internet.

1 Q. All right.
2 A. The web.
3 Q. What was the purpose of the tour of religious art?
4 A. Well, it was to allow people to, first of all, see how much
5 religious art we have, because there has been a pretty dramatic
6 increase in them since I have become president, it's been a
7 commitment of mine.
8 But also, to understand better the significance of the
9 pieces, what are they representing, what are they suggesting.
10 Q. And why did you sponsor this religious tour?
11 MR. KOVALIK: Again, I am going to object as to why.
12 MR. BROWN: Again, it shows the religious purpose of the
13 university, and what steps it has taken, public steps, to
14 identify itself as a religious university.
15 THE HEARING OFFICER: Actually, I am going to sustain it,
16 because I think he already testified about the purpose of this
17 particular tour, why he did it.
18 BY MR. BROWN:
19 Q. Let me ask you this question: Is this an exhaustive list of
20 the art, that reflects Duquesne's religious educational
21 environment?
22 A. It is not. In fact, there are several other important
23 pieces that we couldn't get to. This took about 45 to 50
24 minutes, all by itself, as a tour. And the other major missing
25 piece is every classroom, and every conference room at our

1 I want to talk a little bit about the process.
2 THE HEARING OFFICER: That's all right. We are going to
3 have that.
4 MR. BROWN: Thank you.
5 A. Well, first of all, in my own case, it was critical in my
6 hiring. I was interviewed extensively on my own Catholic
7 background, and my commitment to the Catholic faith.
8 Then, when we replaced vice presidents, I set up a search
9 committee, including the chair, and I have an initial meeting at
10 which I give the committee the charge, that is, what kind of a
11 person are we looking for.
12 The first thing I always say is the person has to be
13 supportive of the mission.
14 In that process, when the committee emerges with three
15 finalists, I interview all three, and I emphasize again fit with
16 the commission, commitment to the mission, and that plays a
17 large role in my appointment of a vice president.
18 The same is -- pattern is followed with the deans.
19 When we hire full-time faculty, when we get down to a short
20 list of candidates, usually three, there is an associate vice
21 president who meets with each one of those candidates, and has
22 an extended conversation about the candidate's fit with the
23 mission.
24 It's not a conversation about whether they are Catholic or
25 not, it's a conversation about whether they understand who we

1 are, and whether or not they see themselves being a part of a
2 community with that mission.
3 I don't know exactly how that's done in the hiring of
4 adjuncts, because that is done at a very decentralized way at
5 departmental level, but the leaders of departments have
6 themselves been hired for mission, and presumably their hiring
7 of adjuncts follows a pattern not unlike the way they were hired
8 themselves.
9 Q. All right.
10 And, do you do anything else with regard to adjuncts with
11 regard to mission and hiring for mission to achieve that goal of
12 hiring for mission?
13 MR. KOVALIK: I am just going to object to the extent he
14 knows, because he just said he doesn't know how it's done.
15 THE HEARING OFFICER: Right.
16 MR. BROWN: I'm asking him to know -- he didn't say he
17 doesn't know how it was done, what he was talking about was the
18 interviewing process.
19 I am asking about other steps that are taken to achieve
20 hiring for mission, with regard to adjuncts.
21 MR. KOVALIK: To the extent he knows.
22 Q. To the extent you know, of course.
23 THE HEARING OFFICER: To the extent that you are personally
24 aware.
25 THE WITNESS: Of course.

1 A. We have an orientation program for new faculty, and for new
2 adjuncts, and the mission is a large part of that.
3 Obviously, in the case of adjuncts, there is a regular
4 series of decisions, because they are hired, they are temporary
5 employees, part-time employees, and so the question of rehiring
6 is always at stake, and so, presumably -- and again I don't know
7 this in detail, but presumably that conversation goes,
8 reflections happen again and again, with adjunct hiring.
9 Q. And with adjuncts, just to make sure the record is clear on
10 this, are they part time?
11 A. Yes.
12 Q. And, how are they hired; are they hired for just a semester?
13 A. Yes.
14 Q. All right.
15 Now I want to talk to you about, you mentioned in terms of
16 informing faculty about mission, various talks, including
17 convocation?
18 A. Yes.
19 Q. And I want to ask you about some of your convocation
20 speeches.
21 Now, first, what is a convocation, so the record is clear on
22 that?
23 A. It's a major academic meeting, typically held in the early
24 fall each year, so, late August, early September. It's when I
25 give a major speech on issues facing the university.

1 MR. BROWN: No, that's all I have, really.
2 THE HEARING OFFICER: Okay. Fine.
3 MR. KOVALIK: That's our objection.
4 THE HEARING OFFICER: And I overruled the objection.
5 MR. BROWN: Thank you.
6 MR. BROWN: Can you read back my question, Mr. Reporter.
7 (Record read.)
8 A. Well, I am trying unpack the phrase "we serve God by serving
9 students," by showing that there is, in our tradition, and in
10 the university's mission, the view that there is dignity, human
11 dignity in every person, and particularly in every one of our
12 students; that, in fact, represents a spark of the life of the
13 Holy Spirit; and that when we serve those students through
14 education, we are in fact serving an expression of God, so we
15 are serving God through educating our students.
16 Q. And when you refer to "we," who is the "we" you are
17 referring to?
18 A. Well, it's all of us, but in this particular case, of
19 course, the education is carried primarily by our faculty.
20 Q. All right.
21 Now, you say, "We serve God by serving students, including
22 the faculty," does that also include faculty that are non
23 Catholic?
24 A. It does.
25 Q. And what would happen if a faculty member mocked the notion

1 of serving God by serving students, in your mission?
2 MR. KOVALIK: Objection to the extent it is not merely a
3 hypothetical question, that he knows specifically what would
4 happen.
5 THE HEARING OFFICER: You can answer if you have direct
6 knowledge of such a situation.
7 A. It would be a serious matter for us. I would have to
8 understand the context of it. Obviously, we would worry about
9 certain academic freedom issues, we worry about whether or not
10 for some reason it was deemed to be a teachable moment, if a
11 faculty member was using it as a parity for example.
12 But if it was meant, seriously, to try to undermine what we
13 stand for, that would be serious, and in our point of view,
14 would be grounds for not renewing an adjunct, for example.
15 Q. All right. Thank you.
16 MR. BROWN: I want to move the admission of Exhibit 15.
17 MR. KOVALIK: Well, we object to it on relevance, and also
18 being duplicative.
19 THE HEARING OFFICER: It goes in the same rejected exhibit
20 file that we will revisit close to the end of the hearing.
21 MR. BROWN: Very well.
22 Q. For clarity, given the fact that right now this document is
23 in the rejected exhibit file, can you read the paragraph that
24 you were referring to and explain it?
25 MR. KOVALIK: I'm going to object on the same basis, if it

1 case.
2 THE HEARING OFFICER: I will permit it, for a short time.
3 MR. KOVALIK: Okay. Fair enough.
4 A. What was the question again?
5 Q. Well, I mean, do you disagree with Pope -- one,
6 Pope Francis, his recognizing this Italian Union of Educators --
7 Catholic Educators?
8 MR. BROWN: Objection. How can -- how can this witness talk
9 about what's going on in a Catholic --
10 MR. KOVALIK: I am just asking --
11 THE HEARING OFFICER: Well, he is asking --
12 MR. KOVALIK: -- his opinion. He can give me his opinion.
13 THE HEARING OFFICER: -- his opinion, and you are giving
14 your opinion as the president of Duquesne.
15 A. I have no knowledge of the circumstance of teachers in
16 Italy, I don't know if they are underpaid, overpaid, paid the
17 same as the U.S., paid the same as Argentina, I just don't know
18 what the wage in Italy is.
19 Q. Well, that wasn't my question.
20 My question is: The fact that the Pope addressed a Catholic
21 teachers union, does that -- do you have any position on that,
22 in terms of its relationship to the mission of Duquesne?
23 MR. BROWN: Objection. Again, this is --
24 THE HEARING OFFICER: Well, I am going to sustain that,
25 because that question is not relevant.

1 MR. KOVALIK: I think I only have two copies now, I will
2 need to make a couple more.
3 Can I show you Exhibit No. 10.
4 Do you recognize that document?
5 A. I do.
6 Q. And what is that?
7 A. This is the self-study that we produced for the Middle
8 States Association visit in 2008.
9 Q. Okay.
10 And if you look at page 4, is that your signature on there?
11 A. It is.
12 Q. Under "Chief Executive Officer"?
13 A. Yes.
14 Q. Okay. If you go to page 17, the second paragraph, the first
15 sentence. Would you mind reading that into the record?
16 A. "In keeping with University standards across the country,
17 Duquesne recognizes the principles of academic freedom and due
18 process as set forth by the Association of American University
19 Professors (AAUP)."
20 Q. And are you familiar with the AAUP?
21 A. Somewhat.
22 Q. If I showed you a copy, do you think you would recognize
23 what it is?
24 MR. BROWN: Asking the witness --
25 MR. KOVALIK: Well, I'm going to show it to him in a second.

1 MR. BROWN: Objection.
2 A. A copy of what?
3 Q. Of the AAUP statement on academic freedom, that is referred
4 to here?
5 A. Portions that are important to us, are in our faculty
6 handbook.
7 Q. Can I show you the AAUP statement, in any case?
8 A. Sure.
9 (Thereupon, Union Exhibit No. 11 marked for identification.)
10 MR. KOVALIK: This is Union's Exhibit 11.
11 I would like to move for admission of Union's Exhibit 10.
12 MR. BROWN: Objection. Relevance.
13 MR. KOVALIK: Yes. There is a lot of discussion on there on
14 academic freedom, diversity, and other things, specifically
15 mentioned to by Pacific Lutheran, this is a document that is
16 filed for accreditation purposes, again specifically talked
17 about in Pacific Lutheran.
18 THE HEARING OFFICER: I actually have a couple of questions
19 about this
20 MR. KOVALIK: Yes, I'm sorry.
21 THE HEARING OFFICER: I have a couple of questions about
22 this.
23 President Dougherty, is -- the university, is it required to
24 be a part of the Middle States Association, or do you do that
25 voluntarily?

1 THE WITNESS: I suppose in a global way it is voluntary, but
2 this is the major accrediting body for our region of the
3 country, and so we would be an unaccredited institution without
4 it.
5 THE HEARING OFFICER: Okay.
6 And I think you testified this is self-prepared?
7 THE WITNESS: Yes.
8 THE HEARING OFFICER: Based on criteria that is established
9 by whom?
10 THE WITNESS: They -- they establish some criteria for
11 self-assessment, and we establish faculty committees throughout
12 the university to deal with those areas, and then it kind of
13 bubbles up through the university.
14 MR. KOVALIK: It is our position this is the very type of
15 accreditation document --
16 MR. BROWN: Yes, I withdraw the objection.
17 THE HEARING OFFICER: Okay. It's received.
18 MR. KOVALIK: Thank you.
19 (Thereupon, Union Exhibit No. 10 was received into evidence.)
20 THE HEARING OFFICER: I don't know whose this was.
21 MR. KOVALIK: That is fine, thank you.
22 BY MR. BROWN:
23 Q. And now I would like to talk about Union Exhibit 11.
24 Do your recognize this document?
25 A. Yes.

1 Q. And this is the statement of principles of academic freedom
2 as set forth by the AAUP; is that correct?
3 A. Correct.
4 MR. KOVALIK: I'd like to move for admittion of Union
5 Exhibit 11.
6 MR. KILBERT: Relevance?
7 MR. KOVALIK: Yes. Again academic freedom is very much
8 focused on in Pacific Lutheran, it is important to the second
9 prong.
10 We have already established that their own submission to
11 Middle States states that they follow the AAUP statement on
12 academic freedom, I think it is relevant to put in the statement
13 on academic freedom so people can look at it.
14 MR. BUCKMAN: It is, but the witness testified to the
15 relevant portions of the AAUP document are found in the Duquesne
16 University handbook.
17 MR. KOVALIK: That's what he says, but that is not what the
18 Middle Stats submission says, it says they followed the AAUP.
19 You can make any argument you want on it, but I think it is
20 important to have the statement in.
21 MR. BUCKMAN: That is one sentence, that is your
22 characterization of one sentence.
23 MR. KOVALIK: Well, that sentence says what it says. It
24 says that it follows the AAUP.
25 MR. BUCKMAN: What page is it at again?

1 MR. KOVALIK: 17.
2 MR. BUCKMAN: 17.
3 THE HEARING OFFICER: President Dougherty, are there any
4 ways that you can think of -- well, let me backtrack.
5 Is it your testimony that you do follow this statement of
6 principles?
7 THE WITNESS: It's important to note that there was a 1940
8 statement of principle that we embody in our faculty handbook.
9 There have been a number of iterations since then that, in our
10 estimation, expand the notion of academic freedom beyond its
11 initial meaning and boundaries, and we don't subscribe to those.
12 MR. KOVALIK: And that's why we gave the 1940 statement.
13 THE HEARING OFFICER: So I think your testimony was that the
14 1940 statement is embodied in your --
15 THE WITNESS: Yes.
16 THE HEARING OFFICER: Okay. I'm going to admit this.
17 MR. KOVALIK: Thank you.
18 (Thereupon, Union Exhibit No. 11 was received into evidence.)
19 (Thereupon, Union Exhibit No. 12 marked for identification.)
20 MR. KOVALIK: I am on Exhibit 12. Again I took as many
21 documents this morning as could I carry.
22 This is Union Exhibit 12.
23 Here, I'm sorry. Please.
24 THE HEARING OFFICER: Thank you.
25 MR. KOVALIK: I will let you gander.

1 (Thereupon, Union Exhibit No. 18 was received into evidence.)
2 Q. Let me just ask you maybe some general questions.
3 You mentioned yesterday, if I recall, that there is about 12
4 to 15 Spiritans on campus; is that correct?
5 A. Yes.
6 Q. And about how many students study at Duquesne university?
7 A. We have about 6,500 undergrads, and another 3,000 or so
8 graduate students, for a total population of just under 10,000.
9 Q. Okay. Thank you.
10 Yesterday you did testify a bit to some convocations you
11 have given?
12 A. Yes.
13 Q. My only question would be, you know, do you know how many
14 adjuncts would have attended those convocations?
15 A. I have no idea.
16 Q. Does anyone? I mean, would anyone keep track of that, as
17 far as you know?
18 A. No.
19 Q. Okay.
20 A. I would have received a copy of it afterwards.
21 Q. Okay. And how -- okay.
22 Same question about you mentioned some orientations, mission
23 centered orientations --
24 A. Uh-huh.
25 Q. -- at Duquesne. Would you know how many adjuncts attended

1 about the convocations that you spoke about yesterday, and the
2 orientation sessions.
3 With respect to each of those, are faculty, and that
4 includes adjunct faculty, required to attend these?
5 THE WITNESS: No.
6 THE HEARING OFFICER: So the university doesn't keep track
7 of which faculty or adjunct faculty attended those?
8 THE WITNESS: Correct.
9 Sometimes faculty, adjunct faculty are rehired, so they may
10 have gone through an orientation two years ago, so there would
11 be no sense in asking them to do it again.
12 THE HEARING OFFICER: Okay. I understand.
13 And with specific reference, then, to the -- I guess the
14 convocations, and the larger groups that you testified that you
15 gave the speeches to, faculty are not required to attend?
16 THE WITNESS: Correct.
17 THE HEARING OFFICER: Right. At the opening convocation.
18 And with respect -- you also testified with respect to the
19 card that students get when they first enter, with the mission
20 statement?
21 THE WITNESS: Right.
22 THE HEARING OFFICER: Are students required to sign
23 anything, indicating that they have received the card?
24 THE WITNESS: No.
25 THE HEARING OFFICER: Or read the card?

1 external relations, public affairs, which is our communications
2 and marketing group, government relations, and also conference
3 and event services.
4 Q. And in terms of the Office of Public Affairs, which is under
5 your direction, what is the scope of the Office of Public
6 Affairs?
7 A. The departments within public affairs would include again
8 communications both internal and external, marketing, in which
9 we provide marketing support for the various units of the
10 university, media relations, government relations.
11 We oversee the website, though content is very
12 decentralized, but we are responsible for the website, the
13 maintenance of it, from a graphical stand point, not the
14 technological part of it.
15 Those are the major units.
16 We have a printing and graphics operation, also.
17 Q. And, in terms of the Office of Public Affairs, what is the
18 responsibility of portraying how the university holds itself out
19 to the outside world, as well as internally?
20 A. We -- depending on the constituency, whether it is
21 prospective students, or the community at large, or alumni, we
22 will work with those offices to get their message out about the
23 university, and we try to be consistent in that in portraying
24 ourselves as a Spiritan Catholic institution.
25 Q. And, to what extent have you published and disseminated

1 material with regard to Duquesne University of the Holy Spirit
2 Catholic and Spiritan identity?
3 A. There are a number of ways.
4 I'll speak to the one with the largest distribution.
5 Our university magazine is sent out, I believe the
6 distribution of that magazine is approximately 200,000, three
7 times a year.
8 So that would go to all constituents, all members, employees
9 of the university, but also all of our alumni, parents, and
10 friends of the university.
11 Q. Does that include faculty?
12 A. Yes.
13 Q. Go ahead.
14 A. On the enrollment management side, each year we deal with a
15 major printed publication, which is really the first primary
16 printed student recruitment piece that we do, which is known as
17 the viewbook, that will go out each year to 90,000 prospective
18 students and their families, high school students, juniors and
19 seniors primarily.
20 Q. How well publicized is Duquesne University's mission
21 statement?
22 A. It's broadly publicized across all platforms, all of our
23 electronic platforms. It's on placards around campus that we
24 will print and produce.
25 So it's -- again, it is very public within the campus.

1 A. It depicts -- it depicts Christ on the cross, it is known as
2 This Crucifix, it was a piece of art commissioned in 1960, and
3 has been at the -- the primary crossroads of the campus since
4 that time.
5 Q. And, how tall is that cross?
6 A. 25 to 30 feet.
7 Q. And, where does it stand, in relation to the campus?
8 A. It is depicted here, again, at the crossroads between
9 several of our academic buildings, and the administration
10 building and our chapel.
11 It had some -- what you are seeing is wooden timbers that
12 the cross is made of, it had some damage, so we subsequently
13 moved it onto the lawn just to the right in this top picture,
14 and had the top refurbished, and refurbished the cross, and it
15 now kind of looks out onto Forbes Avenue also, and then we built
16 a contemplative prayer area around the cross at the same time we
17 moved it.
18 THE HEARING OFFICER: Let's go off the record for a minute.
19 (Discussion after the record.)
20 THE HEARING OFFICER: Let's go back on the record.
21 BY MR. PERL:
22 Q. Mr. Plante, you described the imposing crucifix, some
23 25 feet that appears outside on the campus.
24 To what extent are crucifixes found inside buildings, or
25 including classrooms?

1 hire faculty?
2 A. Yes, I am.
3 Q. And what is your role as provost in faculty firing?
4 A. I have general responsibility for overseeing faculty hiring
5 of all kinds. However, my practical role, my practical
6 involvement differs, depending on whether the individual is
7 being hired on a full-time basis or a part-time basis.
8 For full-time faculty, the university uses a very
9 centralized system, and the office of the provost is critically
10 involved throughout.
11 For adjunct faculty, we are involved in training those who
12 will ultimately conduct the hiring process at the departmental
13 level, that is in a decentralized way, and my responsibility is
14 to make sure that those who will be involved in that process,
15 are appropriately prepared.
16 Q. Does the university interview candidates about the mission?
17 A. Yes, it does.
18 Q. When did that start?
19 A. I have no idea when it began. Ever since I have been on
20 campus.
21 Q. Okay.
22 Why does the university interview candidates for mission?
23 MR. KOVALIK: Objection as to why.
24 THE HEARING OFFICER: What's your objection?
25 MR. KOVALIK: I just don't see how it is relevant, you know,

1 how they publicly hold themselves out is what's relevant, not
2 why they do, and also it is duplicative, because President
3 Dougherty spoke at length about this subject.
4 THE HEARING OFFICER: I think it would be more relevant to
5 talk about the nature of it.
6 MR. BUCKMAN: I think we are getting there, but I think one
7 question on the why would be important, particularly from this
8 witness, who is the provost, and responsible for hiring, because
9 it also goes to it's importance. It's at the heart of this
10 case, hiring.
11 THE HEARING OFFICER: Indeed.
12 I will allow one question, but then I think the testimony
13 really should focus on particularly hiring to adjunct faculty.
14 Okay?
15 So I will allow the one why question.
16 MR. BUCKMAN: Okay.
17 A. Could I have the question again.
18 MR. BUCKMAN: Would you read it back.
19 (Record read.)
20 A. Because the education that we deliver, the Spiritan Catholic
21 education that we deliver, is entrusted to our faculty. The
22 task of representing our values, and our priorities, is
23 something that our faculty convey to our students, and we must
24 be satisfied in employing a faculty member that she or he is
25 able to fulfill that responsibility.

1 Q. Who hires adjunct faculty?
2 A. Adjunct faculty are hired within the schools, or within the
3 McAnulty College, and usually specifically by department chairs.
4 Q. Are department chairs full-time faculty?
5 A. Yes, they are.
6 Q. Would department chairs have gone through the centralized
7 process you described for interviewing as to mission for
8 full-time faculty?
9 A. They would.
10 Q. Who is responsible for interviewing those candidates as to
11 mission?
12 A. That is going to be on a department by department basis.
13 Some departments use search committees, or small groups of
14 faculty to conduct those interviews, others the chairman may do
15 the process him or herself.
16 Q. My question was about the full-time faculty.
17 A. I'm sorry.
18 Q. Who interviews the full-time faculty about the mission?
19 MR. KOVALIK: Again, object to full-time faculty.
20 THE HEARING OFFICER: We can have some limited testimony
21 about that.
22 MR. BUCKMAN: Thank you.
23 A. For full-time faculty, that job is assigned to the associate
24 provost for academics.
25 Q. And what is her name?

1 A. Dr. Alex Gregory.
2 Q. When Dr. Gregory conducts an interview about mission, what
3 happens then?
4 A. She prepares a memorandum, which she returns to the
5 department that is going to hire the full-time faculty member,
6 and I get a copy of that memorandum.
7 Q. Who makes the ultimate hiring decision?
8 A. The ultimate decision is made by me.
9 Q. Okay. And in connection with that decision, do you review
10 the associate provost's report about the mission interview?
11 A. I certainly do.
12 Q. Okay.
13 Could you tell us, just briefly, very briefly, why --
14 turning back to adjunct faculty now specifically, why discretion
15 is left to academic chairs and departments?
16 A. The matter is primarily one of logistics, and that has to do
17 both with the volume, that is, the number of adjuncts who we
18 employ at any given time, and to the fact that the time frame
19 within which we have to make those decisions is often quite
20 short.
21 Adjuncts are frequently hired due to a resignation, or a
22 retirement, or a sudden need to add a section of a given course.
23 So, very often that decision has to be made rapidly, and is most
24 effectively made at the departmental level.
25 Q. Is that unique?

1 A. No, in my experience, that's the common way of doing things.
2 Q. Okay.
3 I would like to show you a document.
4 MR. BUCKMAN: One moment, please, Ms. Hearing Officer.
5 (Thereupon, Employer Exhibit No. 35 marked for identification.)
6 BY MR. BUCKMAN:
7 Q. I show you what's been marked for identification as
8 Employer 35.
9 Do you recognize that document?
10 A. Yes, I do.
11 Q. What is it?
12 A. This is announcement of positions, adjunct positions
13 available in one of the departments of our School of Education.
14 Q. Okay.
15 MR. BUCKMAN: I would move that into evidence now, Your
16 Honor.
17 MR. KOVALIK: I'm going to object, because this -- this case
18 has to do with McAnulty college, this is not McAnulty College,
19 this is School of Education.
20 THE HEARING OFFICER: That's true.
21 MR. BUCKMAN: That is true.
22 THE HEARING OFFICER: So we can put this in the rejected
23 admission file.
24 MR. BUCKMAN: Yes, ma'am. Can I ask, let me have a few
25 questions about it, Your Honor, about postings in general?

1 THE HEARING OFFICER: About postings?
2 MR. BUCKMAN: Yes.
3 MR. BUCKMAN:
4 Q. What role do job postings typically play in the adjunct
5 faculty hiring process?
6 A. Candidates for adjunct positions come to the university from
7 a number of different sources.
8 In certain cases, it is certainly true that the university
9 advertises the availability for such positions, both perhaps by
10 putting them into national publications, but much more probably,
11 simply by sending out notices to local Ph.D. departments, to see
12 whether there are recent graduates who might wish to apply.
13 Also, department chairs -- I was a department chair myself
14 for many years, department chairs receive unsolicited CV's
15 through the mail, with requests for employment.
16 So there are a number of different ways in which candidates
17 arise for these jobs.
18 Q. So are postings often used?
19 A. I think often is fair.
20 Q. Is it Duquesne's policy and practice to include a statement
21 of its Catholic and Spiritan identity in postings?
22 A. In postings, it is.
23 Q. Okay.
24 (Thereupon, Employer Exhibit No. 36 marked for identification.)
25 Q. I show you what's been marked for identification as

1 Employer 36.
2 Do you recognize this document, Provost Austin?
3 A. Yes, I do.
4 Q. What is it?
5 A. This is the application form used by our Office of Human
6 Resource Management for all applicants for jobs of all kinds in
7 the university.
8 Q. Would that exclude adjunct faculty?
9 A. Yes, it would.
10 Q. Adjunct faculty in the McAnulty College?
11 A. Yes, it would.
12 MR. BUCKMAN: I would move this into evidence now.
13 MR. KOVALIK: Any objection?
14 THE HEARING OFFICER: On objection.
15 THE HEARING OFFICER: It is received.
16 (Thereupon, Employer Exhibit No. 36 was received into evidence.)
17 Q. Would you direct your attention to the last page of the
18 document.
19 A. Yes.
20 Q. And, in the black box on the top, entitled "Duquesne
21 University Mission Statement," would you just review the
22 italicized text, please, to yourself.
23 A. Yes.
24 Q. Is that Duquesne University's mission statement?
25 A. Yes, it is.

1 Q. Would you please read for the record the bold text
2 immediately below it.
3 MR. KOVALIK: I am going to object, it says what it says, it
4 is in evidence.
5 MR. BUCKMAN: I just want to make it clear.
6 THE HEARING OFFICER: I agree, it is very clear what it
7 says.
8 MR. BUCKMAN: Just so the record is clear, there is going to
9 be a big stack of documents, if you just let him read into the
10 record one statement. I am not going to ask him to comment
11 about it.
12 THE HEARING OFFICER: Are you going to ask questions about
13 it?
14 MR. BUCKMAN: No, I just want the record to be clear, why we
15 are introducing this, and what it says.
16 THE HEARING OFFICER: He can read the one sentence.
17 MR. BUCKMAN: Great. Thank you.
18 A. "Please describe how you would support and contribute to the
19 University Mission."
20 Q. Thank you, Provost Austin.
21 What are your expectations regarding the role of the
22 university's mission statement in an adjunct faculty hire?
23 A. My expectation is that it would play --
24 MR. KOVALIK: I am going to object. Whatever his
25 expectation is, is irrelevant. It is not being held out to the

1 adjuncts themselves.
2 Or the public.
3 His own expectation's irrelevant.
4 THE HEARING OFFICER: Well, let me ask you a question. Are
5 you really asking him what the university's expectations are?
6 MR. BUCKMAN: He is the provost. Yes, ma'am.
7 THE HEARING OFFICER: I am going to permit that.
8 A. My expectation is that the mission statement, and the
9 mission of the university, will play a role in the hiring
10 process.
11 That candidates will be asked to remark on how they see
12 themselves relating to the mission of the university, and that a
13 decision about employment will be made in that context.
14 Q. Great.
15 Do you ever communicate that expectation to chairs?
16 A. Yes, I do.
17 Q. How so?
18 A. At the beginning of each year, we hold a workshop for those
19 departments that will be conducting searches during the coming
20 year, and departments are invited to send department chairs, or
21 anybody else from within the department who may be delegated the
22 responsibility for hiring.
23 Q. Okay.
24 I am going to show you another document. Just one moment.
25 THE HEARING OFFICER: Does this apply to adjunct faculty

1 that might be hired in the coming year?
2 THE WITNESS: Because adjunct faculty usually is not
3 predictable at that point in the year, the -- we assume that the
4 people that are attending those are for full-time openings
5 coming up.
6 THE HEARING OFFICER: Right.
7 THE WITNESS: Many of those, of course, will also be hiring
8 part-time faculty during the course of that year.
9 THE HEARING OFFICER: Thank you.
10 (Thereupon, Employer Exhibit No. 37 marked for identification.)
11 Q. Provost Austin, I show you what has been marked for
12 identification as Employer Exhibit 37, a document entitled
13 "Departmental Interviewing Guidelines University Mission
14 Statement."
15 Do you recognize that?
16 A. Yes, I do.
17 Q. What is it?
18 A. This is a document prepared by the Office of Human Resource
19 Management, and sent out by them to all departments that they
20 are notified that are conducting searches.
21 Q. Okay.
22 MR. BUCKMAN: I will move this into evidence as such.
23 MR. KILBERT: Adjunct faculty, there are no searches that
24 are being conducted; right?
25 THE HEARING OFFICER: Well, one of you is conducting this.

1 MR. KOVALIK: Yeah. Objection as to whether this applies to
2 adjuncts at all.
3 BY MR. BROWN:
4 Q. Is it your expectation, Provost Austin, that these
5 guidelines will apply to adjunct faculty?
6 A. Yes, it is.
7 THE HEARING OFFICER: It is your knowledge, that they are
8 applied to adjunct faculty?
9 THE WITNESS: No.
10 THE HEARING OFFICER: They are not?
11 THE WITNESS: It is not my knowledge, that they are.
12 THE HEARING OFFICER: Is it your knowledge that they are
13 not?
14 THE WITNESS: No.
15 MR. KOVALIK: Okay.
16 Unless we know whether it applies to adjuncts or not, I
17 don't know why this has any relevance.
18 MR. BUCKMAN: Right.
19 BY MR. BUCKMAN:
20 Q. So the training we were talking about, and expectations,
21 does this document relate to that?
22 A. This document relates both to that, and to the new chair
23 orientation process that takes place at the beginning of every
24 year. So, this is an extension into particular cases of those
25 two different chair training processes.

1 Q. Okay.
2 MR. KOVALIK: Again, we don't see the relevance of it.
3 Let's put it this way: It is too tenuous.
4 THE HEARING OFFICER: It is very tangential, so far.
5 MR. BUCKMAN: Well, I think we have testimony, Hearing
6 Officer Belinkoff, that it is the university's expectation that
7 chairs will hire per mission; that there is training; that these
8 are guidelines about how to hire for mission, and that when
9 departments are hiring faculty, they have these guidelines.
10 I mean --
11 THE HEARING OFFICER: But we also have testimony, I think,
12 that it isn't necessarily the department chair who hires the
13 adjuncts, so you need to tie it up a little better, at this
14 point.
15 Q. Do the department chairs hire the adjuncts?
16 A. The department chairs make the final decision.
17 THE HEARING OFFICER: In every -- in every case?
18 THE WITNESS: Yes.
19 MR. KOVALIK: But still, both the provost and President
20 Dougherty testified it is a very decentralized process. He
21 doesn't know if this is being applied to adjuncts or not, and if
22 he doesn't know, then what value is this?
23 Again, because it is so decentralized, the fact that a
24 chair, you know, may be trained in this, is irrelevant, if they
25 are not doing it, and he doesn't know if they are doing it or

1 not.
2 BY MR. BUCKMAN:
3 Q. Are department chairs trained to apply this?
4 A. They are trained in using mission as a factor in the hiring
5 of faculty members of all kinds.
6 Q. It is your expectation that chairs will do that?
7 A. Absolutely
8 Q. And this is guidance on how to do that?
9 A. Yes, it is.
10 Q. And they are the ones who hire adjunct faculty?
11 A. Yes, they are.
12 THE HEARING OFFICER: I am going to receive this.
13 (Thereupon, Employer Exhibit No. 37 was received into evidence.)
14 Q. What are your expectations, again, speaking as provost of
15 Duquesne University of the Holy Spirit, as to what a department
16 chair should do if there is a candidate who has expressed
17 hostilities to the religious Catholic Spiritan mission of the
18 Duquesne University of the Holy Spirit in his interview?
19 MR. KOVALIK: I am going to object to his expectations.
20 THE HEARING OFFICER: Yes.
21 MR. KOVALIK: He doesn't know what the process is with the
22 adjuncts.
23 THE HEARING OFFICER: I think that's correct. He has to
24 testify as to actual acts of actuality of what happened.
25 Q. So, in the training for department chairs, when they are

1 hiring for mission, are they instructed that if someone
2 expresses hostility to the mission, what they should do?
3 A. Yes. The university is not able to hire anybody who is
4 unable to support the mission of the institution.
5 Q. Okay. Okay.
6 Let's move on.
7 THE HEARING OFFICER: Does that last statement apply to the
8 adjunct professors as well?
9 THE WITNESS: Yes, it does.
10 (Thereupon, Employer Exhibit No. 38 marked for identification.)
11 Q. I show You what's been marked for identification as
12 Employer 38, a document entitled "Getting Started: Adjunct
13 Faculty at Duquesne."
14 Do you recognize this document?
15 A. Yes, I do.
16 Q. What is it.
17 A. It is a document posted on the website of the Center for
18 Teaching Excellence, which is an office that reports to academic
19 affairs, and which contains information that we believe adjunct
20 faculty should consult and consider as they move into their new
21 roles at the university.
22 Q. Okay. And is it currently on the website?
23 A. Yes, it is.
24 Q. Do you know for how long it has been on the website?
25 A. I know it has been on the website for at least 15 months.

1 Q. And, could you direct your attention just under the bold
2 text, "Getting Started: Adjunct Faculty at Duquesne," there is
3 a link, and it says, from -- and the last -- it says,
4 "adjunct-welcome," from Provost Timothy R. Austin.
5 Would you recognize the welcome that adjunct faculty would
6 receive if they clicked that link?
7 A. I would.
8 Q. Okay.
9 MR. BUCKMAN: I would -- just for the record, I would move
10 the welcome page at this time.
11 THE HEARING OFFICER: Any objection?
12 MR. KOVALIK: No objection.
13 THE HEARING OFFICER: Okay. That's received.
14 MR. KOVALIK: Did you mean Employer 38, you are moving?
15 MR. BUCKMAN: Yes.
16 MR. KOVALIK: And is that the welcome page, is that what you
17 are referring to?
18 MR. BUCKMAN: Yes, that is the welcome page.
19 MR. KOVALIK: Yes, no objection to 38.
20 THE HEARING OFFICER: It is received.
21 (Thereupon, Employer Exhibit No. 38 was received into evidence.)
22 (Thereupon, Employer Exhibit No. 39 marked for identification.)
23 MR. KOVALIK: Thank you.
24 BY MR. BUCKMAN:
25 Q. Okay. I show you what's been marked for identification as

1 Employer 39.
2 Do you recognize this document?
3 A. Yes, I do.
4 Q. Who is the author?
5 A. I am. At least of the material under the "Welcome from
6 Timothy R. Austin."
7 Q. Is this the page that an adjunct faculty member would land
8 on if they clicked the link "Welcome" on the prior exhibit?
9 A. That is correct.
10 Q. Would you read the second paragraph to yourself.
11 A. Yes.
12 Q. What are you telling adjunct faculty at Duquesne, about
13 their role in fostering moral and spiritual value?
14 MR. KOVALIK: Objection. Speaks for itself.
15 THE HEARING OFFICER: What does that question mean; your
16 question?
17 MR. BUCKMAN: Well, I am asking him to say the message he is
18 intending his audience to derive from this document.
19 THE HEARING OFFICER: Well, I think if somebody reads this,
20 they read what they read into it. I mean, his projection of
21 what they read, we can't -- is not relevant to this.
22 MR. BUCKMAN: Well, but he --
23 THE HEARING OFFICER: He wrote a statement, and that's what
24 people out there are reading.
25 MR. BUCKMAN: I suppose there is some truth to that, Hearing

1 Officer Belinkoff, but usually the writer of a document sends a
2 message, and perhaps an adjunct faculty would come and talk to
3 Provost Austin about this document.
4 THE HEARING OFFICER: That's a different question.
5 MR. BUCKMAN: Okay.
6 THE HEARING OFFICER: So I'm going to sustain that
7 objection.
8 Q. If an adjunct faculty member came to you and asked what you
9 meant by the second paragraph, what would you tell them?
10 A. I would explain to them, I would rehearse for them the main
11 factors of the university's mission, which is what I do in the
12 first half of that paragraph, and from there I go on to explain
13 that we expect each individual to bring his or her gifts as a
14 teacher, as a scholar, to the task of furthering that university
15 mission.
16 Q. Okay.
17 Can we return, if I could, to Employer 38, the welcome page.
18 Do you see that bold text that says, "First Things."
19 A. I do.
20 Q. And below that, "Our," then there's a link, "provides a
21 context and guide for all that we do at Duquesne."
22 Do you know what that link is?
23 A. It is a link to the mission identity page on our website.
24 Q. And does that page include a video, a YouTube video?
25 A. I believe it does.

1 Q. And does that YouTube video address Duquesne University's
2 mission?
3 A. It does.
4 Q. And would you recognize that video, if you saw it?
5 A. I would.
6 MR. BUCKMAN: Let's mark this.
7 (Thereupon, Employer Exhibit No. 40 marked for identification.)
8 MR. BUCKMAN: Employer 40.
9 MR. BUCKMAN: Hit the lights.
10 THE HEARING OFFICER: Before you start this video, can I ask
11 some questions. Do you know, or can anybody explain who made
12 this video?
13 Q. Do you know who made this video?
14 A. I believe that it was made by a company that the university
15 uses for production of such materials, under the direction of
16 the Office of Mission and Identity, and with the help of the
17 Public Affairs Center.
18 Q. And it is on the website?
19 A. Yes.
20 Q. It is on Duquesne University's website?
21 A. Yes, it is.
22 (Video plays.)
23 MR. BUCKMAN: I would offer the video at this time.
24 THE HEARING OFFICER: Any objection?
25 MR. KOVALIK: No objection.

1 THE HEARING OFFICER: Received.
2 (Thereupon, Employer Exhibit No. 40 was received into evidence.)
3 MR. BUCKMAN: Could I have Employer's 1.
4 BY MR. BUCKMAN:
5 Q. I show you what's been marked as Employer 1.
6 Would you just take a minute and review that.
7 And at the top of the second page there is an embedded
8 video; do you see that?
9 A. I do.
10 Q. Is that the video we just watched?
11 A. Yes, it is.
12 Q. And, so the record's clear, when you testified earlier that
13 if an adjunct faculty member clicked the link under "First
14 Things," they would land on the mission and identity web page?
15 A. Yes.
16 Q. Is this the page?
17 A. Yes.
18 Q. They would land on that page?
19 A. Correct.
20 Q. Okay.
21 I would like to turn now to a different topic if we could,
22 adjunct faculty orientation.
23 First, does the university provide orientation for new
24 adjunct faculty?
25 A. Yes, it does.

1 Q. Do you know when the university started providing that
2 orientation?
3 A. I don't know when it began.
4 Q. Was it going on when you arrived?
5 A. Yes, it was.
6 Q. How often is the orientation held?
7 A. It is offered once at the end of the summer, the beginning
8 of the full semester. Late August, early September.
9 Q. And would that orientation include a presentation devoted to
10 the university's mission statement?
11 A. Yes, it would.
12 Q. Who would typically give that presentation?
13 A. Either the vice president for mission and identity, or
14 someone that he designates.
15 Q. Okay. I am going to show you another document.
16 (Thereupon, Employer Exhibit No. 41 marked for identification.)
17 BY MR. BUCKMAN:
18 Q. I show you what has been marked for identification as
19 Employer Exhibit 41.
20 Do you recognize this document?
21 A. Yes, I do.
22 Q. What is it?
23 A. It is a letter that is sent to all incoming adjunct faculty
24 in the middle of the summer. This particular one went out on
25 July 1st, 2014.

1 Q. Who signed the letter?
2 A. I did.
3 Q. And, what does the letter accomplish?
4 MR. KOVALIK: Again, objection.
5 It speaks for itself.
6 MR. BUCKMAN: It is just really foundation. I just want him
7 to say what it is, and we are going to move on pretty quick
8 here.
9 THE HEARING OFFICER: Why don't you ask him what this is
10 about, as opposed to accomplish, we don't know what it
11 accomplishes.
12 Q. Okay. What is this letter about?
13 A. This letter is about the orientation session that is
14 upcoming, and invites and encourages adjunct faculty members to
15 attend.
16 Q. What happens if an adjunct faculty member is unable to
17 attend?
18 A. In the paragraph immediately below the italicized language
19 in the middle of the page, I notify them that we will happily
20 make the handouts available from the session, if they are unable
21 to be there. In addition I also point them towards the welcome
22 page, as we have called it, the CTE resources on teaching at
23 Duquesne.
24 Q. Is -- are these -- you testified about adjunct orientation
25 sessions. Are those orientation sessions mandatory?

1 A. They are not.
2 Q. Is attendance at the orientation session encouraged?
3 A. Yes, it is.
4 MR. BUCKMAN: I would move this exhibit at this time.
5 MR. KOVALIK: No objection.
6 THE HEARING OFFICER: It is received.
7 (Thereupon, Employer Exhibit No. 41 was received into evidence.)
8 Q. Okay. I would like to turn now to a new topic, the terms
9 and conditions of faculty employment, if we could.
10 As provost of Duquesne University of the Holy Spirit, are
11 you familiar with the terms and conditions of faculty
12 appointments at the university?
13 A. Yes, I am.
14 Q. Would you identify for us the key documents that set forth
15 those terms and conditions?
16 A. The key documents consist of the faculty handbook, which
17 contains the most detailed and thorough explanation of those
18 terms and conditions.
19 There is also language that addresses those terms and
20 conditions in the document called the executive resolutions, and
21 some coverage in some letters of appointment.
22 Q. All of those documents are part of the terms and conditions
23 of faculty appointment?
24 A. Yes, they are.
25 Q. Okay.

1 I would like to show you what's in as Employer Exhibit 9,
2 the faculty handbook.
3 I'm sorry, Petitioner's.
4 Do you recognize that?
5 A. Yes, I do.
6 Q. Let's take a moment and page through it.
7 Is that the faculty handbook that you just testified is part
8 of the terms and conditions of the faculty employment?
9 A. Yes, it is.
10 Q. And does that faculty handbook apply to adjunct faculty?
11 A. Yes, it does.
12 Q. In what respect does the faculty handbook apply to adjunct
13 faculty?
14 A. The faculty handbook is a document that applies to all
15 faculty of the university; it is the standard resource that
16 faculty members of all kinds should go to, if they want to
17 better understand the role of the university.
18 Q. Great. I apologize for -- could you please turn to page 2
19 of the handbook.
20 And I draw your attention to the introduction, under numeral
21 I. There we find the statement, "At the same time, we take
22 great pride in our Catholic character and ambience, and we
23 subscribe to the teachings of the Roman Catholic Church."
24 Who is "we"?
25 MR. KOVALIK: Objection. This speaks for itself.

1 THE HEARING OFFICER: I am going to allow that.
2 Q. Who is "we"?
3 A. "We" is the university community as a whole, and inasmuch as
4 this document is addressing the faculty, it is the faculty as a
5 whole.
6 Q. Okay.
7 Looking a bit down that page, it is bold font. Do you see
8 that bold font?
9 A. I assume you mean the second paragraph from the bottom of
10 the page?
11 Q. Yes.
12 A. Yes.
13 Q. "The Executive Resolutions and relevant sections of the
14 faculty handbook are part of the faculty member's agreement with
15 the University"?
16 A. I see that.
17 Q. And so, when it says, "relevant sections of the faculty
18 handbook," when it comes to adjuncts, what are the relevant
19 sections of the faculty handbook?
20 A. Those sections that do not explicitly refer to such matters
21 as tenure, or refer to full-time employment.
22 Q. Okay. Would you flip forward to page 10.
23 A. Yes.
24 Q. You see, where it says, "The essential role of the faculty
25 in the educational mission of Duquesne is implicit in the stated

1 goals and mission of the University. Without the faculty, the
2 University would be unable to prepare the students
3 intellectually, professionally, aesthetically, spiritually or
4 ethically for the ordinary responsibilities of life and for
5 leadership in a free, complex, and changing society."
6 Does that apply to adjunct faculty?
7 MR. KOVALIK: Again, I'm going to object, that this speaks
8 for itself.
9 THE HEARING OFFICER: I'm going to overrule that.
10 I think the point is that he is going through to make sure
11 it applies to adjunct faculty or not.
12 A. Yes, it does.
13 Q. Okay.
14 Would you flip forward to page 13.
15 A. I'm sorry, what number.
16 Q. I apologize, page 13.
17 The letter B., numeral 2, "Specific University
18 Responsibilities."
19 There it states, "Individual members of the faculty, by
20 contracting for employment with the University in annual letters
21 of agreement, shall be deemed to agree to pursue and uphold the
22 purpose of the University as stated in the Second Article of the
23 Charter and to comply with the University's Bylaws and Executive
24 Resolutions."
25 Does that section apply to adjuncts?

1 A. Yes, it does.
2 Q. Okay.
3 I would like to focus now on academic freedom, if I could,
4 which I believe is on page 12, Roman numeral II.
5 And under II-A, the number 2, "Freedom and Responsibility in
6 Teaching and Research.
7 "Academic freedom is essential to teaching. The teacher is
8 entitled to freedom in the classroom. The teacher should not,
9 however, interject opinions which have no relation to the
10 subject and should not impose personal views of the subject upon
11 the students. The teacher should respect the religious and
12 ecumenical orientation of the University."
13 Is that section applicable to adjuncts?
14 A. Yes, it is.
15 Q. And that's the university's definition of academic freedom?
16 A. That's correct.
17 MR. KOVALIK: Well, it is a portion, I would say, there is
18 more here, and --
19 MR. BUCKMAN: Yes. That's fair.
20 THE HEARING OFFICER: There is.
21 MR. BUCKMAN: That's fair.
22 BY MR. BUCKMAN:
23 Q. Yesterday, the counsel for the union elicited the 1940
24 statement of academic freedom by the AAUP.
25 A. Correct.

1 Q. Has the university adopted wholesale the AAUP policies on
2 academic freedom?
3 MR. KOVALIK: I am going to object, that the president has
4 already testified that they have?
5 THE HEARING OFFICER: Well, I think he testified that they
6 had accepted the 1940 --
7 MR. KOVALIK: The 1940, yes.
8 THE HEARING OFFICER: -- document. So you want to hone your
9 question a little bit more?
10 MR. BUCKMAN: Well, I think if we could go back to the
11 transcript, and I would be willing to go off the record to do
12 that, I think what the president testified to was that the
13 Middle States report said he -- the closing statement cited a
14 line from the Middle States report, that said, "We recognize the
15 principles of the 1940 statement."
16 And I actually think the president said that there were a
17 variety of AAUP documents, and I don't think he testified that
18 the university has adopted the AAUP 1940 statement wholesale,
19 and I would ask that question to the provost.
20 MR. KOVALIK: I think he did, so I guess we need to go off
21 the record.
22 THE HEARING OFFICER: Go off the record and see if we can
23 find that.
24 (Discussion off the record.)
25 THE HEARING OFFICER: On the record.

1 BY MR. PERL:
2 Q. Provost Austin, I understand that the university -- is it
3 your understanding that the university has adopted wholesale,
4 the 1940 AAUP principles in academic freedom?
5 MR. KOVALIK: I am just going to continue my objection, to
6 the extent that the documents speak for themselves, and what
7 they say is more relevant than what he is going to testify to
8 his understanding of it.
9 THE HEARING OFFICER: Well, I think the question is whether
10 the university's adopted that.
11 MR. KOVALIK: He asked him what his understanding is.
12 THE HEARING OFFICER: I am going to permit it. Go again.
13 A. It's my understanding that the university has not accepted
14 wholesale the AAUP statement -- the 1940 statement on academic
15 freedom.
16 And, that it's approach to the issue of academic freedom is
17 much like the approach articulated later in this section of the
18 faculty handbook, where it notes that AAUP documents are not
19 binding on the university, although certain principles are
20 certainly relied upon as guiding our thinking.
21 MR. KOVALIK: Again, I going to interject to the extent, you
22 know, the document speaks for itself, and any characterization
23 is not relevant.
24 THE HEARING OFFICER: Well, it's in, and I am going to
25 permit it, but I note your objection.

1 BY MR. BUCKMAN:
2 Q. I show you now Union 11.
3 A. Okay.
4 MR. BUCKMAN: And with permission, can I come over just to
5 point to the place in the record?
6 THE HEARING OFFICER: Yes.
7 MR. BUCKMAN: And for everyone else, so this is the 1940
8 statement, it starts on page 13, I am directing the provost's
9 attention to page 14.
10 BY MR. BUCKMAN:
11 Q. And under "Academic Freedom" in bold, No. 2, would you
12 please read that into the record, and I will ask you a question
13 about it, and connect it.
14 A. "Teachers are entitled to freedom in the classroom in
15 discussing their subject, but they should be careful not to
16 introduce into their teaching controversial matter which has no
17 relation to their subject. Limitations of academic freedom
18 because of religious or other aims of the institution should be
19 clearly stated in writing at the time of the appointment."
20 Q. That last sentence that you just read, "limitations of
21 academic freedom because of religious or other aims of the
22 institution should be clearly stated in writing at the time of
23 the appointment," how does that relate to the page 12 of the
24 faculty handbook, Roman numeral II, A2?
25 MR. KOVALIK: I'm going to object that the document speaks

1 for itself, the faculty handbook, as well as --
2 THE HEARING OFFICER: I think you can rephrase that
3 question, actually.
4 MR. BUCKMAN: In what respect?
5 THE HEARING OFFICER: The question is, does that line, that
6 you just read from the 1940 statement, is there a reference in
7 Duquesne's faculty handbook to that?
8 A. Yes, there is.
9 Q. And why is that in the faculty handbook?
10 A. That is in section Roman II, capital A2.
11 THE HEARING OFFICER: I have one question about that, about
12 this page 12.
13 When it says, "Academic freedom and tenure," are all of
14 these -- are No. 1 and No. 2, "Freedom and responsibility as a
15 citizen and in teaching and in research," does that relate only
16 to tenured positions?
17 THE WITNESS: No, it does not. This handbook applies to all
18 faculty members.
19 THE HEARING OFFICER: Okay.
20 Q. So, it's clear is this language, "The teacher" -- in II, 2A,
21 "The teacher should respect the religious and ecumenical
22 orientation of the university," one of the limitations
23 contemplated by the AAUP statement we just talked about?
24 MR. KOVALIK: I am going to object.
25 THE HEARING OFFICER: I am going to sustain that objection.

1 MR. BUCKMAN: Okay. I will move on.
2 BY MR. BROWN:
3 Q. What is the relationship at Duquesne University between the
4 religious orientation of the university and academic freedom?
5 A. The relation -- the relationship is that academic freedom is
6 an important and foundational value, as in all academic
7 institutions, but that that must be constrained by the faculty
8 member's ability to conform his or her behavior to the mission
9 orientation of the university.
10 Q. So, there is a limit on academic freedom, as related to
11 religious mission of the university.
12 MR. KOVALIK: I am just going to object, the faculty
13 handbook speaks for itself on the issue, as other documents.
14 His characterization is not relevant.
15 THE HEARING OFFICER: I think more relevant testimony is
16 actual instances, or examples.
17 MR. BUCKMAN: Well, I -- could I be heard on that objection?
18 THE HEARING OFFICER: Sure.
19 MR. BUCKMAN: Okay. This is the heart of the case, he is
20 the provost of the university, and the university has an
21 official document, and if there are specific instances, or
22 examples, his understanding of this document is entirely
23 relevant, and controls.
24 And I'm not sure what this speak for itself objection is.
25 Is the objection that this is so clear on its face, that we

1 MR. BUCKMAN: I believe it was: Is that an obligation of
2 adjunct faculty?
3 MR. KOVALIK: Same objection.
4 THE HEARING OFFICER: Sustained.
5 I think the point is, this is what's held out, these are
6 terms and conditions of employment, and I am referring to Union
7 Exhibit 9, and that's the -- where the inquiry has to go?
8 MR. BROWN: Can I ask a couple of questions about this, with
9 all -- if you don't mind?
10 THE HEARING OFFICER: Ask me a couple of questions?
11 MR. BROWN: No, no, no. Ask the witness.
12 THE HEARING OFFICER: Oh, even though it is Mr. Buckman's --
13 MR. BROWN: Yes. I am asking for permission. Otherwise, I
14 will just labor to do it.
15 THE HEARING OFFICER: Do you have any objection?
16 MR. KOVALIK: Only to the extent that they keep asking the
17 same question multiple times. How many ways are we going to try
18 to, you know, slice this apple.
19 THE HEARING OFFICER: Go ahead.
20 MR. BROWN: All right.
21 DIRECT EXAMINATION
22 BY MR. BROWN:
23 Q. Let me just ask you a couple of questions about this.
24 I want to direct your attention to the language, "The
25 teacher should respect the religious and ecumenical orientation

1 of the university."
2 If a teacher did not respect that provision, would that
3 teacher be breaching the terms of his agreement?
4 MR. KOVALIK: Again, same objection.
5 It's speculation. It's all if. I mean, does he know any --
6 you know, what does he or she know?
7 THE HEARING OFFICER: I am going to sustain it.
8 The inquiry is, have there been situations, are there
9 examples of this.
10 But, these are the terms, this is what's held out.
11 It says, pretty clearly, I think to me, what are the terms
12 of the teacher's responsibilities.
13 MR. BROWN: All right.
14 Q. If a teacher violated those responsibilities, what, if
15 anything, would you do?
16 MR. KOVALIK: Same objection.
17 THE HEARING OFFICER: No, that's purposeful, go ahead.
18 MR. KOVALIK: Well, why if, it is speculative. Why doesn't
19 he ask about --
20 THE HEARING OFFICER: Because he is the provost, and he
21 knows what will happen if a teacher violates one of the terms
22 and conditions of employment.
23 Q. Please answer.
24 MR. KOVALIK: Standing objection.
25 A. An initial step would be to summon that faculty member, with

1 their department chair, and presumably their dean, for a
2 discussion of the circumstances, and then an active
3 understanding of the full context.
4 If I determine that this was an egregious violation of this
5 particular provision, then an adjunct would not being rehired,
6 and tenured faculty member might have their tenure revoked.
7 MR. BROWN: Very good. Thank you.
8 MR. BUCKMAN: If we could -- I think we can move on to a new
9 document.
10 (Thereupon, Employer Exhibit No. 42 marked for identification.)
11 DIRECT EXAMINATION
12 BY MR. BUCKMAN:
13 Q. Do you recognize that document?
14 A. Yes, I do.
15 Q. What is it?
16 A. It is No. 44 in a series of documents called TAPS, or
17 administrative policies of the university, which apply to all
18 employees.
19 Q. And, what does TAP 44 -- is TAP 44 applicable to adjunct
20 faculty?
21 A. Yes, it is applicable to all employees.
22 Q. Okay.
23 And, the last sentence of the first paragraph reads,
24 "Research proposals must be consistent with the goals and
25 objectives or the university"?

1 A. That's correct.
2 Q. And is that applicable to adjunct faculty?
3 A. Yes, it is.
4 MR. BUCKMAN: I would move the exhibit at this time?
5 THE HEARING OFFICER: Any objection?
6 MR. KOVALIK: no objection.
7 THE HEARING OFFICER: It is received.
8 (Thereupon, Employer Exhibit No. 42 was received into evidence.)
9 Q. Let me show you Union Exhibit 6.
10 Do you recognize that document?
11 A. Yes, I do.
12 Q. And what is that document?
13 A. This is a copy of the executive resolutions of the board of
14 directors of the university.
15 Q. And I think you testified earlier that executive resolutions
16 are part of the terms and conditions of adjunct faculty
17 employment?
18 A. Yes, I did.
19 Q. Would you turn to Executive Resolution 5. I don't think the
20 pages are numbered.
21 Yes.
22 Q. Okay. Directing your attention to 5B, you see the
23 statement, "Academic freedom is essential teaching. The teacher
24 is entitled to full freedom in the classroom, subject to the
25 principles and values expressed in the Duquesne University

1 Mission Statement. The teacher should not interject matter
2 which has no relation to the subject and should not attempt to
3 impose personal views of the subject upon the students. The
4 teacher should reflect the religious and ecumenical orientation
5 of the University."
6 Do you see that?
7 A. Yes.
8 Q. Is that applicable to adjunct faculty?
9 A. Yes, it is.
10 MR. BUCKMAN: If you will give us one moment, I think we are
11 done.
12 THE HEARING OFFICER: Sure.
13 Q. I think you testified that when we were talking about the
14 application for employment, it was a statement that requested
15 how an adjunct faculty member would support the mission
16 statement, those may not be the exact words, do you recall that?
17 A. I do.
18 Q. Does the faculty handbook contain a statement of the
19 university's mission?
20 A. Yes, it does.
21 Q. Is that the mission that's at issue?
22 A. Yes.
23 MR. BUCKMAN: Nothing further.
24 THE HEARING OFFICER: Okay. Let's go off the record.
25 (Discussion off the record.)

1 (Thereupon, at 12:57 p.m., a luncheon recess was taken to
2 1:59 p.m.)
3 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N
4 THE HEARING OFFICER: All right. On the record.
5 Mr. Kovalik, do you have cross examination?
6 MR. KOVALIK: I do.
7 THE HEARING OFFICER: Go ahead.
8 CROSS EXAMINATION
9 BY MR. KOVALIK:
10 Q. Good afternoon, Dr. Austin. How are you.
11 A. I'm fine.
12 Q. So my first question, I understand that you are
13 Episcopalian; is that correct?
14 A. That's true.
15 Q. And so, we have heard a little bit about this, but
16 essentially there are no requirements that an individual be
17 Roman Catholic to work at Duquesne; is that correct?
18 A. That is correct.
19 Q. Okay.
20 Have you ever seen a -- one of the appointment
21 letters/contracts for adjuncts at McAnulty College?
22 A. No.
23 Q. You testified a bit about some of the postings, public
24 postings for adjuncts.
25 A. Yes.

1 (Thereupon, Union Exhibit No. 23 marked for identification.)
2 Q. Okay. I wanted to show you what's marked as Union
3 Exhibit 23, which, by the way, is a document we received from
4 Duquesne in response to our request for such postings. And
5 first of all, on -- I want to note, Dr. Austin, that we
6 requested all such postings for part-time faculty at McAnulty
7 College going back to 2012, and in response Duquesne gave us
8 postings for a lot of different faculty, but literally, this,
9 only one posting since 2012, public posting, for an adjunct at
10 McAnulty College.
11 Does that lack of posting, does that jibe with your
12 knowledge of how adjuncts are recruited; that is, largely not
13 through postings?
14 A. I indicated that postings were one possible source of
15 candidates for adjunct positions.
16 Q. Okay.
17 Would you say that this is a fair example of a posting for
18 an adjunct at McAnulty College, Union Exhibit 23?
19 A. I have no idea.
20 Q. Do you have anything to do with the postings?
21 A. No, I don't.
22 Q. Okay.
23 You did testify about the postings, though?
24 A. I did.
25 Q. But you don't have any knowledge about them, or their

1 contents?
2 A. I testified that postings are a method by which candidates
3 are recruited for part-time positions.
4 Q. Okay.
5 MR. KOVALIK: Well, I'd still like to move for admission of
6 Union Exhibit 23. We did receive it from Duquesne.
7 THE HEARING OFFICER: Any objection?
8 MR. BUCKMAN: At the top I see it's 5 of 6. Is this -- my
9 question is, is this the entire posting?
10 MR. KOVALIK: Yes. That we received, anyway.
11 MR. BUCKMAN: Okay. Then no objection.
12 THE HEARING OFFICER: It is received.
13 (Thereupon, Union Exhibit No. 23 was received into evidence.)
14 MR. KOVALIK: By the way, the marking at the top, let me
15 just explain that, if I might, we left our copy back there, they
16 had to be faxed here, and we had them fax multiple copies, so we
17 don't have to make our own copies.
18 THE HEARING OFFICER: That's the 5 of 6.
19 MR. KOVALIK: That's what the 5 means, yes.
20 Q. I had a question. I saw somewhere in the documents that, in
21 fact, it is the policy of -- in terms of hiring, not to ask what
22 the applicant's religion is; is that correct?
23 A. I believe that's federally prohibited.
24 Q. Okay. So that would be your policy as well?
25 MR. BUCKMAN: Well --

1 MR. KOVALIK: Please let him answer the question.
2 MR. BROWN: Well, he has a right to object.
3 MR. KOVALIK: Him. No, you have the right to object.
4 THE HEARING OFFICER: No, no, no, he is referring to
5 Mr. Buckman.
6 MR. KOVALIK: No, but I'm asking a question, and --
7 THE HEARING OFFICER: Well, he hasn't objected yet.
8 MR. KOVALIK: All right.
9 MR. BUCKMAN: Well, I would object, we are talking about a
10 document, I would say put it in front of him.
11 MR. KOVALIK: He has already answered that it's a federal
12 requirement.
13 Q. And you follow that federal requirement?
14 MR. KOVALIK: I think I can ask him that.
15 THE HEARING OFFICER: I don't think there is a problem here,
16 just ask your question.
17 Q. And you follow that federal requirement?
18 A. I believe so.
19 Q. Okay.
20 Fine. Okay.
21 I am going to show you what is marked as Employer
22 Exhibit 36. Unless you have it front of you, 36 is the faculty
23 and staff employment application.
24 Yes, excellent.
25 Have you ever seen a completed application by an adjunct, on

1 this document?
2 A. No, I have not.
3 Q. Let me just show you some documents.
4 (Thereupon, Union Exhibit No. 24 marked for identification.)
5 BY MR. KOVALIK:
6 Q. This is Union 24. Do you recognize this document, Union
7 Exhibit 24?
8 It says, "Student Evaluation" at the top.
9 A. I have not seen this uncompleted survey instrument before.
10 Q. Okay.
11 Have you seen a completed version?
12 A. No.
13 Q. All right.
14 Okay. Are you familiar at all with the student surveys used
15 for adjuncts, to assess adjuncts?
16 A. Yes.
17 Q. Does this look like -- does this look like one that you are
18 familiar with?
19 MR. BUCKMAN: Objection, asked and answered. He says he is
20 not familiar with this document.
21 MR. KOVALIK: Okay. Forget about the document.
22 Q. How about the questions therein, does that seem to jibe with
23 the types of questions that are in student evaluations?
24 A. Yes.
25 Q. Okay. Fair enough.

1 allowed to ask.
2 MR. KOVALIK: No, I don't think so.
3 THE HEARING OFFICER: I think Mr. Buckman is right, and I'm
4 going to sustain his objection.
5 MR. KOVALIK: Okay.
6 Q. I want you to take a look at Employer Exhibit 37, please.
7 A. That is this one?
8 Q. Yes. Would you please look at the first page, the second
9 sentence on the first paragraph.
10 A. The first page.
11 Q. Yes, first page.
12 A. Yes.
13 Q. It talks about a search process; is that right?
14 A. It does.
15 Q. So this focuses on search processes; is that fair; for
16 faculty?
17 A. That's right.
18 Q. Is it safe to say that generally there are not search
19 processes for the adjuncts, in the sense that that is used?
20 A. No, I believe this covers adjunct faculty.
21 Q. Okay. All right.
22 Okay. I am going to try this another way.
23 Would you have any concerns, as the provost, if you learned,
24 if a Muslim student came to you and complained that an adjunct
25 faculty was purposefully disrespectful to the Islamic faith in

1 class?
2 MR. BUCKMAN: I am going to object to that, because I think
3 I asked a very similar question, and the objection was
4 sustained, when it came to answering the question.
5 MR. KOVALIK: I think he was allowed to answer some of
6 those. We did object to some as speculative, and I think a
7 couple were allowed in.
8 THE HEARING OFFICER: I'm going to sustain it, and the issue
9 is not speculation only, but actually, according to one of the
10 arguments that you made, that the issue is how does the
11 university holds itself out in a number of different respects,
12 and that the documents are there showing how the university
13 holds itself out.
14 So that's where we are going to leave it.
15 MR. KOVALIK: Okay. Fair enough.
16 (Thereupon, Union Exhibit No. 26 marked for identification.)
17 BY MR. KOVALIK:
18 Q. I am going to somehow what is marked as Union Exhibit 26.
19 Do you recognize this document?
20 A. No.
21 Q. Can you tell from what it is -- you know, from reading it,
22 what the document is?
23 And, by the way, we did receive this from Duquesne in
24 response to our request for course descriptions for adjunct
25 faculty.

1 I do a lot of the work particularly related to regulatory
2 environment, related to academic affairs, on behalf of the
3 provost.
4 Q. Great, thanks.
5 MR. KOVALIK: Do you ever sleep?
6 THE WITNESS: If you only knew.
7 MR. KOVALIK: That is quite a job description.
8 MR. BUCKMAN: Wow.
9 BY MR. BUCKMAN:
10 Q. Have you held any other positions at Duquesne?
11 A. No.
12 Q. Prior employer?
13 A. Was La Roche College.
14 Q. And what was your position there?
15 A. I was dean of the professional school, and also interim dean
16 of the school for graduate programs.
17 Q. Okay.
18 (Thereupon, Employer Exhibit No. 43 marked for identification.)
19 Q. I show you what's been marked for identification as
20 Employer 43.
21 Do you recognize that document?
22 A. I recognize that it appears to be from our e-mail faculty
23 distribution list.
24 Q. And, when you say the distribution list, and faculty
25 distribution list, would that include adjunct faculty?

1 A. Yes, I believe so.
2 Q. Is there a Document attached to this e-mail message?
3 A. Yes.
4 Q. And would you describe the attachment?
5 A. So the attachment appears to be a letter from the American
6 Association of University Professors, the associate secretary
7 and director for the Department of Academic Freedom, Tenure and
8 Governance, and it's addressed to one our of professors,
9 Professor Mark Schneirov.
10 Q. And, does it address the faculty handbook?
11 A. In the first sentence it says that it does.
12 MR. BUCKMAN: I would move at this time for the admission of
13 this document.
14 MR. KOVALIK: One moment, please.
15 Off the regard.
16 THE HEARING OFFICER: Off the record.
17 (Discussion off the record.)
18 THE HEARING OFFICER: On the record.
19 MR. KOVALIK: I guess, I don't know what the relevance
20 is. I don't know who this Gregory Scholtz is.
21 He doesn't work for Duquesne; is that right?
22 MR. BUCKMAN: Well --
23 THE HEARING OFFICER: That's the author of the letter.
24 MR. BUCKMAN: And this is on AAUP letterhead.
25 THE HEARING OFFICER: So, are you objecting to the document?

1 assessment at Duquesne University?
2 A. For university wide assessment processes, yes.
3 Q. What are your duties with respect to assessment.
4 A. Basically to assure that we have an assessment process for
5 all of our academic programs, to demonstrate student learning
6 outcomes, and then the other piece of that is institutional
7 effectiveness, and those are the major two big pieces of
8 assessment that we are required to document and demonstrate to
9 Middle States as our regional accreditor.
10 Q. Okay.
11 (Thereupon, Employer Exhibit No. 46 marked for identification.)
12 Q. Do you recognize this document?
13 A. I do.
14 Q. What is it?
15 A. It called the dimensions of a Duquesne education.
16 Q. Do you know when it came to be?
17 A. The initial part of it, which is the academic comments, were
18 developed sometime around 2005 and 2006 in preparation for the
19 Middle states self-study.
20 Our last self-study occurred with a site visit in the spring
21 of 2008.
22 Q. Is this document -- what is the title of this document?
23 A. "The Dimensions of a Duquesne Education."
24 Q. Is this document currently in use?
25 A. It is.

1 Q. Is it on the website?
2 A. It is.
3 Q. What is its purpose?
4 A. Its purpose is to provide a means by which the mission, and
5 the curriculum and student learning outcomes, are framed for
6 assessment throughout all academic programs of the university,
7 and then also at this point student life has adopted it, and so
8 I actually wrote the introductory paragraph to this brochure,
9 but we talk about holistic student development, so it is both
10 curricular, and co-curricular activities.
11 Q. I think you testified just now, but so the record is clear,
12 that this is relevant to all Duquesne academic programs?
13 A. All active programs, graduate and undergraduate, use the
14 Duquesne dimensions to link their curriculum and student
15 learning outcomes with the mission of the university.
16 Q. How does that relate to assessment?
17 A. We have to identify generally what we ask for, and this is
18 kind of typically in terms of nationally how assessment is done,
19 we ask for four to six student learning outcomes for each of our
20 programs, and then we -- what we do is ask that each program
21 link its student learning outcomes through the dimensions to the
22 mission, because one thing that Middle States wants, and
23 professional accreditors want, is to be sure what you are doing,
24 all of your activities are linked to your mission, and to your
25 identity, and to your strategic plan.

1 And so this is the means by which we do that.
2 Q. Okay.
3 MR. BUCKMAN: I would move Employer's 46 at this time.
4 MR. KOVALIK: No objection.
5 THE HEARING OFFICER: It is received.
6 (Thereupon, Employer Exhibit No. 46 was received into evidence.)
7 MR. BUCKMAN: Thank you.
8 Q. Which category of employees, at a university, are
9 primarily -- at Duquesne University, are primarily responsible
10 for delivering academic programs?
11 A. Faculty.
12 Q. Can you direct your attention to the document, please, to
13 the academic component row, and the "Ethical, Moral, and
14 Spiritual Development."
15 Before I read this, you just said faculty, would that
16 include adjunct faculty?
17 A. Yes.
18 Q. What is the first bullet; what does that say?
19 A. "Recognize the importance of faith and spiritual values."
20 Q. Who is responsible for achieving that bullet?
21 A. In our academic programs?
22 Q. Yes.
23 A. It is the faculty.
24 Q. That would include the adjunct faculty?
25 A. Yes.

1 Q. What is the second bullet?
2 A. "Apply ethical, moral and spiritual principles in making
3 decisions and interacting with others."
4 Q. And who is responsible for achieving that bullet?
5 A. The faculty.
6 Q. Looking at all of these bullets in "Academic Components," I
7 would ask again, who is responsible for achieving those?
8 A. All of these academic components are achieved through
9 student learning outcomes, which are established and delivered
10 by the faculty in classes that we offer.
11 Q. Okay. I would like to focus for a minute on the last row of
12 this document, "Leadership and Service."
13 And again, the "Academic Components" column, would you take
14 a minute and review those bullets to yourself, and tell me when
15 you are done.
16 A. I'm done.
17 Q. Let's go to the relationship between the university's focus
18 on service, and its religious mission.
19 A. Yes.
20 Q. Would you describe?
21 A. The mission has five pillars, and one of those pillars is
22 service, because the initial impetus for establishing the
23 university was based on service to the poor.
24 And, so the founders, as Spiritan, as the Catholic order of
25 priests, were founded to serve, and so service is a distinctive

1 characteristic at Duquesne University.
2 Q. And when you say it is distinctive, what makes it
3 distinctive, service at Duquesne?
4 A. Well, they are --
5 MR. KOVALIK: I am going to object. I mean, the document
6 speaks for itself. I don't -- it seems to be going to a legal
7 conclusion.
8 THE HEARING OFFICER: Well, we have had an awful lot of
9 testimony about that kind of issue. Is there something special
10 that you are getting at here?
11 MR. BUCKMAN: Well, I think it is just a little meat on the
12 bones of what's important about service, and the university's
13 approach it to, but if --
14 THE HEARING OFFICER: Well, you can ask that, what's
15 important about service, and the university's approach.
16 Q. What's important about service, and the university's
17 approach to service?
18 A. Well, many university's have service, or service learning.
19 But, I think what's important to us about it, is that we are
20 one of the few universities in the nation, particularly Catholic
21 universities, that actually have a requirement that our students
22 fulfill not just volunteerism, which is the commonly understood
23 term that service means, but also service in terms of
24 understanding systemic issues of society.
25 And so service learning, which we are now transitioning to

1 the term community engaged teaching and learning, is really
2 about helping our students to understand systemic issues of
3 society, and equipping them to begin to understand how they can
4 effect positive change in those issues.
5 Q. Okay. I would like to turn now to another topic, the
6 academic core.
7 Are you familiar with the term "academic core"?
8 A. I am.
9 Q. Briefly, what is the academic core?
10 A. Well, at many universities there is something called a
11 general education curriculum, that is required of all students.
12 At Catholic universities, such as ours, or often religious
13 universities, we use the time "core curriculum," because the way
14 our core curriculum is designed, in other words, those courses
15 that are commonly completed by all students at the undergraduate
16 level, are central to our identity as a Catholic university.
17 Q. Who is required to complete the academic core?
18 A. All Undergraduates.
19 In fact, we even include our distance education, adult
20 students who are studying on-line.
21 Q. Who is responsible for teaching the academic core?
22 A. The faculty, including full and adjunct faculty.
23 Q. What was your specific role, in the development of the
24 academic core?
25 A. It actually occurred just prior to my beginning in my

1 position, but since I supervise the director of the core
2 curriculum, who is a faculty member that has a part-time
3 appointment to do that, I have been there for primarily most of
4 the implementation phase of the core curriculum.
5 Q. Let's turn to a document.
6 (Thereupon, Employer Exhibit No. 47 marked for identification.)
7 BY MR. BUCKMAN:
8 Q. I show you what's been marked as Employer Exhibit 47. It is
9 titled "Core Curriculum."
10 Do you recognize this document?
11 A. I do.
12 Q. What is it?
13 A. I believe it's a printout of the web page of the core
14 curriculum, describing it on our university website.
15 Q. And you say you believe it is, do you see Duquesne's website
16 address in the footer?
17 A. I do.
18 Q. Is this currently on the Duquesne website?
19 A. It is.
20 MR. BUCKMAN: I move this Employer's 47 into evidence at
21 this time?
22 THE HEARING OFFICER: Any objection?
23 MR. KOVALIK: No objection.
24 THE HEARING OFFICER: Received.
25 (Thereupon, Employer Exhibit No. 47 was received into evidence.)

1 Q. Directing your attention to the "Guiding Vision" paragraph,
2 would you please review that?
3 A. Okay.
4 Q. What is the relationship between the university's religious
5 mission and its academic core curriculum?
6 MR. KOVALIK: I am just going to object to this speaks for
7 itself, and we don't object to it being in evidence.
8 Again, I just think this is also becoming quite cumulative,
9 and exhausting to me.
10 THE HEARING OFFICER: Well, this is the best evidence, I
11 think.
12 MR. BUCKMAN: I will move along.
13 THE HEARING OFFICER: All right. Thank you.
14 (Thereupon, Employer Exhibit No. 48 marked for identification.)
15 MR. KOVALIK: I think this is actually a union exhibit as
16 well.
17 MR. BUCKMAN: I don't want to confuse it. Was it moved?
18 MR. KILBERT: This is union 14.
19 MR. KOVALIK: This is already 14.
20 MR. BUCKMAN: If I can have one second off the record.
21 THE HEARING OFFICER: Sure. Off the record.
22 (Discussion off the record.)
23 THE HEARING OFFICER: On the record.
24 BY MR. BUCKMAN:
25 Q. I show you Union Exhibit 14.

1 Do you recognize that document?
2 A. I do.
3 Q. What is it?
4 A. I believe it's the -- what we call the founding document of
5 the core curriculum, and it's posted on our website.
6 Q. Who prepared -- if you know, who prepared that core
7 curriculum document?
8 A. There was a faculty committee who worked on it, and it had a
9 person who was a faculty member who chaired it, and I think it
10 had representation from each of the schools.
11 Q. And is it still operative?
12 A. It's operative in the sense that now we have gone through
13 the implementation phase, and so there are actually courses that
14 make these requirements, for instance in the theme area courses,
15 people still propose new courses, or things that might be of
16 timely interest, and so in that sense it's always sort of a
17 living document, things kind of move in and out of the core
18 curriculum in certain areas.
19 Q. And it's on the website today?
20 A. The core curriculum, or this document?
21 Q. This document?
22 A. This document, I believe is on the website today.
23 Q. Just a few, two questions.
24 How many credits in faith and reason are required?
25 A. Faith and reason is a theme area, and it's -- that

1 particular title, we require three hours in that area.
2 Q. What about theology?
3 A. We require three in theology, and also three in ethics,
4 which can be taught either as philosophical ethics, or
5 theological ethics.
6 Q. And, are faculty who teach academic core -- well, first of
7 all, there are learning goals and outcomes in this document?
8 A. Yes, there are.
9 Q. Are faculty, who teach in academic core classes expected to
10 inculcate or achieve these learning goals?
11 A. Yes, they are.
12 Q. Would that include natural science faculty?
13 A. Yes.
14 Q. What role do adjunct faculty have in teaching core courses?
15 A. Well, over the past five years, the average number of
16 student credit hours taught in the core by adjunct faculty is
17 44 percent, ranging from a high of 49 percent, to a low of about
18 43 percent.
19 And so, it's a critically important role for adjunct faculty
20 to teach in our core.
21 Q. All right. Thank you.
22 Turning now to another topic, which is the accreditation.
23 You testified you are an accreditation liaison officer.
24 What is that?
25 A. Well, formally, Middle States requires every institution to

1 BY MR. KOVALIK:
2 Q. I just have one last question.
3 We have heard a lot of testimony over the last couple of
4 days about Duquesne, and part of the mission being ecumenical.
5 A. Uh-huh.
6 Q. Is that correct?
7 A. Yes.
8 Q. And, you know, for the lay person like myself, what is the
9 best -- how would you describe what ecumenical means?
10 A. It means that I, as someone who is not --
11 MR. BUCKMAN: I would object.
12 THE WITNESS: Okay.
13 MR. BUCKMAN: I think it has been asked and answered. I
14 think we have had documents on it, all of which speak for
15 themselves.
16 MR. KOVALIK: I have one question, Your Honor, and that's
17 the end of our questions of this witness.
18 THE HEARING OFFICER: I'm going to permit it. I am actually
19 not clear that we had a definition of ecumenical, but we are
20 going to have it now.
21 Thank you.
22 MR. KOVALIK: Okay.
23 Q. Then you are on.
24 A. It means that someone like myself, who is not Catholic, and
25 who practices a different faith, that I feel that I can be

1 welcomed there, and respected, because part of what I -- I talk
2 to all prospective full-time faculty candidates, and I talk
3 about ecumenism and inclusion, and by that I mean that we
4 believe every person is created by God and, therefore, is worthy
5 of being treated with dignity, which means that a homeless
6 person in the city is as worthy of being treated to dignity as
7 is the president of the university.
8 And so I believe it is a welcoming attitude for those who
9 have no faith, and those who practice other faith, and a respect
10 for those traditions within the context of what it means to be a
11 Spiritan Catholic university.
12 Q. I like that definition, I embrace it. Honestly, I do. It's
13 good.
14 Do you mind if I just add -- I have just one last question.
15 Do you mind if I ask you what your religious faith is?
16 A. I am Presbyterian.
17 MR. KOVALIK: That is all we have. Thank you.
18 THE WITNESS: Thank you.
19 THE HEARING OFFICER: Any redirect?
20 MR. BUCKMAN: None. Thank you.
21 THE HEARING OFFICER: Thank you, very much.
22 MR. KOVALIK: Enjoy your day, you are free to do your
23 hundred tasks.
24 MR. KOVALIK: Get some rest. All right.
25 (Witness excused.)

1 Q. What is it?
2 A. It is a document from the website from the Center for
3 Spiritan Studies at Duquesne University.
4 Q. Okay. I would like to direct your attention to page 2, the
5 second paragraph. It says, "Today we realize that the charism
6 of a religious congregation is not confined to its professed
7 members but is shared by lay people, single and married, who
8 feel drawn by the same vision, and who are working throughout
9 the world."
10 A couple of questions about that.
11 First, what is charism?
12 A. A charism is a particular gift. In the religious context,
13 and from the scriptures, it can be a gift of teaching, a gift of
14 administration, a gift of preaching.
15 As applied to an institution, a religious order holds a
16 particular charism for the church and for the world.
17 Q. What is a -- it says Spiritan here -- or what is a Spiritan
18 charism, let me say that. What is a Spiritan charism?
19 A. The charism of the Spiritan congregation is determined by
20 its founders, and it is, according to our founders, to preach
21 the Gospel to those who have never heard it, or to those who
22 have barely heard it, with particular attention in our recent
23 documents to young people, and to our educational works.
24 Q. Okay.
25 If I could direct your attention to the top of page 3, it

1 one.
2 THE HEARING OFFICER: Okay. I will allow one question.
3 MR. KOVALIK: And I will continue my objection, but you may
4 go ahead, with that caveat.
5 A. I would say the religious mission of the university is
6 vitally important, its mission as Catholic and Spiritan, to me,
7 and to members of the corporation.
8 Q. Okay.
9 I would like to turn now, away from -- you said, you
10 testified, you talked about your time as mission and identity
11 vice president, you testified you served in that role from 2009
12 to 2013?
13 A. Yes.
14 Q. Could you briefly say, briefly, the job of the vice
15 president for mission and identity?
16 A. In essence, it is to foster and promote programs related to
17 the Catholic and Spiritan mission of the university.
18 Q. Okay.
19 Just for economy, did you hear the president testify about a
20 document sent to the bishop, that summarized the way the
21 university views Ex Corde?
22 A. Yes.
23 Q. And you were the author of that?
24 A. Yes, I was.
25 Q. Would that document summarize some of the ways in which you

1 Employer 53.
2 This is a entitled "Duquesne University Mission Statement"
3 at the top, it is a two-sided document.
4 Do you recognize this document?
5 A. Yes, I do.
6 Q. What is it?
7 A. It's the Duquesne University mission statement.
8 Q. And, what about the reverse page?
9 A. It is entitled "Faculty and Staff Expectations."
10 Q. Okay. Is this a copy of the wallet card you mentioned, you
11 testified about a few moments ago?
12 A. Yes, it is.
13 MR. BUCKMAN: I would move Employer's 53 at this time.
14 MR. KOVALIK: We don't have any objections. I will have
15 some questions about it, but we don't have any objections.
16 THE HEARING OFFICER: Received.
17 (Thereupon, Employer Exhibit No. 53 was received into evidence.)
18 Q. Okay. If I could direct your attention to the back of the
19 card, this is a pocket sized wallet card, is that the idea?
20 A. Uh-huh.
21 Q. Why would you distribute a card?
22 MR. KOVALIK: I'm going to object. We have -- you know, we
23 are not objecting to it being admitted, I just think, you know,
24 we are getting far afield here.
25 MR. BUCKMAN: I will withdraw.

1 THE HEARING OFFICER: Thank you.
2 Q. Do you see faculty and staff expectations 8, "Be respectful
3 of the Catholic tradition on which our university is founded"?
4 A. Yes, I do.
5 (Thereupon, Employer Exhibit No. 54 marked for identification.)
6 BY MR. BUCKMAN:
7 Q. I show you what is marked for identification as Employer
8 Exhibit No. 54, it is a copy of a document titled "The Spirit
9 Who Gives Life, Duquesne University."
10 Do you recognize this document?
11 A. I do.
12 Q. What is it?
13 A. It is a document produced by the Office of Mission and
14 Identity.
15 Q. And, that was the office that you were in charge of, when
16 you were vice president?
17 A. Yes. Yes it is.
18 Q. To whom distributed, and when?
19 A. I distributed it to faculty, staff, students, everyone to
20 whom I provided an orientation.
21 Q. If I could direct your attention to the section entitled
22 "Academic Excellence."
23 Do you see the fourth bullet, "Outstanding teacher-scholars
24 and scientists are hired, rewarded and retained to support the
25 mutual enrichment of faith and reason"?

1 Q. My question would be, if I -- if I -- give you hypothetical,
2 if I happened to be a faculty instructor at Duquesne, who is
3 Muslim, you know, would you expect my to spread the Gospel of
4 Jesus Christ to people?
5 A. No, I wouldn't.
6 Q. And, similarly, if I am Jewish, you would not expect that in
7 Jewish faculty?
8 A. That's correct.
9 Q. Would you view the role of Duquesne, or even of yourself,
10 your role as trying to convert students, like say Muslim
11 students to Catholicism?
12 MR. BUCKMAN: I am going to object to that.
13 MR. KOVALIK: Well, it goes to evangelization.
14 Q. Is that, would you --
15 THE HEARING OFFICER: Well, let's hear the objection.
16 MR. BUCKMAN: Well, I think the objection is that we have
17 been very limited in asking people for their opinions about
18 these types of matters.
19 And, I think we asked one question about how important the
20 mission is to the board of directors, and that was it.
21 MR. KOVALIK: And he asked about evangelization, I am trying
22 to understand. I think I am allowed to ask that question.
23 THE HEARING OFFICER: You can ask what his understanding of
24 evangelization is.
25 Q. Could I ask, what is your understanding as to whether

1 evangelization means converting non Catholic students to
2 Catholicism?
3 A. We do not proselytize, and nor do we believe that Christ
4 proselytized. We invite, and we invite by word and example, I
5 hope.
6 I will draw from another tradition, a Franciscan tradition,
7 St. Francis said, "Preach the Gospel always and, if necessary,
8 use words." And what he meant was by your living example, I
9 hope that St. Francis was hoping that faith in Christ was made
10 evident and convincing, and we would hope for the same at
11 Duquesne University.
12 Q. Okay. You talked about a faculty orientation, I guess
13 generally, about at least one specific faculty orientation, and
14 generally about faculty orientations upon the adjuncts; is that
15 correct, Father?
16 A. Yes.
17 Q. And were they specific adjunct orientations, or were they
18 kind of general faculty orientations?
19 A. There were orientations devoted to full-time faculty and
20 others devoted to adjunct faculty.
21 Q. And I think I have seen you at least in large parts of the
22 hearing in the last couple of days, and we heard that adjunct
23 faculty are not required to go to such orientations; is that
24 correct?
25 A. That is correct.

1 Q. Were you here for Alexandra Gregory's testimony, per chance?
2 A. Yes, I did.
3 Q. Did you hear her take on ecumenism? Did I pronounce that
4 right?
5 A. Ecumenism, yes.
6 Q. Would you agree -- would you agree with that, how she
7 portrayed that?
8 A. I thought it was a beautiful statement of her love for the
9 university, and her acceptance of the university as a member of
10 another faith tradition, yes.
11 Q. You thought it was a fair -- a fair statement of that
12 philosophy?
13 MR. BUCKMAN: Object.
14 MR. KOVALIK: He can say yes or no.
15 THE HEARING OFFICER: I am going to sustain that.
16 We really shouldn't be going into the underlying nature of
17 religion, and how the university practices religion, in this
18 hearing.
19 MR. KOVALIK: Okay. Fair enough.
20 Q. Okay. Were you here for, there was some testimony given
21 about some employees on campus being represented by other
22 unions?
23 Did you hear that testimony, or --
24 A. I believe so.
25 Q. Are you aware, or do you have your own independent knowledge

1 A. Yes, they are.
2 Q. Can you briefly describe your duties as the director of the
3 Center for Catholic Intellectual Tradition?
4 A. Well, the center began with my appointment, I am the
5 inaugural director of the center, so I played an integral role
6 in conceiving of the center, and implementing it, and growing
7 it.
8 In my capacity as director, I oversee a variety of the
9 initiatives that the center sponsors, I engage in a lot of
10 capacity building, and relationship building across the
11 university.
12 I regularly serve as a representative of the Division of
13 Mission and Identity on different committees.
14 I do presentations to employees, to faculty, full-time as
15 well as adjunct faculty.
16 I can be drawn in for a consult, for instance, as I was
17 recently, with a committee that's overseeing our division of the
18 university's core curriculum, for instance, to speak about the
19 relationship between the mission and the core.
20 (Thereupon, Employer Exhibit No. 57 marked for identification.)
21 Q. Okay.
22 I want to revisit that in a second, but since you talked
23 about the founding, I show you what's been marked for
24 identification as Employer Exhibit 57, which is a printout from
25 the website, states at the top, "Interdisciplinary Scholar

1 Leading New Center for the Catholic Intellectual Tradition."
2 Do you recall that document?
3 A. Yes, I believe it was a news release on my appointment.
4 Q. And, does this document describe -- you testified that the
5 center is a new --
6 A. Yes.
7 Q. -- center.
8 A. This is our third year.
9 Q. And, how did the center's work relate to the work already
10 going on on campus?
11 A. Well, there was a center that existed prior to the Center
12 for the Catholic Intellectual Tradition, it was called the
13 Center for Catholic Social Thought, I am honestly not clear what
14 years it was dissolved, I know that the ad for my position, and
15 therefore announcing the intention to found the Center for the
16 Catholic Intellectual Tradition, appeared in the fall of 2011,
17 because the application cycle ran during that fall, and I
18 received an offer of employment by the end, close to Christmas
19 in 2011.
20 So, I do know that the Center for the Catholic Intellectual
21 Tradition in some sense subsumed or replaced the Center for
22 Catholic Social Thought, and the research committee was very
23 clear in saying that their rationale for dissolving the previous
24 center, and establishing this one, was to create a center that
25 would be tasked, operating out of the Division of Mission and

1 Identity, with fostering, teaching and scholarship efforts among
2 the faculty that encompassed the entirety of the university.
3 So in other words, Catholic intellectual tradition has
4 broader scope than simply Catholic social thought, which is
5 included in Catholic intellectual tradition, but in no way
6 exhausted the whole of it.
7 Q. When you say the entire university, that means all
8 disciplines?
9 A. Yes, and all schools, yes.
10 Q. If I could just direct you to the document, the second
11 paragraph, you see there is a quote, "'The primary focus of the
12 institute is going to be to support but also to highlight and
13 showcase the ways in the which work already being done here
14 engages the Catholic intellectual tradition.'"
15 Is that an accurate quote for you?
16 A. Yes, absolutely.
17 Q. Okay.
18 MR. BUCKMAN: I move 57 at this time.
19 MR. KOVALIK: We reserve a right to contest relevancy, but
20 we don't oppose admission.
21 THE HEARING OFFICER: Okay. It is received.
22 (Thereupon, Employer Exhibit No. 57 was received into evidence.)
23 Q. Can you tell us, I think we have been dancing a little
24 around this, what is the Catholic intellectual tradition?
25 A. I get asked that question a lot, and I have some images, or

1 MR. BUCKMAN: Okay.
2 I am going to need a minute then to ask her about the rest
3 of that.
4 This is 60.
5 (Thereupon, Employer Exhibit No. 60 marked for identification.)
6 MR. BROWN: Can we just take a minute.
7 THE HEARING OFFICER: Sure.
8 (Recess taken.)
9 THE HEARING OFFICER: Back on the record.
10 BY MR. BUCKMAN:
11 Q. I show you what's been marked for identification as
12 Employer 60, a multipage document, "Center for the Catholic
13 Intellectual Tradition invites you to a conversation on Catholic
14 Artistic Imagination."
15 A. Uh-huh.
16 Q. Do you recognize that document?
17 A. I do.
18 Q. What is it?
19 A. These are photocopies of promotional postcards that we
20 produce for one of the standing initiatives that we sponsor,
21 which is a series of the Catholic artistic imagination.
22 Q. These are just examples of the event?
23 A. Yes. I mean, we did seven, I think, events this year, and
24 we did a handful last year.
25 Q. In the case of all of those events, to whom were the

1 postcards sent?
2 A. They are sent to all faculty and staff.
3 Q. Would that include adjuncts?
4 A. Yes.
5 Q. Would you describe the events advertised? You can do it in
6 an example way.
7 A. Well, sure.
8 So, the second one was one we just had, which shows the
9 drums, the drumming.
10 So, a faculty member in the School of Music was our faculty
11 presenter, and he led a group of attendees on exploration of an
12 indigenous song and dance Fuma Fuma from Ghana.
13 We included it in the series, because of the significant
14 Spiritan congregation significant presence on the continent of
15 Africa, and because of the university's stated commitment to
16 develop ties and programming with the center on Africa and
17 African ideas practice.
18 Q. And directing your attention to the first example from
19 December 6th, 2013.
20 A. Yes.
21 Q. What was that event?
22 A. So, that was our faculty presenter that led attendees in an
23 exploration of a very well-known icon, Rublev's icon of the
24 Trinity.
25 Q. What's the Trinity?

1 A. The Trinity is a Catholic understanding of God. It is one
2 God, but three persons, Father, Son and Holy Spirit.
3 Q. Adjuncts ever attend Catholic artistic imagination events?
4 A. They have.
5 MR. BUCKMAN: I would move Employer 60.
6 MR. KOVALIK: We think it is cumulative, but we will not
7 object.
8 THE HEARING OFFICER: Received.
9 (Thereupon, Employer Exhibit No. 60 was received into evidence.)
10 MR. BUCKMAN: Thank you.
11 (Thereupon, Employer Exhibit No. 61 marked for identification.)
12 Q. I show you what has been marked as Employer Exhibit 61, a
13 document, Duquesne University in the upper corner return
14 address, Rice on the Road 2015.
15 Do you recognize this document, Dr. Weaver?
16 A. I do.
17 Q. You do.
18 What is it? What is it?
19 A. It is a photocopy of a mailer advertising a lecture series,
20 annual lecture series that we sponsor, which we call Rice on the
21 Road.
22 Q. And, it's -- would that be sent to faculty?
23 A. It's sent to all faculty, as well as to staff.
24 Q. Including adjunct?
25 A. Yes.

1 Q. Okay.
2 What does the -- what is the event the document describes?
3 A. So, one of the initiatives that my center inherited from the
4 previous center, the Center for Catholic Social Thought, was a
5 small endowment that supports what's called the Monsignor
6 Charles S. Owen Rice lecture series that had traditionally been
7 undertaken in a fairly standard way for a university lecture
8 series, which is you invite speakers from outside, you pay then
9 a stipend to come in, they do an event, and then, you know, they
10 leave.
11 One of the things that I did in receiving this particular
12 initiative as falling among any responsibilities directing the
13 center, was to consider how we might revamp it, in order to
14 focus on being better stewards of the endowment, having an
15 impact, and offering an approach which was more
16 interdisciplinary, and more community engaged.
17 So we, decided to eschew the standard format of inviting
18 external speakers onto campus for one off event, and instead we
19 collaborate with a range of university programs, departments and
20 faculty, and we have what's essentially a mobile lecture series.
21 So we load the attendees onto shuttle buses for the most
22 part, this year we did do two events on campus as part of the
23 series, but usually every other event has been off campus.
24 We load the attendees onto shuttle buses and we often tour
25 of a community, and we tour the community, and we arrive

1 somewhere onsite for panel discussions, that can include, rather
2 than exclusively faculty talking in the mode of scholar expert,
3 include community organizers, entrepreneurs, community
4 residents, and so on.
5 Q. Any adjuncts participate in this series?
6 A. Yes.
7 MR. BUCKMAN: I would move exhibit 61.
8 MR. KOVALIK: No objection.
9 THE HEARING OFFICER: Received.
10 (Thereupon, Employer Exhibit No. 61 was received into evidence.)
11 Q. Tell us how that program you just described relates to the
12 university Catholic Spiritan mission.
13 A. Well, what I -- the way that I present the lecture series to
14 faculty, is as a resource that helps them to extend and enrich
15 their teaching, so I invite them to come and talk to me about
16 ways in which the lecture series can complement the course that
17 they offer specifically, because the social justice issues that
18 are explored through the series are complex, and
19 interdisciplinary by nature.
20 So, in that regard, the lecture series exemplifies the
21 mission of the university as simultaneously academic and
22 religious.
23 It -- we always start by talking about what is Spiritan
24 about the process of going out into community, the Spiritans are
25 a missionary organization, missionary congregation, and so that

1 method of going out to be with others, rather than somehow
2 sitting back and expecting that they will come to you, is part
3 and -- it is among the warrants for our making the lecture
4 series a mobile lecture series.
5 And then we give an awful lot of thought, working closely
6 with what was the Office for Service Learning, and is now the
7 Center for Community Engaged Teaching and Research, about
8 creating conditions that are conducive to appropriate
9 conversation and engagement with our community partners.
10 This is not easily done.
11 It certainly is a far cry, it is far removed from simple
12 volunteerism, or service.
13 So, the events always begin with attempts to kind of frame
14 for the attendees, who include students, staff, faculty,
15 full-time faculty, as well adjunct faculty, and administrators,
16 so we try to frame for them why we are doing what we are doing,
17 and we do that explicitly in reference to the Catholic and
18 Spiritan identity and mission.
19 (Thereupon, Employer Exhibit No. 62 marked for identification.)
20 BY MR. BUCKMAN:
21 Q. I show you what has been marked as Employer 62, titled,
22 captioned "Part-time Faculty Mission Micro-Grant."
23 A. Yes.
24 Q. Do you recognize this document?
25 A. Yes, I do.

1 Q. What is it?
2 A. It's the most current version of an announcement and set
3 of -- or call for applications, and instructions for a grant
4 that we make available to adjunct faculty.
5 Q. Okay. Is it on the website?
6 A. It is.
7 Q. And, it's --
8 MR. BUCKMAN: I would move this at this time, as
9 Employer's 62.
10 THE HEARING OFFICER: Any objection?
11 MR. KOVALIK: We don't see the relevance of it, but we don't
12 object to the authenticity of it.
13 THE HEARING OFFICER: It is received.
14 (Thereupon, Employer Exhibit No. 62 was received into evidence.)
15 MR. BUCKMAN: 61 was received as well; wasn't it?
16 THE HEARING OFFICER: Yes.
17 (Thereupon, Employer Exhibit No. 63 marked for identification.)
18 Q. I show you what's been marked as Employer Exhibit 63. Do
19 you recognize this document?
20 A. I do.
21 Q. What is it?
22 A. It's a mailer that we sent out to part-time faculty, or to
23 adjunct faculty, announcing the spring 2015 application cycle
24 for the part-time faculty mission micro-grants.
25 It includes not only the call for applications and the

1 relevant deadlines, but examples from the applications of
2 previous mission micro-grant winners.
3 Q. Okay. Thank you.
4 I would move Employer's 63 at this time?
5 MR. KOVALIK: No objection.
6 THE HEARING OFFICER: It is received.
7 (Thereupon, Employer Exhibit No. 63 was received into evidence.)
8 Q. I will turn to a new topic, faculty orientations.
9 Actually, before I do that, since we have had an objection,
10 I am going to ask you to go back to the board report, please.
11 A. Yes.
12 Q. Would you please walk through the board report, and testify
13 about any events to which faculty are invited, that we haven't
14 already done?
15 A. So, A1, Lily Fellows Program Small Grant, was a grant that I
16 applied for in conjunction with another faculty member who also
17 is the chair of the Theology Department, and that was to
18 sponsor -- we received the grant and we used to it sponsor a
19 faculty development workshop on the topic of sustainability,
20 that enlisted faculty from the sciences, from the humanities,
21 that is McAnulty College, and from the School of Business.
22 In helping them -- these were faculty who already were
23 already working somehow on issues of sustainability, and the
24 purpose of the workshop was to bring them into interdisciplinary
25 conversation, but also to enrich and develop their understanding

1 Specifically, I think it was one of the last things you
2 testified about, your view that a course can communicate, or
3 participate in religious identity of the university, even if it
4 has no specific reference to religion, moral or ethnic content;
5 is that correct?
6 A. I don't know that's exactly what I said.
7 I believe what I was saying is that a course can participate
8 in the religious mission of the university, even if it's not a
9 theology course.
10 Q. Okay.
11 But, even if that -- right.
12 But what if I had a class, particular class, where all I
13 talked about were planets.
14 A. Planets?
15 Q. Planets, right.
16 And I said nothing about God, I said something about the
17 ethics of planets, I doubt if they have any, would that -- would
18 you see that as participating in the religious mission of the
19 university?
20 A. I assume you are talking about a course that would be taught
21 in the context of Duquesne University of the Holy Spirit, as
22 opposed to a course that is being taught at another institution.
23 Q. Well, let's just say it is being taught at Duquesne, right.
24 A. Yes.
25 Yes, a course in astronomy being taught, not that we have an

1 astronomy department -- a course in astronomy being taught at
2 the Duquesne University of the Holy Spirit, it takes in the
3 academic religious mission of the university.
4 Q. And even if I don't mention anything in that class about
5 God, Christianity, et cetera?
6 A. The religious character of the university's academic mission
7 cannot be reduced to theology alone, or to specifically theistic
8 bodies of thought.
9 Q. Okay.
10 Fair enough. But I mean, just so I want to be precise here.
11 What if even I'm an atheist teaching that same class, and I
12 say nothing about God, but only about the planets, would you
13 still see that --
14 A. Absolutely, I would.
15 Q. -- as advancing the religious mission?
16 A. Absolutely, I would.
17 Q. Now, what if that same professor, if we stick with that one
18 example, the same -- in fact, just call him Carl Sagan, for lack
19 of a better example, what if he also teaches that very same
20 course in the very same way, in the very same words, at the
21 university of Pittsburgh, is that furthering a religious mission
22 at Pittsburgh?
23 A. I'm not equipped to speak about the character of that work
24 in the institutional context of the University of Pittsburgh.
25 Q. Okay. Fair enough.

1 THE HEARING OFFICER: I see.
2 THE WITNESS: Or if they give a presentation, which is then
3 accepted for publication, that could be an outcome that gets
4 shared with us.
5 THE HEARING OFFICER: Okay. And do the students have any
6 input into, if it's for curricular functions, do students
7 directly have an input into an outcome evaluation for these?
8 THE WITNESS: That would -- that would be up to the faculty
9 member to determine to include them or not and, of course, that
10 would only apply -- that could only apply to mission
11 micro-grants that involved curricular.
12 THE HEARING OFFICER: Correct.
13 MR. KOVALIK: You know this action -- I'm sorry, you are
14 still going.
15 THE HEARING OFFICER: That's all of the questions I have.
16 Did that --
17 MR. KOVALIK: You did spur a couple of questions in my own
18 mind.
19 THE HEARING OFFICER: Go ahead.
20 RECROSS EXAMINATION
21 BY MR. KOVALIK:
22 Q. First all, is this an optional grant, that is to say,
23 adjuncts don't have to apply for these grants; is that correct?
24 A. I strongly encourage them to apply for the grant.
25 Q. But they are not required?

1 A. They are not required.
2 Q. And would it be a liability, in your view, if one of the
3 adjuncts who applied was a Muslim; could they still be eligible
4 for such a grant?
5 A. Assuming that their application, in the judgment of the
6 part-time faculty admission micro-grant committee, meets the
7 goals of the grant program, yes, they could apply for, and
8 secure one of the grants.
9 Q. And what if that same, or a different adjunct applied was an
10 agnostic, would that foreclose their ability to get that grant?
11 A. Any faculty member who is able to articulate the
12 relationship between the specific project that they propose --
13 right? -- so they are able to articulate to the satisfaction of
14 the committee members, irrespective of their own personal
15 religious convictions, if they can articulate to the
16 satisfaction of the committee members the links between the
17 curricular project, or the research project, or the professional
18 development project, and the Catholic Spiritan academic
19 religious mission of the university, their personal religious
20 convictions would not disqualify them from receiving one of the
21 grants.
22 Q. Would their desire to express some of their personal non
23 Catholic or even non Christian beliefs through the project,
24 would that foreclose them from getting this grant?
25 MR. BUCKMAN: I am going to object. I think we have had a

1 BY MR. KILBERT:
2 Q. Please state your name for the record?
3 A. My name is Clint Benjamin.
4 Q. And, are you employed by Duquesne?
5 A. Yes.
6 Q. Thank you.
7 In what capacity are you employed by Duquesne?
8 A. I'm a part time lecturer, a/k/a adjunct faculty.
9 Q. In what department do you teach?
10 A. The English Department.
11 Q. When did you begin teaching?
12 A. The fall of 2007.
13 Q. And that was at Duquesne?
14 A. Uh-huh.
15 Q. Okay.
16 What are your educational credentials?
17 A. I have a BA in English from Elmira College, and MFA from
18 Chatham University. MFA is in creating writing.
19 Q. Thank you.
20 Were any of those schools religiously affiliated?
21 A. No.
22 Q. What do you teach in the English Department at Duquesne?
23 A. The two core curriculum, UCOR 101 and UCOR 102.
24 Q. So, for a lay person not affiliated with the university, and
25 so on, unfamiliar with the course numbering scheme, what are

1 those course?
2 A. That's a basic composition 1, which is more of your thinking
3 processes, and processes, and the UCOR 102 is more of a
4 literature based composition.
5 Q. Have you taught similar courses at any other institution?
6 A. Yes.
7 Q. Which other institution?
8 A. I have taught here in the city at CCAC, Community College of
9 Allegheny County, I have taught on-line a little bit.
10 Q. Okay.
11 Is your course at CCAC different from your Duquesne course
12 at all?
13 A. No.
14 Q. When you applied to teach at Duquesne, what was the process?
15 A. I believe, admittedly this was some time ago, I sent an
16 e-mail to the department chair, there was an ad in a paper.
17 Q. Okay.
18 And, was there an interview?
19 A. Yes.
20 Q. And, did the job listing for your position say anything
21 about religious duties?
22 A. No.
23 Q. Did the job listing, or any other component of the
24 application process, request that you describe how you would
25 support the university's mission statement?

1 MR. BROWN: Objection.
2 MR. PERL: Objection.
3 THE HEARING OFFICER: Only one of you can object.
4 MR. BROWN: If I may, I would object, this is not the best
5 evidence, this is a witness talking about a job listing back in
6 2007.
7 The proper way to produce evidence on this would be to
8 produce the job listing itself; therefore, we object to
9 testimony about what is in the context of the job listing.
10 THE HEARING OFFICER: I think he can testify to his
11 recollection.
12 Go ahead.
13 MR. BROWN: But it's to prove the contents of what's in the
14 job listing, and again, the best evidence of that is the job
15 listing itself.
16 THE HEARING OFFICER: Do you have any comment, Mr. Kilbert?
17 MR. KILBERT: I don't really have any comment, other than,
18 you know, we -- if --
19 THE HEARING OFFICER: You can rephrase that question.
20 MR. KILBERT: I will try to rephrase that.
21 Q. When you were applying, did anybody, or anything ask that
22 you describe how you would support the university's mission
23 statement?
24 MR. BROWN: Objection.
25 Again, the issue is the best evidence.

1 If there is a thing, the thing should be part of what's --
2 should be proposed as an exhibit. And, as to the anybody, what
3 anybody said, that's also hearsay.
4 MR. KILBERT: The hearsay thing is -- I mean, that's right
5 out. This would be admissions by a representative of the party.
6 I mean, otherwise how are we supposed to get in what gets asked
7 in an interview?
8 THE HEARING OFFICER: I think it's not hearsay. I think he
9 can ask specifically about the conversation.
10 I think it is an admission.
11 MR. BROWN: Well, we don't know, he hasn't even said what it
12 said, he hasn't testified as to who the --
13 THE HEARING OFFICER: Lay a foundation about the process.
14 MR. BROWN: About who the person was who said it, and that
15 would not constitute an admission of anything, it seems to me.
16 THE HEARING OFFICER: All right.
17 Well, I -- Mr. Kilbert, you need to lay a better foundation
18 for the process.
19 MR. KILBERT: I am happy to.
20 And I got a little out of order here, and I apologize.
21 MR. KOVALIK: Can I just add something, I'm sorry, I know we
22 have all been taking turns, the other thing I would argue on
23 hearsay, it is not being of1fered for the matter of truth, it is
24 offered for whether it was said, it is not even hearsay.
25 MR. BROWN: Well, I think it is being offered for the truth

1 asserted, and I think it is hearsay, and it goes back years ago,
2 we don't even know who supposedly the speaker is.
3 THE HEARING OFFICER: And I think that's where the
4 foundation is --
5 MR. KILBERT: I appreciate your concern for the foundation
6 here.
7 BY MR. KILBERT:
8 Q. With whom were you interviewed?
9 A. Dr. Greg Barnhisel.
10 Q. And who is he?
11 A. He is the current chair of the English Department.
12 Q. And at that time, was he the chair of the English
13 Department?
14 A. Yes.
15 Q. And, in that conversation did he ask you to describe how you
16 would support the university's mission statement?
17 MR. BROWN: Again, it is leading, and it's also hearsay.
18 Q. In that conversation were you asked about the university's
19 mission statement?
20 MR. BROWN: Again, leading, and --
21 THE HEARING OFFICER: That is not leading, and I am going to
22 approve that.
23 A. No, I was not.
24 Q. I would like to present for your inspection Employer 36.
25 Take a look at that please, familiarize yourself with it.

1 Have you read it?
2 A Please answer yes or no.
3 MR. BROWN: Give me a moment, if you would.
4 THE HEARING OFFICER: Sure. It is the employment
5 application.
6 A. Yes, I have reviewed it.
7 Q. Right.
8 Did you fill this out?
9 A. No, I don't believe so.
10 Q. I'd like you to refer, specifically, to the final page, at
11 the top, where it asks about the mission statement.
12 A. Right.
13 Q. Did you fill that out?
14 A. No.
15 Q. Okay. Thank you.
16 So, now I'm going to ask some questions from Employer
17 Exhibit 37, some interview questions. And I'm going to ask if
18 these were asked in your interview.
19 Were you asked what aspects of Duquesne's mission statement
20 appealed most to you?
21 MR. BROWN: Objection. Leading and hearsay.
22 THE HEARING OFFICER: How is it leading?
23 MR. KILBERT: I am reading the question.
24 MR. BROWN: Well, he can ask him what he was asked about,
25 what he was told.

1 MR. KILBERT: The employer has represented that these
2 specific questions are asked in interviews.
3 I am asking if these specific questions are asked in the
4 interviews, and I would like to be able to do that.
5 And it's plainly not hearsay, because as I have said, it is
6 not offered for the truth of the matter asserted, as my
7 colleague has said, and because it is by a hiring agent of the
8 university. It is the most party admission thing that a party
9 ever admitted.
10 THE HEARING OFFICER: I will permit it.
11 MR. KILBERT: Thank you.
12 Q. So, to restate the question, Mr. Benjamin: Were you asked,
13 in this interview, what aspects of the mission statement appeal
14 most to you?
15 A. No, I was not.
16 Q. Were you asked how you think the mission of Duquesne fits
17 with your work?
18 A. No.
19 Q. Were you asked whether any aspects of the mission might
20 cause you some concern?
21 A. No.
22 Q. Were you asked how you see yourself as embodying Duquesne's
23 mission?
24 A. No.
25 Q. Were you asked about your thoughts about the relationship

1 between faith and reason, in an academic environment?
2 A. No.
3 Q. Were you asked about how you reconcile Duquesne University's
4 commitments to religious and academic freedom?
5 A. No.
6 Q. Were you asked what service means to you, in the context of
7 Duquesne's mission statement?
8 A. No.
9 Q. Were you asked about how you understood the mission, and how
10 your discipline enhances it?
11 A. No, I was not.
12 Q. Were you asked about the five pillars of the mission
13 statement?
14 A. No.
15 Q. Was the mission mentioned at all?
16 A. No.
17 Q. Did Professor Barnhisel ask you about your religious
18 beliefs?
19 A. No.
20 Q. At any point in the hiring process, were you asked about
21 your religious beliefs?
22 A. No.
23 Q. Did Professor Barnhisel indicate that you would be required
24 to fulfill any particular religious role?
25 Please answer verbally.

1 A. No.
2 Q. Thank you.
3 That's fine.
4 Did any of the documents that you filled out in the course
5 of applying for employment, or initiating your employment,
6 indicate that you had a religious role to play?
7 A. No, they did not.
8 Q. Okay.
9 (Thereupon, Union Exhibit No. 22 marked for identification.)
10 BY MR. KILBERT:
11 Q. I am going to pass you what is marked as Union 22.
12 Please take a look at that document, and indicate when you
13 have thoroughly reviewed it.
14 A. I am good to go.
15 Q. So, did you sign -- or did you -- did you receive an
16 appointment letter similar to this one, when you began
17 employment with Duquesne?
18 A. Yes, I did.
19 Q. And, did you sign it at the bottom, where it says
20 "Signature"?
21 A. Yes.
22 Q. And returned it?
23 A. Uh-huh. Yes.
24 Q. And, are these contracts -- your appointment is for how
25 long?

1 A. One states -- I mean, semester to semester.
2 Q. So, every semester would you have to have another one of
3 these, sign it and return?
4 A. Yes.
5 Q. And, substantially, they are identical every semester, with
6 the exception of pay and the courses?
7 MR. BROWN: Leading.
8 MR. KILBERT: I will rephrase that.
9 BY MR. KILBERT:
10 Q. Do these change from semester to semester?
11 A. Not that I can see.
12 Q. Thank you.
13 MR. KILBERT: I move the admission of Union 22.
14 THE HEARING OFFICER: Any objection?
15 MR. BROWN: No objection.
16 THE HEARING OFFICER: Received.
17 (Thereupon, Union Exhibit No. 22 was received into evidence.)
18 BY MR. KILBERT:
19 Q. When you began employment at Duquesne, did you attend an
20 orientation for new adjunct faculty?
21 A. Yes.
22 Q. How many other new adjuncts were at the orientation?
23 A. Approximately a half dozen. Six.
24 Q. Do you know how many of those adjuncts at the orientation
25 were employed in the McAnulty College?

1 A. No, I do not.
2 Q. Turning to your class, does your class have any religious
3 content?
4 A. No, It does not.
5 Q. Do you integrate religious teachings into the course work?
6 A. No.
7 Q. Does your class have any more religious content than similar
8 classes that you have taught at CCAC, I believe you testified?
9 A. It has no -- could you rephrase that again?
10 Q. I will repeat the question.
11 A. Thank you.
12 Q. Always ask for a clarification, if you don't understand what
13 I'm asking.
14 You testified previously that you have taught similar
15 courses at the Community College of Allegheny County.
16 Does your class at Duquesne have any more religious content
17 than the classes that you teach at the Community College of
18 Allegheny County?
19 A. No, there is no religious content.
20 Q. You prepare course syllabi, or are syllabi provided to you?
21 A. I prepare them myself.
22 Q. Does anybody from the administration, or from the department
23 look at your course syllabi?
24 A. I would presume so. I turn them in at the beginning of the
25 semester.

1 Q. To whom?
2 A. The department head.
3 Q. Has this person, or anybody else in the administration, ever
4 made comments about any of your syllabi?
5 A. Never.
6 Q. Do your syllabi include the university's mission statement?
7 MR. BROWN: Objection. Again, it is the best evidence
8 issue.
9 THE HEARING OFFICER: No, he can --
10 MR. BROWN: The best evidence is the syllabus itself.
11 THE HEARING OFFICER: I think he stated he creates the
12 syllabus, and I --
13 MR. KILBERT: This will be my only question.
14 THE HEARING OFFICER: I am going to permit it.
15 MR. BROWN: Fine.
16 BY MR. KILBRIDE:
17 Q. So, to restate, do your syllabi include the university's
18 mission statement?
19 A. No.
20 Q. How is your teaching performance evaluated?
21 A. Via a student evaluations. Occasionally, a full-time
22 faculty will observe me.
23 Q. Okay. So let's start with the observations.
24 A. By faculty?
25 Q. By faculty. Who does those?

1 A. Usually full-timers.
2 Q. Anybody in particular?
3 A. Not that I can ascertain.
4 Q. Okay.
5 Has -- how does that observation go?
6 A. They observe my class, I receive feedback, and said feedback
7 goes into some sort of file.
8 Q. Has any feedback from an observation included anything about
9 the religious content, or lack thereof, of your course?
10 A. No, never.
11 Q. Or about the conformity of your course to the university's
12 mission?
13 A. No.
14 Q. Okay.
15 I am going to show you what's been marked as Union Exhibit
16 24. It is already in evidence.
17 Take a minute, look it over thoroughly, and let me know when
18 you have reviewed it.
19 Does that document contain the questions used in this
20 student evaluation survey?
21 A. They seem accurate to me. They seem -- they do change them
22 sometimes.
23 Q. Do you receive responses from the student evaluation
24 surveys?
25 A. Eventually, yes.

1 Q. How are those formatted?
2 A. They are conveyed to me via e-mail.
3 Q. Do you receive individual student comments?
4 A. There were individual student comments that are also
5 available.
6 Q. Have any comments on those forms, over the years that you
7 have been teaching, ever indicated that a student was
8 disappointed that there wasn't more religious content in your
9 course?
10 A. No.
11 Q. Has any student ever told you that, in any other way?
12 A. No.
13 Q. Has anyone, from the university, ever given you positive or
14 negative feedback regarding your teaching, as it relates to
15 Catholic doctrine?
16 A. Never.
17 Q. To the university's mission statement?
18 A. No.
19 Q. Has the chair of your department ever spoken to you about
20 religion, or about any religious role that either you or he
21 performs at Duquesne?
22 A. No.
23 Q. Do students ever turn to you for advice?
24 A. Yes.
25 Q. Do they ask about -- do they turn to you for advice about

1 their spiritual development?
2 A. Never.
3 Q. If a student were to ask you for religious guidance, would
4 you feel capable of giving that guidance?
5 A. Perhaps.
6 Q. Has anybody ever communicated -- anybody from the university
7 ever communicated any expectation that you should be a spiritual
8 guide for students?
9 A. Never.
10 Q. Have you ever been disciplined by the university for failing
11 to live up to Catholic teachings?
12 A. No.
13 Q. Have you ever been disciplined for failing to teach Catholic
14 doctrine?
15 A. No.
16 Q. Have you ever disciplined students for failing to live up to
17 Catholic teachings?
18 A. No.
19 Q. For failing to adhere to the mission of the university?
20 A. Never.
21 Q. So far as you were aware, before this hearing started, was
22 there any expectation that you do so?
23 A. No.
24 Q. Do you think about Catholic doctrine when you are evaluating
25 student written work?

1 A. No.
2 Q. So far as you are aware before this hearing, was there any
3 expectation that you do so?
4 A. No.
5 Q. All right.
6 I am going to pass to you two documents, they have been
7 marked Employer 19 and employer 18. If you could take a moment,
8 and look at them --
9 A. Thank you.
10 Q -- I would appreciate it.
11 So did you ever receive a copy of the 2003 strategic plan --
12 A. No.
13 Q. -- from Duquesne?
14 A. No.
15 Q. Did you ever receive a copy of the 2010 strategic plan from
16 Duquesne?
17 A. No.
18 Q. Have you ever attended a university convocation?
19 A. No.
20 Q. Did you ever participate in a Duquesne sponsored Bible
21 study?
22 A. No.
23 Q. What about a Duquesne sponsored mission trip?
24 A. No.
25 Q. At the time you were hired, were you given a faculty

1 handbook?
2 A. No.
3 Q. Have you ever applied for a grant through the Center for the
4 Catholic Intellectual Tradition?
5 A. No.
6 MR. BROWN: Objection.
7 There is a whole line of questions here that really don't go
8 to the holding out. They go to what he does.
9 The question is what, as my colleague on the union said
10 has said many times, the issue goes to whether the university is
11 holding itself out, and holding out this faculty as having a
12 part of a religious mission.
13 Here, the questions are going to whether he, in effect,
14 takes advantage of what those opportunities are. It really
15 doesn't go to the holding out question.
16 So I would object to this question, and any questions that
17 go to what he does or what he doesn't do.
18 THE HEARING OFFICER: Well, I agree with you, that it
19 doesn't go to the holding out.
20 I think some evidence is required about the practice. There
21 has been a lot of testimony that the university holds itself out
22 in that way, but I think the -- to be complete, the record needs
23 some evidence of how that is effectuated, or if that's
24 effectuated.
25 MR. BROWN: But it is not a question of whether it was

1 effectuated or not, it' a question of whether he does it or not.
2 That's different than whether it's effectuated.
3 THE HEARING OFFICER: All right. Well, these questions I
4 think are going to whether -- your concern.
5 MR. KILBERT: And, in fact, that was my final question.
6 THE HEARING OFFICER: It is never the last one.
7 MR. KOVALIK: He only has one more question.
8 MR. BROWN: Well, I think it is important.
9 THE HEARING OFFICER: Let him finish his thought.
10 MR. BROWN: It is important, the Board says in PLU, "We will
11 not look to beyond these documents to determine what specific
12 role petitioned for faculty actually play in fulfilling the
13 religious mission of this school, or to inspect the university's
14 actual practice with respect to faculty members, nor will we
15 examine the specific actions of any individual teachers."
16 So, PLU is very specific about that.
17 That is the guidance, obviously, that goes to the region, or
18 any other Board official, in determining whether the PLU
19 standards are met or not.
20 These questions are contrary to that.
21 The Board says these kinds of questions, this kind of
22 information, is irrelevant. And, therefore, we object to the
23 line of questions.
24 THE HEARING OFFICER: All right. I understand your point.
25 Mr. Kilbert, what was the last question?

1 MR. KILBERT: So the last question was whether Mr. Benjamin
2 had ever applied for a grant through the Center for Catholic
3 Intellectual Tradition.
4 MR. BROWN: My objection.
5 MR. KILBERT: I wonder if I might be heard?
6 MR. BROWN: Of course.
7 MR. KILBERT: Thank you.
8 Professor Weaver testified about how people are encouraged
9 to apply for grants through the Center for the Catholic
10 Intellectual Tradition, and I think this goes to the
11 effectiveness and pervasiveness of such encouragement.
12 Moreover, the adjunct faculty here are a little bit
13 different than ordinary instructors in that they are employed on
14 a rolling semester to semester basis. So, more so than any
15 other faculty in a university, they are prospective faculty as
16 well.
17 And so the holding itself out of the university, through its
18 actual practice, in some respects, in some limited respects, is
19 relevant to whether they continue in their employment.
20 Because each semester they reapply, and make for themselves
21 the determination whether they are going to continue there, or
22 go somewhere else.
23 THE HEARING OFFICER: I think the last part of that argument
24 is really speculative, and we don't have anything on the record
25 with respect to that.

1 A. Adam Wells Davis.
2 Q. Thank you.
3 Are you employed by Duquesne?
4 A. I am indeed.
5 Q. In what capacity?
6 A. I am an adjunct professor.
7 Q. In what department do you teach?
8 A. Department of History.
9 Q. What course do you teach?
10 A. History of science.
11 Q. And when did you begin teaching at Duquesne?
12 A. Fall semester 2008.
13 MR. BROWN: I'm sorry, I didn't hear it.
14 THE WITNESS: Fall semester 2008.
15 Q. And what are your educational credentials?
16 A. I have a bachelor's degree in biological anthropology,
17 archeology, and forensic anthropology, and master's in
18 paleoanthropolgy, and in evolutionary biology.
19 Q. And, from what institutions did you receive those degrees?
20 A. My undergraduate is from Mercyhurst University in Erie,
21 Pennsylvania.
22 MR. BROWN: Excuse me, could you spell that for me, please?
23 THE WITNESS: M-e-r-c-y-h-u-r-s-t.
24 It was Mercyhurst College at the time I attended, it is
25 University now.

1 Q. And your master's degree?
2 A. From Pitt.
3 MR. BROWN: From?
4 THE WITNESS: Pitt. My apologies.
5 MR. BROWN: That's all right.
6 Q. Are either of those schools religiously affiliated?
7 A. Mercyhurst is a Sisters of Mercy Catholic institution.
8 Q. And, the course -- and the department in which you teach is
9 situated within McAnulty College?
10 A. That's correct.
11 Q. Could you please describe your participation in campus life?
12 A. I don't really have any participation in campus life beyond
13 the course that I teach. I teach a class that meets one night a
14 week, it's the only class I teach there, I come to campus, I
15 teach that one class, I go home.
16 I occasionally show up if there is something else I need to
17 do, like pick up paperwork, but otherwise, I really don't have
18 any involvement in the larger campus community.
19 Q. When you applied to teach at Duquesne, how did that process
20 work?
21 A. There was an advertisement in the Post-Gazette looking for
22 an instructor for the history of sciences, I applied for the
23 position, the initial position was given to another instructor,
24 a year later when he accepted a posting in another college, they
25 called me and asked me if I would take on the class.

1 I responded to that, and was accepted.
2 Q. Do you recall whether the listing said anything about your
3 religious duties of your position?
4 MR. BROWN: Objection. The best evidence rule.
5 MR. PERL: It is leading.
6 MR. KILBERT: What is their objection?
7 MR. BROWN: Goes to the best evidence, it is also leading.
8 But there is a document that's the best evidence, not his
9 testimony.
10 THE HEARING OFFICER: The question is his recollection, and
11 I'll allow it for that.
12 A. To my recollection, the advertisement only called for a
13 professor to teach the history of science.
14 I don't know if it's relevant, but --
15 THE HEARING OFFICER: There is no question before you.
16 THE WITNESS: Okay. Sorry.
17 MR. KILBERT: Thank you.
18 Just for the future, I ask for the witness's and the hearing
19 officer's indulgence, as I attempt to formulate my next
20 question. So, if there is ever a pause, give me a kick, if you
21 think I have fallen asleep.
22 Q. Were you interviewed?
23 A. I was.
24 Q. By whom?
25 A. The head of the history department, who at the time was

1 Holly Mayer.
2 M-a-y-e-r.
3 Q. Okay.
4 In that interview, were you asked what aspects of Duquesne's
5 mission statement appealed the most to you?
6 MR. BROWN: Objection.
7 MR. KOVALIK: You know, if you look at page 12 of Pacific
8 Lutheran, we have it up, and footnote 23, this is exactly what
9 they consider for this prong. They consider these very
10 questions. They had a couple adjuncts named Glenn Gurr and
11 Michael Ng, I don't know how you pronouncer that, who talked
12 about this very subject.
13 It is allowed in in footnote 23. They make it clear that
14 they consider that for the purpose of the second prong.
15 THE HEARING OFFICER: Let's go off the record for a minute.
16 (Discussion off the record.)
17 THE HEARING OFFICER: On the record.
18 Would you state your objection again?
19 MR. BROWN: Yeah, I object to the form of the question, and
20 it was the way it was put.
21 THE HEARING OFFICER: Well, okay. You can rephrase the
22 question.
23 MR. KILBERT: Okay.
24 BY MR. KILBERT:
25 Q. Did the interviewer -- who was whom?

1 A. Holly Mayer.
2 Q. Holly Mayer. Did Professor Mayer ask you what aspects
3 Duquesne's mission statement appealed the most to you?
4 MR. BROWN: Objection. Again I object to the form of the
5 question, he basically focused -- it had a leading aspect to it.
6 THE HEARING OFFICER: I think this question is, what, if
7 anything was asked.
8 MR. KILBERT: They have represented that this particular set
9 of questions is distributed to the chairs who do the hiring, and
10 that these are sample admission questions. So I believe that
11 it's appropriate to ask whether these questions are asked.
12 THE HEARING OFFICER: And I'm saying that the form of the
13 question might be better put as, "What, if anything, was asked
14 of you" with respect to whatever topic.
15 MR. KILBERT: Okay. Sure.
16 Q. What, if anything, was asked of you with respect to the
17 aspects of the Duquesne mission statement that appealed to you?
18 A. I was not asked about my feelings on mission statement.
19 Q. Were you asked about how you think the Duquesne mission
20 statement fits in with your work?
21 A. No.
22 Q. Were you asked about whether you had concerns about the
23 mission?
24 A. No.
25 Q. About whether you had questions about the mission?

1 A. No.
2 Q. Were you asked whether you saw yourself as embodying
3 Duquesne's mission?
4 A. No.
5 Q. Were you asked about your thoughts about the relationship
6 between faith and reason in a university environment?
7 A. No.
8 Q. Were you asked about how you personally reconciled Duquesne
9 University's commitments to religious academic freedom?
10 A. No.
11 Q. Were you asked about what service means to you?
12 A. No.
13 Q. Were you asked how you understood the mission of the
14 university?
15 A. No.
16 Q. Were you asked about the five pillars of the mission
17 statement?
18 A. No.
19 Q. Was the mission statement mentioned at all?
20 A. No.
21 Q. Okay.
22 In that interview, were you asked about your religious
23 beliefs?
24 A. No.
25 Q. Not that it's particularly relevant, but for the record,

1 what are your religious beliefs?
2 A. I am largely Unitarian.
3 Q. Okay.
4 In the interview, did the professor conducting the
5 interview, the chair conducting the interview, ask whether --
6 sorry -- indicate that you would be required to fulfill any
7 religious role?
8 A. No.
9 Q. Did she -- sorry, strike that.
10 Okay. I am going to have you examine a document that's been
11 marked as Employer Exhibit 36.
12 Please let me know whether you have finished reviewing that
13 document, or when you are finished reviewing that document.
14 A. All right. I think I have gone over it in detail.
15 Do you need it back?
16 Q. You can hang onto it for the moment.
17 I'm sorry, I do have a question about that. Did you fill
18 out this application?
19 A. Honestly, I don't recall filling out any application. I
20 have yet to have an adjunct position anywhere, where I filled
21 out an application.
22 Q. So you have never seen this document before?
23 A. No.
24 MR. BROWN: Objection. Leading.
25 THE HEARING OFFICER: You can rephrase it. Well, he

1 A. No.
2 Q. Has anybody else in the Duquesne administration done so?
3 A. No.
4 Q. Did you attend an -- sorry to change gears a little bit, but
5 when you were first hired, did you attend an adjunct orientation
6 session?
7 A. No. I wasn't even aware that such were available.
8 Q. Has anybody from Duquesne ever communicated an expectation
9 that you should be a spiritual guide for students?
10 A. No.
11 Q. Has anybody from Duquesne ever communicated that you would
12 be disciplined for failing to live up to Catholic teachings?
13 A. No.
14 Q. Has anyone from Duquesne ever communicated that you would be
15 disciplined for failing to teach Catholic doctrine?
16 A. No.
17 Q. Has anyone from Duquesne every communicated that you are
18 expected to discipline students who fail to live up to Catholic
19 teachings?
20 A. No.
21 Q. Has anybody from Duquesne ever communicated that you ought
22 to think about Catholic doctrine, when evaluating student work?
23 A. No.
24 Q. Okay.
25 I'm going to give you two documents, one is employer 18, one

1 is Employer 19.
2 Take a look at those.
3 Have you had a chance to look at those?
4 A. Yeah, I am just finishing this last one here.
5 Q. Right.
6 A. All right.
7 Q. Okay.
8 Were either of those documents ever given to you by
9 Duquesne?
10 A. No.
11 Q. Have you ever attended a convocation?
12 A. No.
13 Q. Did you ever participate in a Duquesne sponsored Bible
14 study?
15 A. No.
16 Q. A mission trip?
17 A. No.
18 Q. At the time you were hired, were you given a faculty
19 handbook?
20 A. I don't believe so.
21 MR. KILBERT: I don't think I have any more questions.
22 Thank you.
23 THE WITNESS: Thank you.
24 THE HEARING OFFICER: Do you have cross exam?
25 MR. BROWN: Well, if could have two minutes.

1 THE HEARING OFFICER: Sure.
2 (Discussion off he record.)
3 THE HEARING OFFICER: On the record.
4 MR. BROWN: No further questions.
5 THE HEARING OFFICER: Mr. Kilbert?
6 MR. KILBERT: One moment.
7 One additional question.
8 REDIRECT EXAMINATION
9 BY MR. KILBERT:
10 Q. So far as you know, do all classrooms at Duquesne contain
11 crucifixes?
12 A. No.
13 Q. Have you seen a classroom that did not have a crucifix?
14 A. I have.
15 MR. KILBERT: Thank you, no further questions.
16 RECROSS EXAMINATION
17 BY MR. BROWN:
18 Q. You have seen a classroom that doesn't contain a crucifix?
19 A. My classrooms change every semester, I have seen some that
20 have them, and some that don't.
21 Q. Which one doesn't contain a crucifix?
22 A. I honestly could not remember which specific room it would
23 be.
24 Q. All right.
25 A. Again, my classrooms change every semester.

1 Q. But you have seen crucifixes in classrooms --
2 A. I have.
3 Q. Let me finish.
4 A. Yes.
5 Q. As a matter of fact, you have also seen many religious
6 symbols on the campus?
7 A. I have.
8 Q. Every place you go on the campus, you see religious symbols;
9 isn't that right?
10 MR. KILBERT: Objection, beyond the scope.
11 THE HEARING OFFICER: You opened it.
12 MR. BROWN: You opened it.
13 Q. When you walk on the campus, there are various kinds of
14 religious symbols; is that right?
15 A. There are.
16 Q. And you see them, and you understand very well that this is
17 a Catholic university?
18 MR. KILBERT: Objection. His understanding is irrelevant at
19 this point.
20 THE HEARING OFFICER: He has already testified that he
21 understands it is a Catholic university.
22 MR. KILBERT: Well, then asked and answered.
23 THE HEARING OFFICER: So I don't think we need too much
24 more. But it is open.
25 MR. BROWN: Okay. Thank you.

1 Q. So you see religious paintings; is that right?
2 A. There are a few.
3 Q. And you see religious statues?
4 A. Certainly.
5 Q. Right on the main campus?
6 A. Right.
7 Q. And you see many classrooms where there are crucifixes?
8 A. Yes.
9 MR. KILBERT: Objection.
10 THE HEARING OFFICER: What is basis for the objection?
11 MR. KILBERT: It was going to be asked and answered, now it
12 is doubly asked and answer.
13 MR. BROWN: He opened it.
14 THE HEARING OFFICER: We don't need much more.
15 MR. BROWN: I don't have any other questions.
16 Thank you.
17 THE HEARING OFFICER: I have a few questions for you.
18 THE WITNESS: Certainly.
19 THE HEARING OFFICER: Do you develop your own syllabus?
20 THE WITNESS: I do.
21 THE HEARING OFFICER: And does that have to be approved by
22 anyone in your -- anybody at Duquesne?
23 THE WITNESS: No.
24 THE HEARING OFFICER: Do you have to show it to anybody,
25 prior to teaching a class?

1 THE WITNESS: I submitted one when I first began teaching,
2 no one has asked me for another one since.
3 THE HEARING OFFICER: And just, does that include readings
4 that you are asking the students to do?
5 THE WITNESS: Yes.
6 THE HEARING OFFICER: Okay.
7 You answered a question about discipline, and disciplining
8 students.
9 Is it your understanding that you have a role in
10 disciplining students at all?
11 THE WITNESS: No.
12 THE HEARING OFFICER: Okay.
13 And, do you happen to know the number of adjunct faculty
14 that are teaching at Duquesne today?
15 THE WITNESS: I don't know precisely, no.
16 THE HEARING OFFICER: Okay. And is your class a core class?
17 THE WITNESS: It is a class that fulfills a core requirement
18 for students in the sciences. There is, I believe one other
19 course that can fulfill that requirement, and most students take
20 mine, actually.
21 THE HEARING OFFICER: Does that raise any other question?
22 MR. KILBERT: I have one.
23 REDIRECT EXAMINATION
24 BY MR. KILBERT:
25 Q. Is it your understanding -- what happens if a student acts

1 address, that's Duquesne's website?
2 A. Yes.
3 Q. One other question, at the bottom, "Education for the Mind,
4 Heart and Spirit," what's that?
5 MR. KILBERT: Objection. The document speaks for itself.
6 MR. KOVALIK: And we have had a lot of testimony on this
7 point.
8 THE HEARING OFFICER: We have.
9 There is no need for that.
10 MR. BUCKMAN: I can move on in this case.
11 THE HEARING OFFICER: Thank you.
12 MR. BUCKMAN: I will move on.
13 Q. Turning to 57. That's the seal of the university at the
14 top?
15 A. Yes.
16 Q. And at the bottom "A Catholic University in the Spiritan
17 Tradition"?
18 A. Yes.
19 Q. All right.
20 53. The McAnulty College of Liberal Arts, who is McAnulty?
21 A. McAnulty was the name of Father McAnulty, who was the former
22 president of the university, and is a Spiritan father.
23 Q. When you say father, Spiritan priest?
24 A. Spiritan priest.
25 Q. Okay.

1 C-E-R-T-I-F-I-C-A-T-E

2 This is to certify that the attached proceedings before the National Labor Relations Board, Region Six, held in Room 904,
3 William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15219, on Wednesday, April 29, 2015,
4 were held according to the record, and that this is the original, complete, true and accurate transcript which has been
5 compared to the reporting accomplished at the hearing; that the exhibit files have been checked for completeness and no exhibits
6 received in evidence or in the rejected exhibit files are missing.
7

8 _____
Eugene C. Forcier, Official Reporter
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EXHIBIT NO. B-1(a) RECEIVED ✓ REJECTED ___

06-RC-080933
CASE NO. _____ CASE NAME Duquesne

NO. OF PAGES 4 DATE 4/27/15 REPORTER ECF

INTERNET FORM NLRB-502 (2-08)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

FORM EXEMPT UNDER 44 U.S.C.

DO NOT WRITE IN THIS SPACE

Case No.	Date Filed
06-RC-080933	5/14/12

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (if box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)

- [✓] **RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] **RM-REPRESENTATION (EMPLOYER PETITION)** - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [ ] **RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.**
- [ ] **UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES)** - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] **UC-UNIT CLARIFICATION**- A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) [ ] In unit not previously certified. [ ] In unit previously certified in Case No. _____
- [ ] **AC-AMENDMENT OF CERTIFICATION**- Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer	Employer Representative to contact	Tel. No.
Duquesne University	Charles J. Dougherty	412-396-6575

3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)	Fax No.
600 Forbes Avenue Pittsburgh, PA 15282	412-396-2236

4a. Type of Establishment (Factory, mine, wholesaler, etc.)	4b. Identify principal product or service	Cell No.
University	Higher Education	e-Mail

5. Unit Involved (In UC petition, describe **present** bargaining unit and attach description of proposed clarification.)	6a. Number of Employees in Unit:
Included Non-Tenure Track, Adjunct Faculty in the McAnulty College and Graduate School of Liberal Arts located at 600 Forbes Ave., Pittsburgh, PA 15282 **Excluded** All Tenure Track Faculty, Clerical, Support Personal, All Student Employees, and All Managers, Confidential Employees, Supervisors, Guards, and all others excluded by the Act	Present 124
	Proposed (By UC/AC)
(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)	6b. Is this petition supported by 30% or more of the employees in the unit?* [✓] Yes [ ] No *Not applicable in RM, UC, and AC

7a. [✓] Request for recognition as Bargaining Representative was made on (Date) 5/14/2012 and Employer declined recognition on or about (Date) no response (If no reply received, so state).

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state.)		Affiliation	
Address	Tel. No.	Date of Recognition or Certification	
	Cell No.	Fax No.	e-Mail

9. Expiration Date of Current Contract. If any (Month, Day, Year)	10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)
11a. Is there now a strike or picketing at the Employer's establishment(s) Involved? Yes [ ] No [ ]	11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name) _____, a labor organization, of (Insert Address) _____ Since (Month, Day, Year) _____

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

Name	Address	Tel. No.	Fax No.
		Cell No.	e-Mail

13. Full name of party filing petition (If labor organization, give full name, including local name and number)
The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)

14a. Address (street and number, city, state, and ZIP code)	14b. Tel. No. EXT	14c. Fax No.
Five Gateway Center, 9th Fl., Pittsburgh, PA 15222	412-562-5017	412-562-2555
	14d. Cell No. 724-880-4371	14e. e-Mail jcech@usw.org

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)
The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)	Signature	Title (if any)
Jeff Cech		Organizer

Address (street and number, city, state, and ZIP code)	Tel. No.	Fax No.
Five Gateway Center, 9th Fl., Pittsburgh, PA 15222	412-562-5017	412-562-2555
	Cell No. 724-880-4371	eMail jcech@usw.org

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

FORM NLRB-4812
(4-12)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STATEMENT OF PROCEDURES IN REPRESENTATION CASES

Right to be Represented – Any party to an NLRB case has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlrb.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Service of Documents – If a party's representative is an attorney, the attorney will receive exclusive service of all documents, except that the party and its attorney will both receive those documents described in Sec. 11842.3(b) of the NLRB's Casehandling Manual. However, the attorney may consent to have additional documents served on the party by making the appropriate designation on the Notice of Appearance Form NLRB-4701. If the representative is not an attorney, the party and its representative may receive copies of all documents.

Initial Processing of Petition – Immediately upon receipt of the petition, the NLRB's Regional Office conducts an impartial investigation to determine if the Board has jurisdiction, whether the petition is timely and properly filed, whether the showing of interest is adequate, and if there are any other interested parties to the proceeding or other circumstances bearing on the question concerning representation.

Election Agreement – If the NLRB's criteria for conducting a secret ballot election are met, the parties are afforded the opportunity to enter into an election agreement. There are two types of election agreements: (1) a Consent Election Agreement (Form NLRB-651), which provides that the Regional Director's determination of postelection matters is final; and (2) a Stipulated Election Agreement (Form NLRB-652), which provides for the right of appeal to the Board on postelection matters. The secret ballot election will be conducted by an NLRB agent pursuant to the election agreement and the parties shall have the right to observers at the election.

Hearing – In certification and decertification cases, the Regional Director issues a notice of hearing when the petition is filed. That hearing will not be held if the parties enter into an election agreement approved by the Regional Director. If the parties desire, they may enter into a Full Consent Agreement (Form NLRB-5509) that provides the Regional Director will make final determinations regarding all pre-election and post-election issues.

Purpose of Hearing: The purpose of a hearing conducted under Section 9(c) of the Act is to determine if a question of representation exists. A question of representation exists if a petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which an individual or labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily do not need to be litigated or resolved before an election is conducted. Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record documentary and other evidence so long as such examination, cross-examination, and other evidence supports its contentions and is relevant to the existence of a question of representation or a bar to an election. The hearing officer shall also have power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence.

Conduct of Hearing: If held, the hearing will be conducted by a Hearing Officer of the NLRB and all parties will be afforded the opportunity to state their positions and present evidence on the issues deemed litigable. All parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and

who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the Regional Director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. *(Copies of exhibits should be supplied to the Hearing Officer and other parties at the time the exhibit is offered in evidence.)* All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the Hearing Officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the Regional Director or to the Board in Washington *(if the case is transferred to the Board)* instead of to the Hearing Officer.

Motions and Objections: Statements of reasons in support of motions or objections should be as concise as possible. Objections and exceptions may, on appropriate request, be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings. All motions shall be in writing unless stated orally on the record at the hearing and shall briefly state the relief sought and the grounds for such motion. If not E-Filed, an original and two copies of written motions shall be filed with the Hearing Officer. A copy of any motion must be served immediately on the other parties to the proceeding.

Oral Argument and Briefs – Upon request, any party shall be entitled to a reasonable period at the close of the hearing for oral argument, which shall be included in the official transcript of the hearing. At any time prior to the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. *Post*-hearing briefs shall be filed only upon special permission of the hearing officer and within the time and addressing the subjects permitted by the hearing officer. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the Regional Director.

If allowed, briefs are to be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, www.nlrb.gov, is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

Names and Addresses of Eligible Voters – If an election is to be held, the Employer must provide an eligibility list to the Regional Director within seven days after either the approval of the election agreement or the direction of an election by the Regional Director or the Board. The eligibility list must contain the full names and addresses of eligible voters. The Regional Director will make the list available to all other parties.

Waiver of Time to Have Eligibility List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the eligibility list with the Regional Office. However, a petitioner and/or union entitled to receive the eligibility list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Withdrawal or Dismissal – If it is determined that the Board does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the Regional Director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

EXHIBIT NO. B-1(S) RECEIVED ✓ REJECTED ____

CASE NO. 06-RC-080933 CASE NAME Duquesne

NO. OF PAGES 212 DATE 4/27/15 REPORTER ECF

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT,

Employer,

v. No. 06-RC-080933

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC,

Petitioner.

EMPLOYER'S MOTION FOR BOARD TO ORDER AN EVIDENTIARY HEARING, VACATE ELECTION, AND DISMISS PETITION

COMES NOW Employer Duquesne University of the Holy Spirit (hereinafter referred to as "Duquesne" or the "University"), pursuant to this Board's Order of September 14, 2012,[1] and hereby renews its contention that this Board lacks statutory jurisdiction over Duquesne. In all the circumstances, the Board must order an evidentiary hearing, vacate the election held herein, and dismiss the instant Petition. In support, Duquesne will show as follows:

Introduction

Duquesne requests that the Board finally resolve the threshold question of whether it can properly exercise jurisdiction over Duquesne in light of the religious exemption from Board jurisdiction recognized by the Supreme Court in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). The Regional Director, in its Order Denying Duquesne's Motion to Withdraw from a

[1] A copy of this Order is attached hereto as Exhibit "1."

1(5)

Stipulated Election Agreement, essentially ignored Supreme Court precedent and relied on Duquesne's failure to challenge jurisdiction before the Board on prior occasions in support of its ruling. Because statutory jurisdiction cannot be waived, the Regional Director was required to address the merits of Duquesne's arguments regarding jurisdiction. Further, as an evidentiary hearing will demonstrate, because this Board lacks statutory jurisdiction over Duquesne, the election should be vacated, and the instant Petition should be dismissed.

Facts and Procedural Posture

On May 14, 2012, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (hereinafter referred to as the "Petitioner"), filed a petition in the above-captioned case, seeking to represent non-tenure track adjunct faculty in the McAnulty College and Graduate School of Liberal Arts. On May 25, 2012, the Regional Director approved a Stipulated Election Agreement executed by Duquesne and the Petitioner in a unit of "[a]ll part-time faculty employed by [Duquesne] in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees." The election was conducted by mail ballot with voting commencing on June 22, 2012 and ending on July 9, 2012.

On June 14, 2012, Duquesne filed its Motion to Withdraw from the Stipulated Election Agreement and Request for Expedited Review[2] with the Regional Director. As the Acting Regional Director acknowledged, "[t]he Employer's basis for its Motion is its contention that the Employer is a 'church operated school' as defined by the Supreme Court in *NLRB v. Catholic*

[2] Duquesne's Motion to Withdraw from Stipulated Election Agreement and Request for Expedited Review is attached hereto as Exhibit "2." Duquesne sought expedited review from the Regional Director in order to have time to pursue a special appeal to the Board if the Regional Director ruled adverse to Duquesne, which it did.

Bishop of Chicago, 440 U.S. 490 (1979) and its progeny." (Order Denying Motion to Withdraw from Stipulated Election Agreement and Request for Expedited Review, p. 2.)[3] On June 18, 2012, the Acting Regional Director denied Duquesne's Motion, finding that the Board could exercise jurisdiction over Duquesne because the University had entered into an election agreement and because the Board had previously exercised jurisdiction over Duquesne in the past. Significantly, the Regional Director did not address the fact that Duquesne never contested jurisdiction in those cases.[4]

On June 19, 2012, Duquesne filed its Request for Special Permission to Appeal from the Regional Director's Order Denying Employer's Motion to Withdraw from Stipulated Election Agreement and Request for Expedited Review. On September 14, 2012, this Board issued its "Order" denying "without prejudice" Duquesne's Request for Special Permission to Appeal. In addition, this Board instructed the Regional Director to open and count the ballots[5] and held that, if Petitioner received a majority of the votes cast, Duquesne could "renew its jurisdictional contention before the Board." On September 20, 2012, the Regional Director issued his "Tally of Ballots," indicating that Petitioner received a majority of the votes cast. Accordingly, Duquesne submits the instant Motion and arguments in renewal of its contention that this Board lacks statutory jurisdiction in this matter.[6]

---

[3] The Regional Director's Order Denying Duquesne's Motion to Withdraw from Stipulated Election Agreement is attached hereto as Exhibit "3."

[4] In *Duquesne University of the Holy Ghost*, 261 NLRB 587 (1982), Duquesne initially challenged the jurisdiction of the Board but later withdrew its challenge. At that time, as shown *infra* at page 9, *Catholic Bishop* was applied by the Board only to elementary and secondary schools. The Board now applies *Catholic Bishop* to all religiously affiliated schools at all levels of education.

[5] The ballots had been impounded, pending this Board's ruling on Duquesne's Request for Special Permission to Appeal.

[6] In an abundance of caution, Duquesne is also submitting "Employer's Objection to Conduct to Election" to the Regional Director.

Argument

I. Where statutory jurisdiction does not exist, neither "waiver" nor "consent" by a party can confer jurisdiction.

It is well established that the question of whether Duquesne is exempt from the National Labor Relations Act under *Catholic Bishop* is the type of jurisdictional issue that is not subject to waiver. *See, NLRB v. Cheney Cal. Lumber Co.*, 327 U.S. 385 (1946); *Local 900, Int'l Union of Elec., Radio & Machine Workers v. NLRB*, 727 F.2d 1184, 1191 n.5 (D.C. 1984) ("A court can always invalidate Board action that is patently beyond the Board's jurisdiction, even if the jurisdictional challenge was never presented to the Board"); *NLRB. v. Fed. Sec.*, 154 F.3d 751, 754 (7th Cir. 1998) (holding that a party's "contention that Congress explicitly excluded it from the Act's coverage surely is the type of jurisdictional challenge the Board agrees can never be waived."). "If the Board lacks statutory jurisdiction over a particular respondent, the respondent's failure to raise the issue does not waive it. A respondent is not Congress, and a respondent's waiver cannot confer on the Board jurisdiction which Congress has never given it." *Centex Independent Electrical Contractors Association, Inc. & Mills Electric, Inc. v. Intern. Brotherhood of Electrical Workers*, 344 N.L.R.B. 1393, 1396 (2005). For instance, in *Carroll College, Inc. v. NLRB*, 558 F.3d 568 (D.C. Cir. 2009), the United States Court of Appeals for the District of Columbia Circuit held that the Board lacked jurisdiction over the employer pursuant to *Catholic Bishop*, even though the employer raised the issue under *Catholic Bishop* for the very first time on appeal, and did not raise the issue before the Board. *Id.* at 574. The *Carroll College* court opined that the Board had no authority to order the employer to bargain with the union, and invalidated the Board's order. *Id.*

Similarly, to the extent this Board lacks statutory jurisdiction over Duquesne, such jurisdiction cannot be conferred by the consent of the parties. "Agency jurisdiction, like subject

matter in the federal courts, cannot be achieved by consent of the parties." *Plaquemines Part, Harbor and Terminal District* v. *Fed. Maritime Comm.*, 838 F.2d 536, 542 n. 3 (D.C. Cir. 1988); *see also, Inter-County Rural Electric Cooperative Corp.*, 106 N.L.R.B. 1316, 1317 (1953) (declining to assert jurisdiction even though the employer "concedes that it is engaged in commerce within the meaning of the Act and that therefore the Board could lawfully assert jurisdiction..."). Indeed, this Board's jurisprudence is replete with examples of the Board's rejecting stipulations on the grounds that the stipulations in question violated the National Labor Relations Act. *E.g., Central Cigar & Tobacco Co.*, 112 N.L.R.B. 1094, 1906 (1955) (holding that, based on the record before it, a cigarette machine service manager was a supervisor "notwithstanding the agreement of the parties to the contrary."); *F.M. Reeves & Sons, Inc.*, 114 N.L.R.B. 1243, 1243 n. 2 (1955) (holding that "a stipulation to include supervisors is in direct conflict with Section 2(11) of the Act and, therefore, is not binding.")

Member Brian Hayes recognized these bedrock legal principles in his dissent to the September 14, 2012 Order, noting that, although he "do[es] not favor releasing parties from their election agreements," the extent of the Board's jurisdiction, once challenged, must be analyzed in order "to determine whether we can do anything else." (Order, September 14, 2012, Member Hayes dissenting.) Member Hayes further recognized that, "[i]f we lack jurisdiction, then we have no power to order the Regional Director to do the things my colleagues order to be done." (*Id.*)

For example, in *The Salvation Army of Massachusetts*, 247 N.L.R.B. 413 (1980), this Board confronted a situation in which the employer, in a Stipulation for Certification Upon Consent Election, stipulated that it was engaged in "commerce" within the meaning of the NLRA and that "it met the monetary standards established by the Board for exercise of its

discretionary jurisdiction… ." After the union received a majority of votes cast, the employer objected to the election on the basis of *Catholic Bishop*, but the Acting Regional Director refused to void this stipulation on the grounds that the employer did not "proffer newly discovered or previously unavailable evidence" in support of its arguments that the stipulation should be voided. *Id.* On appeal, the Board held that "the Employer has raised the question of statutory rather than discretionary jurisdiction and, were we to find that this case involved 'teachers in church-operated schools' within the meaning of *The Catholic Bishop of Chicago*, the stipulation would be contrary to the Act, and the Board could not honor it." *Id.* Even though the Board ultimately concluded that *Catholic Bishop* did not apply in that case, it undertook an independent analysis of its jurisdiction, notwithstanding the stipulations of the parties.

Twelve years after it decided *Salvation Army*, this Board reasserted the fundamental proposition that a party cannot waive statutory jurisdiction. *Chelsea Catering Company*, 309 N.L.R.B. 822 (1992), involved "a catering business which provides catering services primarily to the airline industry." *Id.* at *1. The employer and the union entered into a Stipulated Election Agreement, and the union received the majority of votes cast. *Id.* Following the election, the employer moved to vacate the election and dismiss the petition on the basis that the employer was covered by the Railway Labor Act and that the Board lacked jurisdiction. *Id.* The union argued that the motion to vacate the election was untimely, and the Board swiftly rejected this argument, holding,

> We find no merit to the Petitioner's argument that the Board has jurisdiction over Chelsea because Chelsea submitted to the Board's jurisdiction in the Stipulated Election Agreement and that Chelsea's jurisdictional challenge was asserted in an untimely manner. Sec. 2(2) of the Act is a statutory limitation on the Board's jurisdiction which may be raised at any time.

Id. at *1 n. 2. Because the Board ultimately concluded that the employer was a "carrier" under the Railway Labor Act, the Board vacated the election and dismissed the petition. *Id.* at *1.

Thus, the Board has consistently held that neither a party's entering into a Stipulated Election Agreement nor a party's failure to raise the lack of statutory jurisdiction early in a proceeding constitutes either the party's consent to jurisdiction or a waiver of the right to object to the lack of statutory jurisdiction. Duquesne agrees with the position taken by Member Hayes in his dissent that, when the Board's statutory jurisdiction has been challenged, it is incumbent on the Board to analyze its jurisdiction before taking any other steps. It is clear from the Board's September 14, 2012 Order that, because Petitioner received a majority of the votes cast, the issue of statutory jurisdiction must finally be resolved.

II. The Regional Director erred in concluding that this Board has jurisdiction over Duquesne.

The Regional Director failed to address Duquesne's arguments on their merits. Rather, in its Order Denying Duquesne's Motion to Withdraw from the Stipulated Election Agreement, the Regional Director ruled that the Board can exercise jurisdiction over Duquesne because it exercised jurisdiction over Duquesne in *Duquesne University of the Holy Ghost*, 261 N.L.R.B. 587 (1982), as well as three other representation cases, including the instant case. The Regional Director has failed to acknowledge that jurisdiction before the Board cannot be waived. In light of Duquesne's properly contesting jurisdiction in this case well in advance of the election conducted herein, the Regional Director was obligated to address Duquesne's jurisdictional arguments rather than simply relying on prior cases in which the issue of jurisdiction was <u>not</u> before the Board.

A. The Parties' Stipulation in this matter does not foreclose examination of this Board's statutory jurisdiction.

The Board has a well-established rule that "once an election agreement has been approved, a party may withdraw therefore only upon an affirmative showing of unusual circumstances or by agreement of the parties." *First FM Joint Ventures, LLC*, 331 NLRB 238, 239 (2000) (citing *Sunnyvale Medical Center*, 241 NLRB 1156 (1979)). The Petitioner opposed Duquesne's requested withdrawal from the Stipulated Election Agreement. In its Motion, Duquesne argued that the "unusual circumstance" that should allow Duquesne to withdraw from the Stipulated Election Agreement is the inability of the Board to exercise jurisdiction over Duquesne pursuant to *Catholic Bishop*.

Although Duquesne maintains that this Board's lack of jurisdiction constitutes "unusual circumstances" that should allow Duquesne to withdraw from the Stipulated Election Agreement, such a finding is not strictly necessary for resolution of this matter. As noted above, the parties cannot confer jurisdiction where Congress has not done so. Indeed, in *The Salvation Army* and *Chelsea Catering Corp.*, this Board clearly rejected the argument that this type of stipulation could foreclose examination into the assertion of jurisdiction in a specific case.

In the case at bar, the text of the Stipulated Election Agreement itself demonstrates even more clearly than in *The Salvation Army* or *Chelsea Catering Corp.* that there has been no waiver of lack of statutory jurisdiction. In the Stipulation at issue in this case, Petitioner stipulated to facts that, in and of themselves, raise serious questions about this Board's ability to assert jurisdiction over Duquesne. Specifically, the Parties stipulated that Duquesne is "a University which provides religious and other higher education." (Stipulated Election Agreement, ¶ 2.) Thus, not only did Acting Regional Director Mark Wirick err in denying Duquesne's Motion to Withdraw from the Stipulated Election Agreement, it appears that it was

also error to approve the Stipulated Election Agreement without first analyzing the Board's statutory jurisdiction over Duquesne. The Board now has the opportunity to correct these errors by analyzing the extent of its jurisdiction over Duquesne, which requires that an evidentiary hearing be conducted to create a proper record.

B. The Board has not addressed the issue of jurisdiction over Duquesne under current Board and case precedent.

Contrary to the Regional Director's statements in the Order Denying Duquesne's Motion to Withdraw from Stipulated Election, the Board has never ruled that it can exercise jurisdiction over Duquesne under current precedent. The Regional Director cited *Duquesne University of the Holy Ghost*, 261 NLRB 587 (1982), in support of its ruling. In *Duquesne University*, Duquesne initially filed a motion to dismiss based on *Catholic Bishop* and asserted that the Board lacked jurisdiction. *Id.* at 587. Thereafter, Duquesne withdrew its motion to dismiss and indicated that it had no objection to the Board's assertion of jurisdiction in that proceeding. *Id.* The Board, in its Decision and Order, noted that Duquesne had withdrawn its contention that *Catholic Bishop* was a bar to the Board's jurisdiction. *Id.* The Board further opined in *Duquesne University* that the Board was not precluded from exercising jurisdiction over Duquesne pursuant to *Barber-Scotia College, Inc.*, 245 NLRB 406 (1979), which held that *Catholic Bishop* applied only to parochial elementary and secondary schools. *Id.*

As the Board is well-aware, the Board has since overruled *Barber-Scotia* and now considers the application of *Catholic Bishop* to educational institutions on all levels of education "on a case-by-case basis." *St. Joseph's College*, 282 NLRB 65, 68 (1986) (emphasis supplied). The Regional Director also places significant emphasis on Duquesne's not contesting jurisdiction in prior representation cases involving Duquesne. Such emphasis is grossly misplaced. Simply because Duquesne has not contested jurisdiction in previous cases does not preclude it from

raising the issue in this case. As the Board knows, the Board's precedent regarding *Catholic Bishop* has developed significantly over the years. As noted by the D.C. Circuit, the Board currently utilizes the "substantial religious character" test to determine whether it can exercise jurisdiction over colleges and universities. *Carroll College, Inc. v. NLRB*, 558 F.3d 568, 571 (D.C. Cir. 2009). Duquesne submits, as is explained in depth in its Motion to Withdraw from Stipulated Election Agreement, that it can satisfy the substantial religious character test. Additionally, Duquesne urged the Regional Director to adopt and apply the bright-line test from *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002). Under the *Great Falls* test, a university is exempt from the Board's jurisdiction if it: (1) holds itself out to students, faculty and the community as providing a religious educational environment, even if its principal academic focus is on "secular" subjects; (2) is organized as a nonprofit; and (3) is affiliated with, or owned, operated, or controlled, directly or indirectly, by a recognized religious organization, or with an entity, membership of which is determined, at least in part, with reference to religion. *Id.* at 1341-42. Duquesne also satisfies the *Great Falls* test.

Significantly, there are two other cases pending before the Board that raise issues of statutory jurisdiction under *Catholic Bishop*. In *Saint Xavier University*, Case No. 13-RC-22025 and *Manhattan College*, Case No. 2-RC-23543, the Board has granted the employers' Requests for Review to determine whether the Board can exercise jurisdiction in light of *Catholic Bishop*. Saint Xavier and Manhattan College are both Catholic institutions. In both of these cases, evidentiary hearings were conducted to develop the proper record. In its motion before the Regional Director, Duquesne submitted an offer of proof sufficient to warrant a similar evidentiary hearing, and the University stands ready to offer additional evidence attesting to its religious identity at such a hearing.

Conclusion

For the reasons stated above, Duquesne respectfully requests that the Board remand this matter to the Regional Director for Region Six for an evidentiary hearing to develop a full and complete record regarding this Board's statutory jurisdiction over Duquesne. Duquesne further requests that, thereafter, the record in this matter be transferred directly back to this Board for decision.

Respectfully submitted,

GLANKLER BROWN, PLLC

By: _____

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Andre B. Mathis
Michael D. Tauer
6000 Poplar Avenue, Suite 400
Memphis, Tennessee 38119
Telephone: (901) 525-1322
Facsimile: (901) 525-2389

Attorneys for Employer

CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing was served via FedEx on the following on this 25th day of September, 2012:

Mr. Daniel Kovalik
United Steelworkers of America
5 Gateway Center, Room 807
Pittsburgh, Pennsylvania 15220-3608

Mr. Robert Chester, Regional Director
Region Six
National Labor Relations Board
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, Pennsylvania 15222-4111

4819-5693-3137, v. 1

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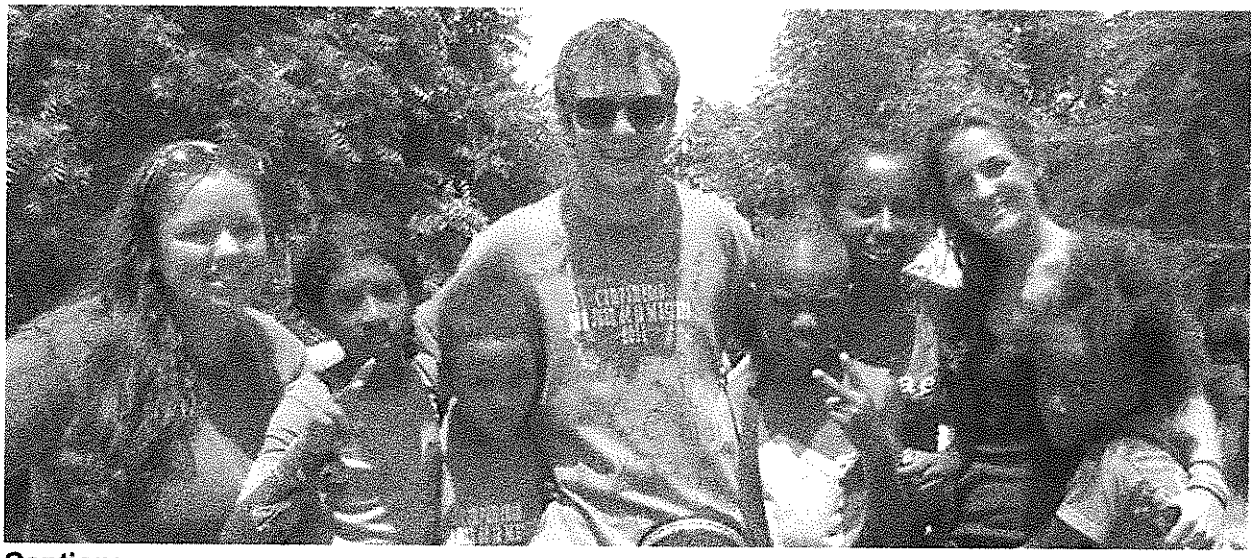
DUQUESNE UNIVERSITY

- Academics (academics)
- Admissions & Aid (admissions-and-aid)
- Life at Duquesne (life-at-duquesne)
- Service (service)
- Research (research)
- About (about)



Caption:

Students become well-rounded individuals by receiving an education for the mind, heart and spirit.

Division of Mission and Identity

Spiritus est qui vivificat

[It is the Spirit who gives life]

The Duquesne Mission

ER1

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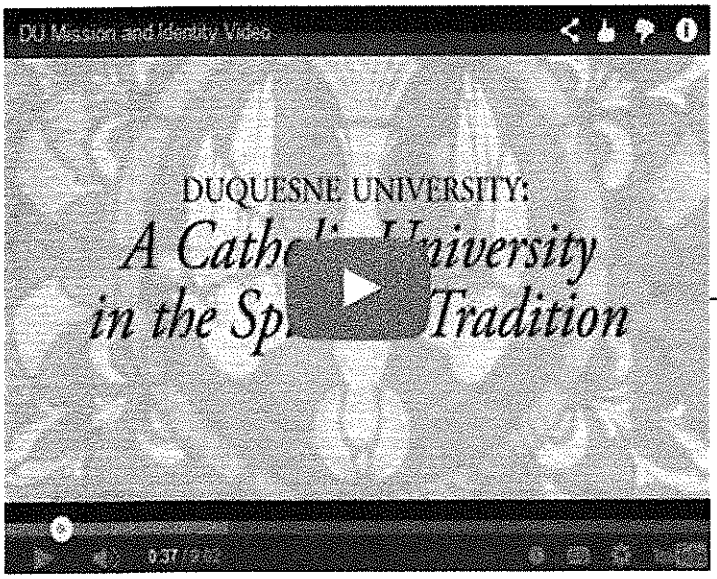

(http://youtu.be/BuDJ4mY-Bkc)

Duquesne University Mission Statement

Duquesne University of the Holy Spirit is a Catholic university founded by members of the Congregation of the Holy Spirit, the Spiritans, and sustained through a partnership of laity and religious.

Duquesne serves God by serving students through:

- Commitment to excellence in liberal and professional education
- Profound concern for moral and spiritual values
- Maintaining an ecumenical atmosphere open to diversity
- Service to the Church, the community, the nation, and the world
- Attentiveness to global concerns

The Spiritan Identity

The identity of Duquesne University is a modern expression of the Spiritan tradition (/about/mission-and-identity/spiritan-tradition) that the Fathers of the Holy Spirit began here in 1878. Generations of students, faculty and staff continually reshape the face of the school, but our true identity remains unchanged. Duquesne University is a community of scholars who live the Spiritan-led commitment of service to all and who share God's wisdom and academia's knowledge with those who seek it.

Our students, faculty and staff are taught how to use all aspects of the distinctly Duquesne experience to go from our small corner of Pittsburgh out into the larger world where they can serve all peoples in their professional and personal lives.

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As you learn more about everything that Duquesne has to offer, remember that tucked away under the buildings, books, social life and many other tangible pieces of the University lies a strong, active tradition of ecumenism that has made Duquesne one of the finest Catholic universities in the nation.

The Rev. Raymond French, C.S.Sp.
Vice President for Mission and Identity

Featured Events

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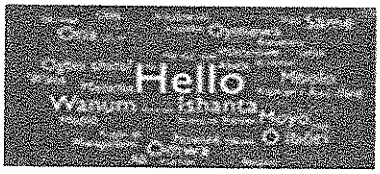

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DUQUESNE UNIVERSITY

Caption:

Amended and Restated Articles of Incorporation

A Pennsylvania Nonprofit Corporation

ARTICLE I

The name of this corporation shall be "Duquesne University of the Holy Spirit" (hereinafter the "University").

ARTICLE II

The University is incorporated under the provisions of the Act of April 29, 1874, of the Commonwealth of Pennsylvania and is governed under the Pennsylvania Nonprofit Corporation Law of 1988, as it may be amended from time to time (the "PNCL"). The University is organized on a non-stock basis. The University is organized, and shall be operated, exclusively for religious, charitable, scientific, literary and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or the corresponding provision of any future United States Internal Revenue Law (the "IRS Code").The University does not contemplate pecuniary gain or profit, incidental or otherwise. The period of duration of the University is perpetual.

ARTICLE III

The registered office and principal place of business of the University shall be 600 Forbes Avenue, in the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania, 15282.

ARTICLE IV

ER-2

The purpose of the University is to support and maintain educational programs in all branches of a thorough, moral and secular education, including languages, the liberal arts and sciences, and also for the preparation and education of individuals destined for the Catholic Priesthood. The courses of study to be pursued are as stated in the most current course catalog. The requirements for admission to undergraduate programs shall be such as are necessary to meet the minimum requirements of any governmental or accrediting body having jurisdiction over the University.

ARTICLE V

The University has the authority, through its Board of Directors, to confer the usual scholastic degrees, to establish, maintain and conduct a course of instruction and to confer degrees in the science of law, medicine, dentistry, pharmacy, and to confer such other degrees as may be approved and authorized from time to time by the Pennsylvania Department of Education and by the duly constituted authorities under the Acts of Assembly of the Commonwealth of Pennsylvania.

ARTICLE VI

The University shall maintain a full time teaching faculty of at least eight (8) members who shall devote all of their time to instruction or such number as the minimum required by any governmental or accrediting body having jurisdiction over the University.

ARTICLE VII

The University shall have members (the "Members"). The Members of the University shall be the Provincial Superior, the Provincial Councillors, and such other vowed members of the Congregation of the Holy Spirit Province of the United States as are appointed by the Provincial Superior with the consent of the Provincial Council so that at all times there are six (6) Members and not more than ten (10) Members.

ARTICLE VIII

The business and affairs of the University shall be managed by a Board of Directors of not less than fifteen (15) Directors and not more than (35) Directors, who shall be elected annually by the Members of the University on a day and in a manner to be set forth in the Bylaws. The Board shall have, subject only to the reserved powers vested in the Members, as set forth in Article IX, full power and authority to manage the University, its officers and its employees. All Directors shall serve without compensation.

ARTICLE IX

The University shall have all the powers permitted a corporation that is both a nonprofit corporation under Pennsylvania law and an exempt organization described in Section 501(c)(3) of the IRS Code. Subject to the provisions of the PNCL and the requirements of an organization that is tax-exempt pursuant to Section 501(c)(3) of the IRS Code, and in conformity with these Articles, the Members shall have the following full and exclusive reserved powers: (i) to determine or change the mission, the philosophy, objectives or purpose of the University; (ii) to elect and to remove, with or without cause, any individual to or from the Board of Directors; (iii) to amend, alter, modify, or repeal the Articles of Incorporation or the Bylaws; (iv) to approve the sale, purchase or encumbrance of real property as set forth in the Bylaws; (v) to approve any merger, consolidation or acquisition or creation of a subsidiary organization with respect to the University; (vi) to liquidate and dissolve the University and to determine the distribution of its assets upon dissolution; (vii) to approve any new indebtedness incurred by the Corporation as set forth in the Bylaws; (viii) to issue to the Board, from time to time, a statement of policy concerning the philosophy and mission of the University; (ix) to request information from and receive an annual financial report from the Board; (x) to confirm the Board's election and appointment of the Officers of the University and Officers of the Board, and to approve any written employment contract between any of the aforesaid Officers and the University; and (xi) to approve legal actions taken in the name of or on behalf of the University other than routine legal actions such as the collection of outstanding accounts receivable and actions taken in defense of claims brought against the University.

ARTICLE X

Bylaws of the University, consistent with these Articles of Incorporation, shall be adopted and amended in the manner provided in the Bylaws. The Bylaws of the University shall be deemed and taken to be its law subordinate to the Constitution and laws of the Commonwealth of Pennsylvania and the Constitution and laws of the United States.

ARTICLE XI

In the event of any conflict between the terms and provisions of these Articles of Incorporation (as amended at any time), the Bylaws of the University (as amended from time to time), or other governing documents of the University, the Articles of Incorporation shall control resolution of such conflict.

ARTICLE XII

The University, through its Board of Directors, shall maintain a protective endowment of at least $500,000, beyond all indebtedness and assets invested in buildings and apparatus, for the exclusive purpose of promoting instruction, provided that financial support or contributed services by its Member organization, the Congregation of the Holy Spirit Province of the United States, may be substituted for such endowment to the extent permitted by the laws of the Commonwealth of Pennsylvania.

ARTICLE XIII

No part of the net earnings of the University shall inure to the benefit of, or be distributable to, its Members, Directors, Officers or other private persons, except that the University shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in this Article. No substantial part of the activities of the University shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the University shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office. Any other provision of these Articles to the contrary notwithstanding, the University shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from the Federal income tax under section 501(c)(3) of the Code, (b) by a corporation contributions to which are deductible under section 170(c)(2) of Code, and (c) by a corporation organized under the Law as now existing or hereafter amended. No Member of the University shall acquire any individual or personal interest or estate in the property real, personal or mixed owned or hereafter acquired by the University.

ARTICLE XIV

These Articles of Incorporation may be amended by the Members in the manner provided by law and in the Bylaws of the University.

ARTICLE XV

Upon the dissolution of the University, after paying or making provision for the payment of all of the liabilities of the University and returning, transferring or conveying any assets requiring return, transfer or conveyance upon dissolution, any remaining assets (received and held subject to limitations permitting their use only for charitable, religious, or similar purposes, but not held upon a condition requiring return, transfer or

conveyance upon dissolution) shall be distributed to Congregation of the Holy Spirit Province of the United States ("Congregation"). In the event the Congregation shall not exist or does not qualify as an exempt organization described in Code Section 501(c)(3) at such time of dissolution or liquidation, the net assets of the University shall be transferred to such organization or organizations which are organized and operated exclusively for charitable, educational, religious or scientific purposes and qualify under Code section 501(c)(3) (or the corresponding provision of any future United States Internal Revenue Law). Any assets not so disposed of shall be disposed of by the court of the city or county in which the principal office of the University is then located to such organization or organizations as said court shall determine and as are then qualified as exempt under Code section 501(c)(3) (or the corresponding provision of any future United States Internal Revenue Law) taking into consideration the dissolution or liquidation provisions as set forth in the University Bylaws.

AMENDED AND RESTATED BYLAWS

OF

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT

EA-3

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ARTICLE I

DEFINITIONS

For purposes of these Bylaws, the following terms shall have the meaning set forth hereinafter.

1.1 "Articles of Incorporation" means the Articles of Incorporation of the Corporation and all amendments and restatements thereof.

1.2 "Board" and "Board of Directors" means those persons in whom certain governing authority with respect to the Corporation is vested as set forth in Article V.

1.3 "Bylaws" means these Bylaws of the Corporation.

1.4 "Canon Law" means the 1983 Code of Canon Law, as amended from time to time.

1.5 "Code" means the Internal Revenue of Code of 1986, as amended.

1.6 "Congregation" means the Congregation of the Holy Spirit Province of the United States, a public juridic person for Canon Law purposes.

1.7 "Constitution" means the Spiritan Rule of Life, as adopted May 15, 2005, and as may be further amended from time to time.

1.8 "Corporation" means Duquesne University of the Holy Spirit, a Pennsylvania nonprofit corporation.

1.9 "Director" means each person who is a member of the Board of Directors.

1.10 "Effective Date" means the effective date of these Bylaws which will be that date after the 2009 Chapter meeting of the Congregation on which the Provincial Superior and all members of the Provincial Council of the Congregation have been elected or selected.

1.11 "Governance Plan" means the canonical governance structure of the Congregation as set forth in the Constitution.

1.12 "Member" means each person who is a Member of the Corporation and in whom certain reserved governing powers are vested as set forth in Article III of the Bylaws.

1.13 "Proper Law" means those canonical documents enacted by the Congregation and related canonical bodies which set forth the norms and directives which govern the Congregation as promulgated and as amended from time to time.

1.14 "Provincial Council" means the persons selected and approved according to Proper Law who assist and advise the Provincial Superior according to the requirements of Canon Law and Proper Law and have the powers attributed to each of them in these Bylaws for civil law purposes. The Provincial Council shall consist of those persons, other than the Provincial Superior, each of whom shall individually be referred to as a "Provincial Councillor" and are selected according to the Governance Plan.

1.15 "Provincial Superior" means the person selected and approved according to Proper Law with canonical authority for the governance of the Congregation.

1.16 "State" means the Commonwealth of Pennsylvania.

1.17 "State Law" means the Pennsylvania Nonprofit Corporation Law of 1988, as amended from time to time.

1.18 "University" means the Corporation.

ARTICLE II

PURPOSE

2.1 Purpose. The purpose for which the University is organized and for which it shall at all times be operated are exclusively religious, charitable, scientific, literary and educational within the meaning of Code Section 501(c)(3) or the corresponding provision of any future United States Internal Revenue Law, including, for such purposes as, (i) to support and maintain a college for the instruction of youth in all branches of a thorough, moral and secular education, including languages, the liberal arts and sciences, and also for the preparation and education of youth destined for the Catholic priesthood, (ii) to confer the usual scholastic degrees, and (iii) to establish, maintain and conduct a course of instruction and to confer such other degrees as may be approved and authorized, from time to time, by the duly constituted authorities under the Acts of Assembly in such case made and provided.

ARTICLE III

MEMBERS

3.1 Number of Members. The Members of the Corporation shall be the Provincial Superior, the Provincial Councillors, and such other vowed members of the Congregation as are appointed by the Provincial Superior with the consent of the Provincial Council so that at all times there are six (6) Members and not more than ten (10) Members. Each Member of the Corporation shall at all times during his Membership satisfy the following eligibility criteria:

(a) be a vowed member in good standing of the Congregation; and

(b) not be under any type of canonical penalty such as canonical censure, expiatory penalty, penal remedy, or a penance.

3.2 Term of Members. The Members shall be divided into two (2) classes: the Provincial Superior and Provincial Councillors shall serve as Class A Members during their respective terms as Provincial Superior and Provincial Council. The term of each Class A member shall be coextensive with the period he serves as Provincial Superior or Provincial Councilor as set forth in the Constitution, his death, disability, resignation or termination, whichever occurs first. Members who are appointed by the Provincial Superior with the consent of the Provincial Council shall be designated as Class B Members. The term of each Class B Member shall be five (5) years. There shall be no limit on the number of terms which either a Class A or a Class B Member may serve, and each shall be eligible for reappointment as determined by the Provincial Superior and the Provincial Council.

3.3 Termination. The Members shall have the power to terminate a Member from Member status by the vote of a majority of the Members at any meeting of the Members called for such purpose at which a quorum of the Members is in attendance. Any Member proposed to be terminated shall be given written notice of such proposed action at least two (2) weeks prior to any such meeting. Such notice shall specify the facts upon which the proposed termination is based, and he shall have the opportunity to present a defense, either pro se or by the counsel of his choice. A full stenographic record of such proceedings shall be made available to all parties concerned.

ARTICLE IV

RESERVED POWERS

4.1 Powers of the Members. The following governing powers are exclusively vested in the Members and no attempted exercise of any such powers by any persons or entity other than the Members acting as such shall be valid or of any legal force or effect whatsoever:

(a) To determine or change the mission, the philosophy, objectives, or purpose of the University;

(b) To elect and to remove, with or without cause, any individual to or from the Board of the University;

(c) To amend, alter, modify, or repeal the Articles of Incorporation or the Bylaws;

(d) To approve the sale, purchase or encumbrance of real property in excess of five hundred thousand dollars ($500,000.00);

(e) To approve any merger, consolidation or acquisition or creation of a subsidiary organization with respect to the Corporation;

(f) To liquidate and dissolve the Corporation and to determine the distribution of its net assets upon dissolution in conformity with the Articles of Incorporation, the Code, and State Law;

(g) To approve any new indebtedness incurred by the Corporation in excess of one million dollars ($1,000,000);

(h) To issue to the Board, from time to time, a statement of policy concerning the philosophy and mission of the University;

(i) To request information from and to receive an annual report from the Board containing the information set forth in Article 5.1(d) below; and

(j) To ratify and confirm the election and appointment of the Officers of the University, the Officers of the Board, the University Chaplain, and approve any written employment contract between any of the aforesaid Officers and the Corporation.

(k) To approve legal action taken in the name of or on behalf of the University other than routine legal actions such as collection of outstanding accounts receivable, etc.

ARTICLE V

MEETING OF THE MEMBERS

5.1 Annual Meeting. The annual meeting of the Members shall be held at least one (1) week before the annual meeting of the Board at such time and place as may be designated by the Chairman of the Members. The Chairman of the Members shall preside at all meetings of the Members and the Vice Chairman of the Members shall act in case of the absence or disability of the Chairman of the Members. The Secretary of the Members shall keep minutes of all meetings of the Members. At the annual meeting, the Members shall:

(a) Elect a Chairman, Vice Chairman and Secretary of the Members from among their number;

(b) Elect new Directors as required pursuant to Article VI;

(c) Prepare and distribute to the Board a statement of policy to be followed in the current year, if the Members deem such to be advisable; and

(d) Review the annual report of the University prepared by the Board, as described in Section 6.1(6); and

(e) Review the performance of the Chairperson and Vice Chairpersons of the Board, and report to the Board concerning their eligibility for reappointment.

5.2 Special Meetings. Special meetings of the Members may be called at any time by the Chairman of the Members or by at least three (3) Members by giving notice as provided in Article 5.4.

5.3 Place of Meeting. The Chairman of the Members may designate any place, either within or outside the State, as the place of meeting for any annual or special meeting of the Members.

5.4 Notice of Meetings. Written notice stating the place, day and hour of any meeting shall be delivered not less than (i) ten (10) days before the date of a meeting that will consider a fundamental change under Chapter 59 of the State Law or (ii) five (5) days before the date of any other meeting. Notice shall be given either personally, by first class or express mail postage prepaid or by telecopy. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member as his address appears on the books of the University, with postage thereon prepaid. A notice by telecopy shall be deemed delivered when there is confirmation of the receipt of the telecopy. Notice of a special meeting shall include the purpose or purposes for which the meeting is called.

5.5 Waiver of Notice. A waiver in writing signed by a Member shall be deemed equivalent to notice. Except for a special meeting, the nature of business to be transacted need not be stated in the waiver. Such a waiver may be made before or after the time of notice stated in these Bylaws. Attendance of a Member at any meeting shall constitute a waiver of notice of the meeting except where the Member attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened in compliance with these Bylaws and State Law.

5.6 Quorum. At all meetings of the Members, a majority of the total voting Members (whether present in person or represented by proxy) shall constitute a quorum for the transaction of business, provided that the Chairman of the Members shall be present in person or by proxy. If a quorum is not present, the Members present may adjourn the meeting to such time and place as they may determine. Written notice of the second meeting shall conform to the requirements of Section 5702(b) or such subsequent amendment of State Law.

5.7 Voting. Class A and Class B Members shall each have one (1) vote. All business of the Members and legal action by them shall be transacted by a majority vote of the voting Members present at a meeting duly called and at which a quorum is in attendance.

5.8 Transaction of Business Without a Meeting. Any action which may be taken at a meeting of the Members may be taken without a meeting if action is taken by unanimous consent as evidenced by a writing setting forth the action so taken, signed by all of the Members in office and filed with the Secretary of the University. Such written action by consent may be executed in multiple counterparts all of which collectively shall be deemed one and the same legal instrument.

5.9 Conference Telephone. The Members may participate in a meeting through the use of conference telephone or similar communications equipment, provided that all Members participating in such a meeting can hear one another. Participation in such a meeting pursuant to this paragraph shall constitute presence in person at a meeting.

ARTICLE VI

BOARD OF DIRECTORS

6.1 Business Affairs.

(a) The business and affairs of the University shall be managed by the Board, who shall have, subject only to the reserved powers vested in the Members as set forth in Article IV, full power and authority to manage the University and its employees. All Directors shall serve without compensation but may receive compensation for other services rendered to the University in a different capacity.

(b) Annually the Board shall prepare a report which contains the following information as of the fiscal year end of the University:

(i) An audited financial statement of the University, including its endowment trust funds;

(ii) the principal changes in assets and liabilities, including endowment funds;

(iii) the revenue or receipts of the University, both unrestricted and restricted as to particular purposes, including separate data with respect to each endowment fund held by or for the University;

(iv) the expenses or disbursements of the University, for both general and unrestricted purposes, including such data separately stated with respect to each endowment fund held by or for the University;

(v) the number of persons who serve as Directors of the University, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and the names, business and resident addresses of said Directors; and

(vi) a report of the Board demonstrating how the University has satisfied the goals of the Members as set forth in the statement of policy promulgated by the Members pursuant to Section 4.1(h).

The report shall be verified by the President and delivered to the Members not later than one hundred twenty (120) days after the fiscal year end of the University.

6.2 Number of Directors. The Board shall consist of not less than fifteen (15) Directors elected by the Members. In addition, there shall be seven (7) ex-officio Directors, who shall also be voting members of the Board. The ex-officio Directors shall be as follows:

(a) The President of the University;

(b) The Bishop of the Roman Catholic Diocese of Pittsburgh, Pennsylvania or his designate;

(c) The Chairman of the Members;

(d) The Vice Chairman of the Members;

(e) The Secretary of the Members;

(f) The Vice President for Mission and Identity at the University; and

(g) The President of Duquesne University Alumni Association.

6.3 Term of Directors. Directors shall ordinarily be elected for a term of three (3) years and may be re-elected for two (2) additional terms of three (3) years each. Any person elected to an unexpired term will be eligible for two (2) additional terms of three (3) years. In addition, the Chairperson (as defined in Article 7.1) may be re-elected to additional terms as necessary while serving in that position. Directors may initially be elected for terms of less than three (3) years for the purpose of dividing the Board into three (3) groups, substantially equal in number, with terms expiring at different intervals. A relative (immediate family member or in- law) of a Director shall not be eligible for election to the Board for a period of at least three (3) years after the Director leaves the Board.

6.4 Vacancy. If the office of a Director becomes vacant by reason of death, illness, resignation, removal or otherwise, the vacancy may be filled by the Members.

6.5 Removal. Directors are subject to removal with or without cause, by the Members or by the Chairperson of the Board with the approval of the Members. Cause may include, but shall not be limited to, failure to comply with the principles and policies of the University or failure to subscribe to the mission and philosophy of the University as determined by the Members.

6.6 Liability. A Director of the University shall not be personally liable for monetary damages for any action taken or failure to take any action unless it is determined that the Director has breached or failed to perform the duties of his or her office under the Director's Liability Act, 42 Pa. C.S.A. Section 8363 and its successor Section Pa. C.S.A. Section 5713, and such breach or failure to perform constitutes self-dealing, willful misconduct or recklessness; provided, however, that the foregoing provisions shall not eliminate or limit (a) the responsibility or liability of such Director under any criminal statute, or (b) the liability of a Director for failure to pay local, state or federal taxes. Any repeal, modification or adoption of any provisions inconsistent

with this section of these Bylaws shall be prospective only, and neither the repeal or modification of this Bylaw, nor the adoption of any provision inconsistent with this Bylaw shall adversely affect any limitation on the personal liability of a Director of the University existing at the time of such repeal or modification or the adoption of such inconsistent provision.

6.7 Emeritus Members of the Board. The "Emeritus Member" designation shall be reserved for those Directors who have served on the Board for a minimum of three (3) terms and who have a record of unusual and distinctive service to the University. Upon the recommendation of the Board Membership and Development Committee and with the approval of the Members, Emeritus Members will be elected by a majority vote of the voting members of the Board. Emeritus Members will be invited to attend the Annual Meeting of the Board and all Board social events. They will not have voting rights or powers. The Chairperson may invite an Emeritus Member to participate on a Board Committee in a non-voting capacity, from time to time.

ARTICLE VII

MEETING OF THE BOARD OF DIRECTORS

7.1 Officers of the Board. The Board shall elect from among its members a Chairperson of the Board ("Chairperson") and up to four (4) Vice Chairpersons of the Board ("Vice Chairpersons"), subject to ratification and confirmation by the Members. The performance of the Chairperson and Vice Chairpersons shall be reviewed annually by the Members. The Secretary of the University shall keep the minutes of all meetings of the Board and serve all notices required and shall have such other responsibilities as delegated by the Chairperson.

(a) The Chairperson shall preside at all meetings of the Board. The Vice Chairperson, senior in service on the Board, shall preside and act in the case of the unavailability of the Chairperson.

(b) Not less than three (3) months prior to the end of the term of the Chairperson, the Board Membership and Development Committee shall canvas the members of the Board for possible candidates for a new Chairperson. The Board Membership and Development Committee shall then present a list of not more than three persons to the full Board for a vote. A simple majority vote is required. This process may take place by paper or electronic ballot. The ballots of this vote are to be counted by the Secretary of the Board and at least one other member of the Board. The person chosen by the Board shall be presented to the Members for formal approval. If the Members approve, the announcement of the newly elected Chairperson will then be made by the Chairman of the Members to the full Board. The newly elected Chairperson will take office on July 1st, at the expiration of the term of the current chairperson. In accordance with Article 5.1(e), this appointment is renewable on an annual basis for a period of up to six (6) years.

7.2 Annual Meeting. The annual meeting of the Board shall be held in the month of May immediately following the annual meeting of the Members.

7.3 Special Meetings. Special meetings of the Board may be called at any time by the President of the University, by the Chairperson of the Board, by at least three (3) Directors of the Board, by the Members or by a majority of the members of the Executive Committee of the Board at such time and place as the calling party shall designate. Notices for such special meetings shall be provided by the Secretary.

7.4 Place of Meeting. The Chairperson of the Board may designate any place within or outside the State as the place of meeting for any annual or special meeting of the Board.

7.5 Notice of the Meeting. Written notice stating the place, day and hour of any meeting shall be delivered not less than (i) ten (10) days before the date of a meeting that will consider a fundamental change under Chapter 59 of the State Law or (ii) five (5) days before the date of any other meeting. Notice shall be given either personally, by first class or express mail postage prepaid or by telecopy. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed with postage thereon prepaid. If notice is given by telecopy, such notice shall be deemed to be delivered when there is confirmation of receipt of the telecopy. Notice of a special meeting shall include the purpose or purposes for which the meeting is called.

7.6 Waiver of Notice. A waiver in writing signed by a Director shall be deemed equivalent to notice. Except for a special meeting, the nature of business to be transacted need not be stated in the waiver. Such a waiver may be made before or after the time of notice stated in the Bylaws. Attendance of a Director at any meeting shall constitute a waiver of notice of the meeting except where the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

7.7 Quorum. At all meetings of the Board, a majority of the total number of the voting Directors shall constitute a quorum for the transaction of business, but if less than such a majority is present at a meeting, a majority of the Directors present may adjourn the meeting.

7.8 Attendance. Unless just cause for absence is made known to the Board, nonattendance of any Director for three (3) consecutive meetings of the Board will operate automatically to terminate his or her term of office. Such non-attendance shall be deemed a formal resignation by such Director unless the Board otherwise takes an affirmative action pursuant to a resolution.

7.9 Procedure. Unless otherwise provided by the Directors, all meetings shall be conducted according to the procedure described in the latest edition of Robert's Rules of Order.

7.10 Voting. Each Director, unless provided otherwise in these Bylaws, shall have one (1) vote. All business of the Board and formal actions by the Board shall be transacted by a majority vote of the voting Directors present at a meeting duly called and at which a quorum of voting Directors is in attendance.

7.11 Transaction of Business Without a Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if action is taken by unanimous consent as evidenced by a writing setting forth the action so taken signed by all the voting Directors in office and filed with the Secretary of the Corporation. Such written consent action may be executed in multiple counterparts all of which shall be deemed one and the same legal instrument.

7.12 Conference Telephone. One or more Directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment, provided that all persons participating in the meeting can hear each other. Participation in such a meeting pursuant to this paragraph shall constitute presence in person at a meeting.

ARTICLE VIII

OFFICERS

8.1 Officers and Designations. The officers of the University shall consist of a President, a Vice President for Academic Affairs, Vice President for Management and Business, Vice President for Student Life, Vice President for University Advancement, Vice President for Mission and Identity, General Counsel, Secretary of the University (who may also serve as Secretary of the Board), and such other vice presidents as the Board shall determine from time to time. The officers shall be elected by the Board at the last meeting of the fiscal year, subject to the approval of the Members. At the request of the President, and with the approval of the Board, the Vice President for Academic Affairs may be designated the Provost of the University, the Vice President for Management and Business may be designated the Executive Vice President for Management and Business, the Vice President for Student Life may be designated the Executive Vice President for Student Life, the Vice President for University Advancement may be designated the Executive Vice President for University Advancement, the Vice President for Mission and Identity may be designated the Executive Vice President for Mission and Identity, and the General Counsel may be designated the Vice President or Executive Vice President for Legal Affairs and General Counsel.

8.2 Term. The President shall continue in office for the period set forth in the employment contract between the President and the University. The other officers of the University shall be elected by the Board on the recommendation of the President, and shall continue in office at the pleasure of the President.

8.3 President. The President shall be the chief executive officer of the University responsible to the Board for the administration and supervision of all activities of the University and, in general, shall have, possess and exercise the powers and duties customarily possessed and exercised by presiding officers of like organizations.

(a) The President shall submit annually to the Board the budget of the University and shall make an annual report to the Board of the work and condition of the University.

(b) The President shall have the power to sign, in the name of and on behalf of the University, all duly authorized contracts, deeds, acceptances of gifts and bequests, and other instruments. The President shall have power to delegate authority under this subparagraph to any other officer of the University by an instrument in writing. Any such delegation shall be reported at the next regular meeting of the Board or the Executive Committee.

If, in the opinion of the Board, the President is unable or unwilling to serve, the Board may appoint an Acting President, with the approval of the Members, who shall have the powers and duties of the President. If no such appointment has been made as aforesaid, the Vice President for Academic Affairs shall have the powers and duties of the President.

8.4 Vice President for Academic Affairs. The Vice President for Academic Affairs is responsible, under the President, for the educational operations of the University.

(a) The Vice President for Academic Affairs shall, in the case of the unavailability of the President and the failure of the Board to appoint an Acting President, have the powers and perform the duties of the President.

(b) The Vice President for Academic Affairs shall obtain the opinions of the academic deans in formulating policies and practices relating to their particular College and Schools, and as each relates to the College or other Schools and to other academic areas in the University.

(c) The Vice President for Academic Affairs shall be responsible to ensure that the academic deans and academic support staff discharge the duties of their offices.

(d) The Vice President for Academic Affairs shall be responsible to the President for academic planning and for the preparation and administration of the budget for all academic activities.

(e) The Vice President for Academic Affairs shall be elected by the Board on the recommendation of the President.

A Review Committee shall be appointed by the President to assist in identifying persons qualified for election to the position. The Committee shall function under the supervision and instruction of the President.

8.5 Vice President for Management and Business. The Vice President for Management and Business shall have the responsibility, under the President, for coordinating and developing policies and plans for the financial, administrative and corporate operations of the University.

(a) The Vice President for Management and Business shall have charge, under the Budget and Finance Committee of the Board, of the funds, stocks, securities, and other investments of the University, including off-campus real estate, and shall supervise and manage its business operations.

(b) The Vice President for Management and Business shall, before each meeting of the Board, submit to the Budget and Finance Committee, for transmission to the Board, a report on such aspects of the finances of the University as the Committee shall specify.

(c) The Vice President for Management and Business shall have responsibility for the preparation of the University's various annual budgets and budget projections..

(d) As the Executive Committee shall provide by resolution from time to time, the Vice President for Management and Business shall sign, or, with approval of the Executive Committee, designate persons who may sign, in the name and on behalf of the University, receipts for all monies, stocks and securities received by the University, shall deposit the monies, stock and securities of the University in such depositories or with such custodians as the Executive Committee shall direct, and shall disburse such monies and withdraw and dispose of such stocks and securities under the direction of the Committee.

(e) The Vice President for Management and Business shall be the accounting officer and treasurer of the University, shall be responsible through the Budget and Finance Committee of the Board for the proper keeping of the accounts for all the departments of the University, shall have authority to establish the methods by which such accounts shall be kept, and shall have the authority to audit them. The books of account of the University shall be open at all reasonable times to inspection by the Directors.

(f) The Vice President for Management and Business shall be responsible for the collection of all monies due the University.

(g) The Vice President for Management and Business shall have administrative responsibility for such University operations and supporting services as the President may designate.

(h) The Vice President for Management and Business shall be bonded for faithful performance of duties in such amount as the Board shall direct.

8.6 Vice President for Student Life. The Vice President for Student Life shall have administrative oversight, under the President, of the campus residential life and the social and co-curricular activities of students, including athletics and athletic organizations, and shall be responsible for the preparation and administration of the budget for these areas. In association with the Vice President for Academic Affairs, the Vice President for Student Life will have a special concern for the encouragement of sound and fruitful relationships between the intellectual and social life of students and for those aspects of college life outside the classroom which can contribute to the student's growth and development as a mature and responsible human being.

8.7 Vice President for University Advancement. The Vice President for University Advancement shall be responsible, under the President, for the creation and execution of communication and development programs designed to interpret and communicate the University's value to the community as an institution of higher education worthy of increased support. The Vice President for University Advancement shall be responsible, under the President, for the supervision of alumni relations, communications, public relations, fund raising and special events and for appointment and supervision of all personnel in this area, and for the preparation and administration of the budget for these areas.

8.8 Vice President for Mission and Identity. The Vice President for Mission and Identity shall be responsible, under the President, for the promotion of the Catholic and Spiritan character of the University. The Vice President for Mission and Identity shall be responsible under the President to articulate the vision, values and concerns of the Spiritan Congregation, collaborate with the President to sustain and advance the Spiritan identity and character throughout the University, develop lay leadership for extending the Catholic and Spiritan qualities of the University, and foster the effective presence and engagement of Spiritans in the University's life.

8.9 General Counsel. The General Counsel shall be the chief legal officer of the University and shall be responsible under the President, for all legal affairs of the University.

(a) The General Counsel shall ensure compliance of all parts of the University with applicable laws, statutes and regulations of government bodies. The General Counsel shall issue opinions of the General Counsel and legal memoranda as to the legality of corporate actions.

(b) The General Counsel shall approve all contracts of the University as to legal form. The General Counsel shall oversee all litigation or administrative hearings involving the University.

(c) The General Counsel shall, as necessary, investigate and report to the President on the legality of the conduct of the officers or employees of the University.

(d) The General Counsel shall, as necessary, employ and oversee the use of outside counsel for the University's legal affairs.

8.10 Secretary of the University. The Secretary of the University shall have charge, under the President and the Chairperson, of the general correspondence of the University, and shall have such other responsibilities as the Chairperson or the President may designate from time to time.

(a) The Secretary of the University shall keep the minutes of all meetings of the Board, serve all notices required, have custody of the corporate seal, shall affix it to such instruments as require its use, and when so affixed, shall sign all documents requiring the signature of the Secretary as an officer of the University.

(b) The Secretary of the University shall have custody of the Articles of Incorporation of the University, the minute books, and papers relating to the records of the Corporation.

ARTICLE IX

UNIVERSITY CHAPLAIN

9.1 University Chaplain. The President shall appoint the University Chaplain and associate Chaplains upon the recommendation and approval of the Members. Consideration for said appointment shall be given first to members of the Congregation. The University Chaplain shall be responsible, under the President, for the planning, preparation and administration of the budget for all the areas of the Campus Ministry and shall report to the President on all campus and off-campus religious services and programs. The University Chaplain shall administer the support for the access to the liturgies and facilities required for all members of the University community on campus. Liturgical services shall be performed in accordance with external ecclesiastical jurisdictions of which the participants are members.

ARTICLE X

EXECUTIVE RESOLUTIONS OF THE BOARD

10.1 Executive Resolutions. The Board shall adopt such resolutions as it deems necessary or appropriate for the proper conduct of the business and affairs of the University, subject to the approval of the Members if required under Section 4.1 of the Bylaws. It shall designate certain of its resolutions as "Executive Resolutions" and cause the same to be published and distributed on the website of the University or such other medium as determined by the Board from time to time. To the extent they conform with the Articles of Incorporation and Bylaws, the "Executive Resolutions" adopted by the Board govern the organization and administration of the University and supersede any conflicting provision of any other University policy, publication or document.

ARTICLE XI

COMMITTEES

11.1 General Provisions. Committees of the Board shall be either "Standing" or "Special." The Chairperson shall appoint the chairperson and members of all Standing and Special Committees unless otherwise specified in these Bylaws. The Standing Committees shall be the Executive, Academic Affairs, Board Membership and Development, Audit and Finance, Investment, University Advancement, Mission and Identity, Student Life, and Athletics Committees. A majority of the members of all Committees of the Board shall be Directors. All Board Committee members who are not members of the Board shall be nonvoting members of that Committee.

11.2 Executive Committee. The Executive Committee shall consist of the Chairperson, the Vice Chairpersons, the President of the University, the Chairman, Vice Chairman and Secretary of the Members, the Vice President for Mission and Identity, the chairpersons and vice chairpersons of the Standing Committees. In situations where the Chairperson cannot attend Executive Committee meetings, the senior Vice Chairperson shall exercise all of the rights and duties of the Chairperson as if he or she were present in person. The Executive Committee shall have the power to transact all regular business of the University between meetings of the Board, except as restricted by the State Law. All matters of major importance will be reported to the Board. The Executive Committee shall meet as necessary.

11.3 Academic Affairs Committee. The Academic Affairs Committee shall review the activities of the Academic Division of the University, and report to the Board on a regular basis.

11.4 Board Membership & Development Committee. The Board Membership and Development Committee shall seek qualified candidates for appointment to the Board and submit the recommendations to the Members. The Committee may have up to five (5) members, and shall include the Chairperson, one Vice Chairperson, the Chairman of the Members and the President of the University as ex-officio members. One other member shall be chosen from among the other Directors.

11.5 Audit & Finance Committee. The Audit & Finance Committee shall review the financial activities of the University, including the annual budget, management of the endowment, and annual audit by an independent accounting firm. The Committee shall report the results of the annual audit to the Board and Members.

11.6 University Advancement Committee. The University Advancement Committee shall review the activities of the University Advancement Division, including fund raising activities and public relations activities, and report to the Board on a regular basis.

11.7 Mission and Identity Committee. The Mission and Identity Committee shall review the activities of the Vice President for Mission and Identity and report to the Board. The Committee shall be responsible for Board orientation.

11.8 Student Life Committee. The Student Life Committee shall review the activities of the Student Life Division of the University and report to the Board on a regular basis.

11.9 Athletics Committee. The University Athletics Committee shall review the activities of the University athletics programs, and report to the Board on a regular basis.

11.10 Investment Committee. The investment Committee shall review the University endowment and investments and report to the Board on a regular basis about the performance of the University investment portfolio.

ARTICLE XII

CONTRACTS, LOANS, CHECKS AND DEPOSITS

12.1 Contracts. The Board may authorize, consistent with Article VI, any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the University, and such authority may be general or confined to specific instances.

12.2 Loans. No loans shall be contracted on behalf of the University and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board and approved by the Members if required under Section 4.1 hereof. Such authority may be general or confined to specific instances.

12.3 Checks, Drafts, etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of the University shall be signed by such officer or officers, agent or agents of the University and in such manner as shall from time to time be determined by resolution of the Board.

12.4 Deposits. All funds of the University not otherwise employed shall be deposited from time to time to the credit of the University in such banks, trust companies or other depositories as the Board may select.

ARTICLE XIII

FISCAL YEAR

13.1 Fiscal Year. The fiscal year of the University shall be the year beginning on the first day of July and ending on the thirtieth (30th) day of June in each year or such other twelve month period as may from time to time be specified by the Board.

ARTICLE XIV

REGISTERED OFFICE

14.1 Registered Office. The registered office of the University shall be the Administration Building, Duquesne University, Pittsburgh, Pennsylvania 15282.

ARTICLE XV

AMENDMENTS

15.1 Amendment to Bylaws. These Bylaws may be altered or repealed and new Bylaws may be adopted only by the Members, at any regular or special meeting of the Members, subject to the notice, quorum and voting provisions set forth herein.

ARTICLE XVI

CONFLICT OF INTEREST

16.1 Board Policies. The Members, Directors, officers, key employees and other persons engaged in governing and managing the University have a fiduciary responsibility to the University. Therefore, the Board shall adopt a conflict of interest policy requiring, among other things:

(a) Periodic statements from Members, Directors, officers and key employees that disclose any existing or potential conflict of interest; and

(b) Corrective and disciplinary action with respect to violations of such policies.

16.2 Inside Information. A Director shall refrain from utilizing any inside information as to the business activities of the University for the benefit of himself/herself, his/her immediate family or any entity with which he/she may be associated.

ARTICLE XVII

INDEMNIFICATION

17.1 The University shall, to the fullest extent permitted by Pennsylvania law, as the same may be amended or supplemented, and to the extent the University has insurance, if any, indemnify every person against reasonable expense and any liability paid or incurred by such person in connection with any action or threatened claim, action, suit or proceeding, civil, criminal, administrative, investigative or other, whether brought by or in the right of the University or otherwise, in which he or she may be involved, as a party or otherwise, by reason of such person being or having been a Member, Director, officer described in these Bylaws or employee of the University or by reason of the fact that such person is or was serving at the request of the University as a Member, Director, officer, employee, fiduciary or other representative of another corporation, partnership, joint venture, trust, employee benefit plan or other entity (such claim, action, suit or proceeding hereinafter being referred to as "action"). The indemnification provisions of this Article XVII shall apply only if the act which gives rise to the possibility of indemnification was an act within the scope of the person's employment at the University. Such indemnification shall include advances of any expense incurred by such person in connection with an action prior to final disposition of such action, consistent with the provisions of any applicable statute. As used herein, "expense" shall include fees and expenses of counsel selected by or on

behalf of such person and "liability" shall include amounts of judgments, excise taxes, fines and penalty amounts paid in settlement.

17.2 The University may purchase and maintain insurance to protect itself and any person eligible to be indemnified hereunder against any liability or expense asserted against or incurred by such person in connection with any action, whether or not the University would have the power to indemnify such person against such liability or expense by law or under the provision of this Article. The University may enter into agreements with any of the persons eligible to be indemnified hereunder guaranteeing that all such persons will be indemnified against liability or expense. The University may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such sums as may be necessary to effect indemnification as provided herein.

17.3 The right of indemnification provided for herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of the Members or disinterested Directors, or otherwise, both as to actions in their official capacity and as to action in another capacity while holding such corporate office, and shall continue as to a person who has ceased to be a Member, Director, officer, employee or agent. The provisions hereof shall inure to the benefit of the heirs and legal representatives of persons entitled to indemnity hereunder and shall be applicable to actions commenced after the adopting hereof, whether arising from acts or omissions occurring before or after the adoption hereof.

ARTICLE XVIII

SEAL

18.1 The corporation shall have a seal as prescribed by the Board.

ARTICLE XIX

DISSOLUTION OR LIQUIDATION

19.1 Distribution on Dissolution or Liquidation. Upon the dissolution or liquidation of the University, whether such be *de jure* or *de facto*, in whole or in part, the Members shall, after paying or making provision for the payment of all of the liabilities of the University, transfer the assets of the University to the Congregation. If the Congregation shall not exist or no longer qualify as an exempt organization under Code Section 501(c)(3) at the time of the dissolution or liquidation of the University, the net assets of the University shall be transferred to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Code Section 501(c)(3) as the Members shall determine. In the event that the Members would fail or be unable to act and the matter would be referred to the court of competent jurisdiction, the Members express their intention that the assets be disposed of exclusively for such charitable purposes to:

(a) any other entity or organization affiliated with the Congregation provided such entity or organization qualifies as an organization exempt from Federal income tax under Code Section 501(c)(3); and/or

(b) any fund or organization whose purpose is to support and maintain a Catholic university provided such fund or organization qualifies as an organization exempt from Federal income tax under Code Section 501(c)(3).

These Bylaws were adopted and effective on May 10, 2000.

Amended and Restated effective June 16, 2009

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The Official Catholic Directory

for the Year of Our Lord

2013

GIVING STATUS OF THE CATHOLIC CHURCH AS OF JANUARY 1, 2013

Containing Ecclesiastical Statistics of

THE UNITED STATES, PUERTO RICO,
THE VIRGIN ISLANDS, AGANA, CAROLINE AND MARSHALL ISLANDS,
AND FOREIGN MISSIONARY ACTIVITIES.

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INSTITUTIONS LOCATED IN THE DIOCESE

[A] SEMINARIES, RELIGIOUS OR SCHOLASTICATES

PITTSBURGH. *Saint Paul Seminary* (1965) *College & Pre-Theology*, 2900 Noblestown Rd., 15205-4227. Tel: 412-456-3048; Fax: 412-456-3187. Email: seminaryprog@diopitt.org. Web: www.diopitt.org. Very Revs. Donald P. Breier, M.Div., Dir. Spiritual Format/Vice Rector; Joseph M. Mele, Ph.D., Rector; Revs. Benedetto P. Vaghetto, J.C.L., Spiritual Dir.; Howard P. Bleichner, Faculty Member; Sr. Cindy Ann Kibler, S.H.S., Pastoral Formation Coord. Priests 4; Sisters 1; Students (attending Duquesne University) 20.

[B] COLLEGES AND UNIVERSITIES

PITTSBURGH. *Carlow University* (1929) 3333 Fifth Ave., 15213. Tel: 412-578-6059; Fax: 412-578-6668. Email: admissions@carlow.edu. Web: www.carlow.edu. Dr. Mary Hines, Pres.; Dr. Margaret McLaughlin, Ph.D., Vice Pres. for Academic Affairs & Provost; Elaine Misko, Librarian. Sisters of Mercy. Sisters 2; Lay Teachers 90; Total Staff 378; Total Enrollment 2,346.

Duquesne University of the Holy Spirit (1878) 600 Forbes Ave., 15282. Tel: 412-396-6000; Fax: 412-396-4354. Web: www.duq.edu. Dr. Charles J. Dougherty, Pres.; Revs. William F. Crowley, C.S.Sp. (Retired); John Fogarty, Supr. Gen., Spiritan Congregation; Sean M. Hogan, C.S.Sp., Exec. Vice Pres. Student Life; Sean Kealy, C.S.Sp.; Raymond D. French, C.S.Sp.; James P. McCloskey, C.S.Sp., Vice Pres. Mission & Identity; Nace McCool, C.S.Sp., Asst. Dean Student Formation School of Educ.; Peter I. Osuji, Campus Min.; Very Rev. Jeffrey T. Duaime, C.S.Sp., Prov. Supr., Spiritan U.S. Province; Revs. John A. Sawicki, C.S.Sp., Chm. Duquesne Univ. Corp.; Jocelyn Gregoire, C.S.Sp.; Daniel L. Walsh, C.S.Sp., Campus Min.; Brian Cronin, C.S.Sp., Visiting Prof., Philosophy; James C. Okoye, Dir., Spiritan Studies; Eugene Uzukwu, C.S.Sp., Assoc. Prof. of Theology; George J. Spangenberg, C.S.Sp., Visiting Instructor Intl. Educ. The Spiritans. Priests 16; Faculty 487; Students 10,046; Total Staff 1,559.

The University is coeducational and comprises the following Colleges, Schools and Institutes:

College of Liberal Arts Tel: 412-396-6359; Fax: 412-396-4859. Dr. James Swindal, Dean, College & Graduate School of Liberal Arts.

School of Business Administration Tel: 412-396-6238; Fax: 412-396-4764. Dr. Alan Miciak, Dean.

School of Music Tel: 412-396-6080; Fax: 412-396-5479. Dr. Edward Kocher, Dean.

School of Law Tel: 412-396-6300; Fax: 412-396-6319. Ken Gormley, Dean.

School of Leadership and Professional Advancement Tel: 412-396-5600; Fax: 412-396-5072. Dr. Dorothy Bassett, Dean.

School of Education Tel: 412-396-6093; Fax: 412-396-5585. Dr. Olga Welch, Dean.

School of Nursing Tel: 412-396-6550; Fax: 412-396-6346. Dr. Mary Ellen Smith Glasgow, Dean.

School of Pharmacy Tel: 412-396-6380; Fax: 412-396-1810. Dr. J. Douglas Bricker, Dean, Mylan School of Pharmacy.

School of Health Sciences Tel: 412-396-6652; Fax: 412-396-5554. Dr. Gregory Frazer, Dean; Dr. David W. Seybert, Dean Bayer School of Natural & Environmental Sciences. Tel: 412-396-4900; Dr. Ralph L. Pearson, Provost & Academic Vice Pres.; Mr. Stephen Schillo, Vice Pres., Mgmt. & Business; Rev. Sean M. Hogan, C.S.Sp., Exec. Vice Pres. Student Life; Linda S. Drago, Esq., Gen. Counsel & Univ. Sec.; Dr. Laverne Saunders, Librarian.

La Roche College (1963) 9000 Babcock Blvd., 15237-5898. Tel: 412-536-1201; Fax: 412-536-1199. Email: karen.willoughby@laroche.edu. Web: www.laroche.edu. Sr. Candace Introcaso, C.D.P., Ph.D., Pres.; Michael Andreola, Vice Pres. Inst. Advancement; Colleen Ruefle, Vice Pres. for Student Life; Revs. W. Peter Horton, M.A., M.Div., Campus Min.; Thomas G. Schaefer, Assoc. Vice Pres., Academic Affairs; Dr. Howard Ishiyama, Vice Pres. for Academic Affairs; Dr. Rosemary McCarthy, Ph.D., Assoc. Vice Pres., Academic Affairs & Dean, Grad. Student & Adult Ed.; Robert Vogel, Vice Pres. Finance & CFO; Sr. Michele Bisbey, C.D.P., Div. Chair Humanities; George Zaffuto, Vice Pres. Admin. Svcs.; William Firman Jr., Vice Pres., Enrollment Mgmt. & Mktg.; Mary Beth Fatchko, Special Asst. to Pres. & Gen. Counsel; Laverne Collins, Librarian. Sisters of Divine Providence. Priests 2; Sisters 9; Lay Teachers 198; Total Staff 296; Students 1,465.

[C] HIGH SCHOOLS, DIOCESAN

PITTSBURGH. *Bishop Canevin High School, Inc.* (1957) 2700 Morange Rd., 15205. Tel: 412-922-7400; Fax: 412-922-7403. Email: mainoffice@bishopcanevin.org. Web: www.bishopcanevin.org. Mr. Kenneth M. Sinagra, Pres.; Rev. John (Jay) F. Donahue, Chap.; Mrs. Karen M. Walker, Librarian. Priests 1; Lay Teachers 27; Students 378.

Central Catholic High School, Inc. (1927) 4720 Fifth Ave., 15213. Tel: 412-621-8189; Fax: 412-208-0555. Email: principal@centralcatholichs.com. Web: www.centralcatholichs.com. Bros. Patrick Duffy, F.S.C., Pres.; Robert Schaefer, F.S.C., Prin.; Mary Sickles, Librarian. The school is a Diocesan institution under the care of the Brothers of the Christian Schools (F.S.C.). Priests 2; Brothers 10; Lay Teachers 53; Students 870; Total Staff 72.

North Catholic High School, Inc. (1939) 1400 Troy Hill Rd., 15212. Tel: 412-321-4823; Fax: 412-321-0699. Email: principal@north-catholic.org. Web: www.north-catholic.org. Dr. Michael J. Pendred II, Prin.; Mr. Frank Orga, Pres. Lay Teachers 16; Total Staff 25; Students 200.

Oakland Catholic High School, Inc. (1989) 144 N. Craig St., 15213. Tel: 412-682-6633; Fax: 412-682-2496. Email: webmaster@oaklandcath.org. Web: www.oaklandcatholic.org. Dr. Maureen Marstaller, Prin.; Katherine D. Freyvogel, Pres.; Mrs. Milana Galagaza Sopko, Librarian. Priests 1; Lay Teachers 49; Total Staff 17; Students 580.

BADEN. *Quigley Catholic High School, Inc.* (1967) 200 Quigley Dr., 15005. Tel: 724-869-2188; Fax: 724-869-3091. Email: office@qchs.org. Web: www.qchs.org. Mrs. Rita McCormick, Prin.; Mr. Mitchell Yanyanin, Librarian. Sisters 1; Lay Teachers 18; Students 155; Total Staff 20.

MCKEESPORT. *Serra Catholic High School, Inc.* (1961) 200 Hershey Dr., 15132. Tel: 412-751-2020; Fax: 412-751-3488. Email: 73781@diopitt.org. Web: www.serrahs.com. Timothy Chirdon, Prin.; Mrs. Wendy Seibert, Librarian. Lay Teachers 25; Students 320; Total Staff 30.

MT. LEBANON. *Seton-LaSalle Catholic High School, Inc.* (1979) 1000 McNeilly Rd., 15226. Tel: 412-561-3583; Fax: 412-561-9097. Email: schoolinfo@slshs.org. Web: www.slshs.org. Lauren Martin, Prin.; Stephanie Schmidt, Librarian. Consolidated South Hills Catholic & Elizabeth Seton High Schools. Lay Teachers 37; Total Staff 50; Students 517.

Under the care of Sisters of Charity. Rev. James M. Bachner, M.Div., Chap.

NATRONA HEIGHTS. *Saint Joseph High School, Inc.*, 800 Montana Ave., 15065. Tel: 724-224-5552; Fax: 724-224-5205. Beverly K. Kaniecki, Prin. Sisters 1; Lay Teachers 11.

[D] HIGH SCHOOLS, PRIVATE

PITTSBURGH. *Vincentian Academy* (1932) 8100 McKnight Rd., 15237. Tel: 412-364-1616; Fax: 412-367-5722. Web: www.vincentianacademy.org. Sr. Camille Panich, S.C.N., Prin.; John Fedko, Pres. Sisters of Charity of Nazareth 4; Lay Teachers 23; Students 231; Total Staff 35.

CORAOPOLIS. *Our Lady of the Sacred Heart High School* (1932) 1504 Woodcrest Ave., 15108. Tel: 412-264-5140; Fax: 412-264-4143. Email: info@olsh.org. Web: www.olsh.org. Tim Plocinik, Prin.; Katelyn Gilroy, Librarian. Felician Sisters, C.S.S.F., State approved day high school. Sisters 1; Lay Teachers 29; Total Staff 43; Students 376.

[E] CONSOLIDATED SCHOOLS

PITTSBURGH. *Brookline Regional Catholic School*, (Grades PreK-8), (Brookline), 2690 Waddington Ave., 15226. Tel: 412-563-0858; Fax: 412-341-6810. Email: brookregcath@yahoo.com. Web: www.brcschool.com. Janet Salley Rakocy, Prin. Serving the parishes of Our Lady of Loreto, St. Pius X and Resurrection. Lay Teachers 19; Total Staff 12; Students 185.

Christ the Divine Teacher Catholic Academy, (Grades PreK-8), (Aspinwall), 205 Brilliant Ave., 15215. Tel: 412-781-7927; Fax: 412-781-0891. Email: office@cdtca.org. Sr. Dorothy Dolak, S.C.N., Prin. Serving 24 parishes (Regional). Lay Teachers 13; Students 159; Total Staff 13.

Northside Catholic, 3854 Brighton Rd., 15212. Tel: 412-761-5043; Fax: 412-761-0840. Mrs. Peggy Booker, Prin. Lay Teachers 12; Aides 1.

Sister Thea Bowman Catholic Academy, (Grades PreK-8), Elementary, 721 Rebecca Ave., 15221. Tel: 412-242-3515; Fax: 412-241-3189. Sr. Marie Margaret Wolf, Prin. (Elementary); Mrs. Rita Canton, Prin. (Middle School); Sr. Mary O'Donnell, Librarian. Priests [illegible] Teachers 17.

BETHEL PARK. *Saint Katharine Drexel* [illegible] Baptist Rd., 15102. Tel: 412-833-[illegible] 347-0361. Linda M. Bechtol, Prin. [illegible] Merger)

BUTLER. *Butler Catholic School* (1988) [illegible] St., 16001. Tel: 724-285-4276; Fax: [illegible] Email: bcsoffice@butlercatholic.org [illegible] www.butlercatholic.org. Sr. John Ann [illegible] C.D.P., Prin. Serving the parishes of St. Michael, St. Fidelis, St. Andrew and St. [illegible] Butler. Lay Teachers 22; Students [illegible] 42.

MONONGAHELA. *Madonna Catholic Regional* (1995) (Grades PreSchool-8), [illegible] 15063. Tel: 724-258-3199; Fax: [illegible] Email: madonnacatholicregional[illegible] Web: www.madonnacatholic.com [illegible] Loughran Brown, Prin. sbrown@madonnacatholic.com. Serving parishes of Mary, Mother of the Church [illegible] of the Valley, and St. Damien of [illegible] Teachers 11; Total Staff 15; Students [illegible]

[F] ELEMENTARY SCHOOLS, PRIVATE

PITTSBURGH. *The Campus School of [Carlow] University* (1963) (Grades PreK-8), [illegible] 15213. Tel: 412-578-6158; Fax: [illegible] Email: mapachuto@carlow.edu [illegible] www.campusschool.carlow.edu. [illegible] Prin.; Amy Collins, Librarian. Sisters [illegible] Lay Teachers 30; Students 285; Total Staff [illegible]

ALLISON PARK. *Providence Heights Alpha School* [illegible] Babcock Blvd., 15101. Tel: 412-[illegible] 412-635-6317. Web: www.alphaschool[illegible] Margaret Ruefle, Prin.; Courtney [illegible] Librarian. Sisters of Divine Providence [illegible] Lay Teachers 28; Students 185.

[G] DEPARTMENT OF SPECIAL EDUCATION

PITTSBURGH. *DePaul School for Hearing and [Speech]* (1908) 6202 Alder St., 15206. Tel: 412-[illegible] Fax: 412-924-1038. Email: [illegible] depaulinst.com. Web: www.speakmindes[illegible] Ruth Auld, Exec. Dir.; Mary Jo Maynard [illegible] Auditory-Oral day school for children [illegible] hearing, speech and language [illegible] Sisters 1; Lay Teachers 16; Students 60.

NEW BRIGHTON. *McGuire Memorial* [illegible] Mercer Rd., 15066-3437. Tel: 724-843-[illegible] 724-847-2004. Email: [illegible] mcguirememorial.org. Web: www.mcguirememorial.org. Residential Intermediate Care for Developmentally Challenged; Private School, Licensed Training, Community Homes, Employment Center. Priests 1; Sisters 3; Lay [illegible] Staff 500; ICF Residents 58; Additional Adult Training 175; Community Living 87; Private Academic School 88; [illegible] 145; Total Assisted Annually 488.

WEXFORD. *St. Anthony School Programs* [illegible] Corporate Dr., Ste. 580, 15090. Tel: 724-[illegible] Fax: 724-940-9064. Email: [illegible] stanthonyschoolprograms.com. [illegible] Program Dir. Resource rooms for students [with] special needs in 4 elementary schools [illegible] schools and 1 Post-Secondary Program. Teachers 7; Students 101; Total Staff [illegible]

[H] CHILD CARE INSTITUTIONS

PITTSBURGH. *Franciscan Child Day Care C[enter]* [illegible] Hamilton Rd., 15234-2299. Tel: 41[illegible] Fax: 412-885-7210. Email: fcdc@[illegible] www.osfprov.org/fcdc.htm. Mrs. [illegible] Dir.; Sr. Barbara Zilch, O.S.F., Pres. Total [illegible] 112; Total Staff 26.

Holy Family Institute (1900) 8235 Ohio River [Blvd.], 15202. Tel: 412-766-4030; Fax: 412-[illegible] Email: schott.sandra@hfi-pgh.org. Web: [www.hfi-]pgh.org. Sr. Linda Yankoski, C.S.F.N., Ed.D., [Pres.] & CEO. Sisters of the Holy Family of N[azareth]. Holy Family Institute is committed to [illegible] children, preserving families and [illegible] communities by providing an integrated [continuum] of social services and programs. These [programs] and services include in-home family services, traditional and [illegible] residential services, shelter placement, workforce development program, SNAP (Stop [Now] and Plan) program, (early intervention for youth), Parent-Child Home Program (early learning and literacy), [illegible]

[Col]laborative (financial stabilization), substance [abuse] and addiction counseling, mental health [co]unseling, energy assistance programs and [specia]lized schools for grades K through 12. [illegible] C.S.F.N. 1; St. Joseph Sisters 1; Total Staff 250.

[illegible] *Day Care & Learning Center*, 146 [illegible] Rd., 15209. Tel: 412-821-4332; Fax: 412-821-3312. Web: www.sosf.org. Sisters of St. Francis of the Neumann Communities., Provides [infant], toddler, and preschool care as well as [before] and after-school care for school age children, school age care on non-school days and [summer]. Total Assisted 275; Total Staff 45.

[Providence] *Connections, Inc.* (1994) Corporate [Office], 3113 Brighton Rd., 15212-2456. Tel: 412-[illegible]; Fax: 412-766-6775. Email: ewinschel@[provi]denceconnections.org. Web: [www.]providenceconnections.org. Sr. Carolyn [illegible], C.D.P., Ph.D., Exec. Dir. Staff 7.

[Providence] Family Support Center (1994) 3113 Brighton Rd., 15212-2456. Tel: 412-766-3860; Fax: [412-]766-6775. Web: www.providenceconnections.org. Total Assisted 620; Total Staff 88.

[illegible] *Child Development Center*, 8150 McKnight Rd., 15237. Tel: 412-366-8586; Fax: 412-[illegible]-7315. Email: jparagi@vcs.org. Jill Paragi, Dir.

[I] GENERAL HOSPITALS

PITTSBURGH. *UPMC Mercy* (An affiliate of the University of Pittsburgh Medical Center), 1400 Locust St., 15219. Tel: 412-232-8111; Fax: 412-[illegible]. Web: www.upmcmercy.com. Will Cook, [M.H.A.], Pres. Bed Capacity 487; Patients Assisted Annually 221,990; Total Staff 2,804.

[J] HOMES FOR THE AGED

PITTSBURGH. *Little Sisters of the Poor Home for the Aged* (1889) 1028 Benton Ave., 15212. Tel: 412-307-1100; Fax: 412-307-1104. Email: [pittsburgh]@littlesistersofthepoor.org. Web: www.littlesistersofthepoor-pittsburgh.org. Sr. Judith Meredith, Supr. & Admin.; Rev. John A. [illegible], S.T.L., M.Ed. Sisters 11; Total Staff 100; Bed Capacity 88; Total Assisted Annually 120.

[illegible] *Manor Corp.* (1966) 2695 Winchester Dr., 15220-4099. Tel: 412-440-4424 (Admin.); 412-440-4343 (Nursing); Fax: 412-440-4426. Web: www.vcs.org. Rev. John F. Walsh. Sisters of the Holy Spirit 7; Total Staff 284; Total Assisted Annually 641; Residents 184; Child Day Care 72.

[K] REHABILITATION, NURSING AND GERIATRIC CARE FACILITIES

[PITTSBURGH]. *Marian Hall Home, Inc.* (1970) 934 Forest Ave., 15202-1118. Tel: 412-761-1699; Fax: 412-761-2556. Email: msgriccia@marianhall.org. Sr. Marian Sgriccia, O.S.F., Admin. Purpose: to provide programs, facilities, and services, including, but not limited to, residential personal care, and long-term care homes for the elderly, ill, or disabled, including supportive services. Total in Residence 60; Total Assisted Annually 100; Total Staff 45.

The Community at Holy Family Manor, Inc., 301 Nazareth Rd., 15229-2194. Tel: 412-931-6996; Fax: 412-931-7255. Web: chfmanor.org. Programs operating under The Community at Holy Family Manor: Mt. Nazareth Learning Center; Nazareth Housing Services; Holy Family Manor Personal Care Home. Bed Capacity 57; Total Assisted Annually 1,700; Total Staff 85.

[Vincentian] de Marillac (1943) 5300 Stanton Ave., 15206. Tel: 412-361-2833; Fax: 412-361-1237. Email: jpruett@vcs.org. Linda Schoyer, Pastoral Care; Jennifer Pruett, Admin. Catholic, skilled nursing home. Total Staff 79; Bed Capacity 50; Total Assisted Annually 108.

[Vincentian] Home (1924) 111 Perrymont Rd., 15237. Tel: 412-366-5600; Fax: 412-366-1408. Web: www.vcs.org. Sr. Anne Kull, S.C.N., Admin. Sisters of Charity of Nazareth. Sisters 5; Total Staff 295; Bed Capacity 180; Total Assisted Annually 445; Assisted Living: Total Assisted 61; Total Staff 31.

[ALLISON] PARK. *Vincentian Regency* (1986) 9399 Babcock Blvd., 15101. Tel: 412-366-5540; Fax: 412-369-9789. Email: mgenovich@vcs.org. Web: www.vcs.org. Sr. Mary Ann Genovich, S.C.N., Admin. Sisters of Charity of Nazareth. Bed Capacity 143; Total Assisted Annually 400; Total Staff 230.

[Providence] Manor, 9000 Babcock Blvd., 15101.

[BADEN]. *Villa St. Joseph of Baden, Inc.*, 1030 State St., 15005. Tel: 724-869-6310; Fax: 724-869-6399. Email: mmurray@villastjoseph.org. Mr. Gary [illegible], Pres.; Ms. Mary M. Murray, N.H.A., M.P.H., Exec. Dir. Purpose: to provide a home-like environment for 120 nursing home residents in need of skilled nursing, rehabilitation and long term intermediate care. Our mission of "competent and compassionate care" is carried out daily by our staff who focus on building relationships, while providing therapy, clinical nursing, activities, spiritual and other support in a holistic manner. Specialty services include short term rehabilitation, dementia care and home-like long term living. Outpatient therapy services are also available. Beds for Patients with Dementia or Alzheimer's 30; Total Assisted Annually 393; Total Staff 217; Bed Capacity 120.

[L] PERSONAL PRELATURES

PITTSBURGH. *Prelature of the Holy Cross and Opus Dei* (1928) Warwick House, 5090 Warwick Ter., 15213. Tel: 412-683-5442; Fax: 412-687-3806. Email: info@warwickhouse.org. Web: www.opusdei.org. Revs. Rene J. Schatteman; Martin J. Miller.

[M] MONASTERIES AND RESIDENCES OF PRIESTS AND BROTHERS

PITTSBURGH. *St. Augustine Friary*, 221 36th St., 15201. Tel: 412-682-6430; Fax: 412-682-6148. Web: www.capuchin.com. Revs. Robert Craig, O.F.M.Cap., Chap., VA PGH Health Care Systems; Gervase Degenhardt, O.F.M.Cap., Chap., Sisters of St. Francis, Millvale; Philip Fink, O.F.M.Cap., Guardian; Francis Fugini, O.F.M.Cap., Dir. for Missions; Vernon Busch, O.F.M.Cap., Pastoral Supply; Bertin Roll, O.F.M.Cap., Dir. Emeritus of Archconfraternity of Christian Mothers (Retired); DeSales Young, O.F.M.Cap.; William Henn, O.F.M.Cap., Prof. Pontifical Gregorian Univ.; Otmar Gallagher, O.F.M.Cap. (Retired); Edward Laurent, O.F.M.Cap., Pastoral Supply; Maurice Sheehan, O.F.M.Cap., Academic Dean, Holy Apostles Seminary; John Pfannenstiel, O.F.M.Cap., Dir. Seraphic Mass Assn.

In Res. Revs. Regis Schlick, O.F.M.Cap.; Victor Kriley, O.F.M.Cap., Pastoral Supply; Charles Knoll, O.F.M.Cap.; Bonaventure Stefun, O.F.M.Cap.; Jerome Dunn, O.F.M.Cap.; Dismas Young, O.F.M.Cap.; Bro. Robert Toomey, O.F.M.Cap., Exec. Sec.

Congregation of the Oratory of St. Philip Neri, The Pittsburgh Oratory, 4450 Bayard St., 15213. Tel: 412-681-3181; Fax: 412-681-3922. Email: frdavid@pittsburghoratory.org. Web: www.pittsburghoratory.org. Very Rev. Drew P. Morgan, C.O., Provost; Revs. David S. Abernethy, C.O., Novice Master & Formation Dir. & Vice Provost; Michael J. Darcy, C.O., Grad Student; Joshua Kibler, C.O., Campus Min. & Dir.; Stephen Lowery, C.O., Campus Min.; Bros. Paul Werley, C.O., Seminarian; Dennis Di Benedetto, C.O., Novice & Seminarian; Peter Gruber, C.O., Novice & Seminarian; Jonathan Crist, C.O., Novice. Total Staff 6.

St. Conrad Friary (1983) 9445 Babcock Blvd., Allison Park, 15101. Tel: 412-364-6340; Fax: 412-366-3331. Web: www.capuchin.com. Rev. John Getsy, O.F.M.Cap., Vicar; Very Rev. W. David Nestler, O.F.M.Cap., Prov. Min.; Revs. Angelus Shaughnessy, O.F.M.Cap., Dir. Archconfraternity of Christian Mothers; Scott Seethaler, O.F.M.Cap., Preaching Ministry; Bro. Richard Lobonski, O.F.M.Cap., Guardian. Total in Residence 5.

Franciscan Friars, T.O.R., Queen of Peace Friary, 5324 Carnegie St., 15201. Tel: 412-449-1020; Fax: 412-449-1095. In Res. Bro. Michael Tripka, T.O.R., Librarian; Revs. Carol Napoli, T.O.R., (Retired); Joseph Markalonis, T.O.R., Hospital Chap.; Jude Ventiquattro, T.O.R., Local Min.; Bernard Tickerhoof, T.O.R., Dir., Ongoing Formation; David Prococka, T.O.R.; Daniel Sinisi, T.O.R.

St. John Vianney Manor, 2600 Morange Rd., 15205. Tel: 412-928-0625; 412-928-0905; Fax: 412-928-1947. Retired priests' residence. Total in Residence 22; Total Staff 8. In Res. Most Rev. William J. Winter, V.G., S.T.D. (Retired); Rev. Msgr. Joseph G. Findlan (Retired); Revs. William R. Bovard (Retired); Roy H. Conley (Retired); Bernard B. Costello (Retired); David C. Dixon (Retired), St. John Vianney Manor, 2600 Morange Rd., 15205; Eugene J. Dougherty (Retired); Albert C. Koser (Retired); Michael C. MacVeigh (Retired); Thomas F. Manion (Retired); Malcolm McDonald; Robert J. Meyer; John D. Petrarulo (Retired); Michael J. Polak (Retired); Philip J. Przybyla; Richard R. Ragni (Retired); Robert J. Reardon (Retired); David E. Scharf; Edward R. Schleicher (Retired); Henry A. Szarnicki (Retired); Richard G. Tardine (Retired); Edward J. Trzeciakowski (Retired); Raymond M. Utz (Retired); George A. Wilt (Retired).

St. Paul of the Cross Monastery Monastery & Retreat Center., 148 Monastery Ave., S.S., 15203. Tel: 412-381-1188 (Monastery); 412-381-7676 (Retreat Center); Fax: 412-431-3049 (Monastery); 412-431-3044 (Retreat Center). Web: www.catholic-church.org/stpaulmonastery/. Very Rev. Gerald Laba, C.P., Rector & Retreat Dir.; Revs. Donald Ware, C.P., Asst. Local Supr.; William Devin, C.P.; Timothy Fitzgerald, C.P., Auxiliary Retreat Staff; John F. McMillan, C.P.; Edwin Moran, C.P.; Michael Salvagna, C.P.; Bro. Matthew Krewchyk, C.P.; Revs. Joseph Sedley, C.P.; Vincent Segotta, C.P.; Patrick Geinzer, C.P.; Paul Vaeth, C.P., Aux. Retreat Staff; Jerome Vereb, C.P.; Bros. Leo DiFiore; Paul Morgan, C.P.

Society of The Divine Word, 207 Lytton, 15213. Tel: 412-683-4030; Fax: 412-682-6039. Revs. Walter Ostrowski, S.V.D., Mission Dir. Tel: 412-683-0640; Raymond Heber, S.V.D.; Bros. John DeBold, S.V.D.; Gerard Reiser, S.V.D., Supr. Total in Residence 4.

AVALON. *Holy Family Friary* (Friars Minor), The Franciscans., 232 S. Home Ave., 15202-2899. Tel: 412-761-2550; Fax: 412-202-2559. Revs. David Moczulski, O.F.M., Guardian Chaplain: Allegheny General Hsp. Sisters of the Holy Family of Nazareth; Leonard Cornelius, O.F.M., Vicar; Michael Lena, O.F.M., (Retired); Bro. Felix Nowakowski, O.F.M. Friars 5.

BEAVER. *St. Fidelis Friary*, 372 East End Ave., 15009. Tel: 724-774-1242 (main). Email: stcecilia@verizon.net. Web: www.stceciliaroch.org. Church: *St. Cecilia*, 632 Virginia Ave., Rochester, 15074. Tel: 724-775-0801; Fax: 724-774-3056. Revs. James Monkins, O.F.M.Cap.; William Talentino, O.F.M.Cap. Capuchin Friars. In Res. Revs. Robert E. McCreary, O.F.M.Cap.; William Gillum, O.F.M.Cap.

BETHEL PARK. *Congregation of the Holy Spirit Province of the United States*, 6230 Brush Run Rd., 15102. Tel: 412-831-0302. Very Rev. Jeffrey T. Duaime, C.S.Sp., Prov. Supr.

Holy Spirit Fathers and Brothers Provincialate, 6230 Brush Run Rd., 15102. Tel: 412-831-0302; Fax: 412-831-0970. Email: usprovince@spiritans.org. Web: www.spiritans.org. Very Rev. Jeffrey T. Duaime, C.S.Sp., Prov. Supr.; Rev. Girard J. Kohler, C.S.Sp., Mission Procurator; Bro. Michael Suazo, C.S.Sp., Province Sec. Residents 2; Total Staff 5.

BUTLER. *St. Mary's Friary*, 821 Herman Rd., 16002. Tel: 724-282-1485; Fax: 724-285-4715. Revs. Mark Carter, O.F.M.Cap., Parochial Vicar; Gary Stakem, O.F.M.Cap., Replacement Ministry; Ward Stakem, O.F.M.Cap., Pastor & Guardian; Bro. Joseph Day, O.F.M.Cap. Capuchin Franciscan Friars, Province of St. Augustine Priests 5; Brothers 1.

[N] CONVENTS AND RESIDENCES FOR SISTERS

PITTSBURGH. *St. Benedict Monastery* (1870) Benedictine Sisters of Pontifical Jurisdiction, 4530 Perrysville Ave., 15229-2296. Tel: 412-931-2844; Fax: 412-931-8970. Email: osbpgh@osbpgh.org. Web: www.osbpgh.org. Sr. Benila DeMatteis, O.S.B., Prioress. Motherhouse and Novitiate of the Benedictine Sisters in the Diocese. Sisters 51.

Ladies of Bethany (1919) 1004 Oglethorpe Ave., 15201-3151. Tel: 412-761-4022.

Motherhouse, Sisters of the Holy Spirit (S.H.S.) (Ross Township), 5246 Clarwin Ave., 15229-2206. Tel: 412-931-1917; Fax: 412-931-4524. Email: SRSHS@verizon.net. Web: www.sistersoftheholyspirit.com. Sr. Grace Fabich, S.H.S., Gen. Supr.; Very Rev. Robert F. Guay, V.E., M.Div., Chap. Professed Sisters 39; Total in Community 39.

Mount Assisi Convent, Motherhouse of the School Sisters of the Third Order Regular of St. Francis United States Province, 934 Forest Ave., 15202. Tel: 412-761-6004; Fax: 412-761-0290. Email: administrationusa@schoolsistersosf.org. Web: schoolsistersosf.org.

Civil Law Entity: The School Sisters of the Third Order Regular of St. Francis, a Pennsylvania corporation. Sisters 92; Residents 34; Total Staff 8. In Res. Rev. Richard M. Lelonis, J.C.L., Chap.

Our Lady of Sorrows Convent of the Passionist Nuns (1910) 2715 Churchview Ave., 15227. Tel: 412-881-1155; Fax: 412-881-1091. Sr. Mary Ann, C.P., Supr. Motherhouse and Novitiate of the Religious of the Passion. (Passionist Nuns). Professed Sisters 10.

Sisters of Charity of Nazareth, Sisters of Charity of Nazareth Pittsburgh Campus, 8200 McKnight Rd., 15237. Tel: 412-364-3000; Fax: 412-364-9055. Rev. Reginald Russo, O.F.M.Cap., Chap. (formerly VSCs)

Sisters of Mercy of the Americas - New York, Pennsylvania, Pacific West Community, Convent of Mercy, 3333 Fifth Ave., 15213. Tel: 412-578-6225; Fax: 412-578-6180. Rev. Robert J. George, Chap. Convent of Mercy Total Professed Sisters 476; Associates 394.

Sisters of St. Francis of the Providence of God, St. Francis Convent Motherhouse, 3603 McRoberts Rd., 15234-2314. Tel: 412-882-9911; Fax: 412-885-7210. Email: usa@osfprov.org. Web:

APOSTOLIC CONSTITUTION OF THE SUPREME PONTIFF JOHN PAUL II ON CATHOLIC UNIVERSITIES

INTRODUCTION

BORN FROM THE HEART of the Church, a Catholic University is located in that course of tradition which may be traced back to the very origin of the University as an institution. It has always been recognized as an incomparable centre of creativity and dissemination of knowledge for the good of humanity. By vocation, the *Universitas magistrorum et scholarium* is dedicated to research, to teaching and to the education of students who freely associate with their teachers in a common love of knowledge(1). With every other University it shares that *gaudium de veritate,* so precious to Saint Augustine, which is that joy of searching for, discovering and communicating truth(2) in every field of knowledge. A Catholic University's privileged task is "to unite existentially by intellectual effort two orders of reality that too frequently tend to be placed in opposition as though they were antithetical: the search for truth, and the certainty of already knowing the fount of truth"(3).

2. For many years I myself was deeply enriched by the beneficial experience of university life: the ardent search for truth and its unselfish transmission to youth and to all those learning to think rigorously, so as to act rightly and to serve humanity better.

Therefore, I desire to share with everyone my profound respect for Catholic Universities, and to express my great appreciation for the work that is being done in them in the various spheres of knowledge. In a particular way, I wish to manifest my joy at the numerous meetings which the Lord has permitted me to have in the course of my apostolic journeys with the Catholic University communities of various continents. They are for me a lively and promising sign of the fecundity of the Christian mind in the heart of every culture. They give me a well-founded hope for a new flowering of Christian culture in the rich and varied context of our changing times, which certainly face serious challenges but which also bear so much promise under the action of the Spirit of truth and of love.

It is also my desire to express my pleasure and gratitude to the very many Catholic scholars engaged in teaching and research in non-Catholic Universities. Their task as academics and scientists, lived out in the light of the Christian faith, is to be considered precious for the good of the Universities in which they teach. Their presence, in fact, is a continuous stimulus to the selfless search for truth and for the wisdom that comes from above.

3. Since the beginning of this Pontificate, I have shared these ideas and sentiments with my closest collaborators, the Cardinals, with the Congregation for Catholic Education, and with men and women of culture throughout the world. In fact, the dialogue of the Church with the cultures of our times is that vital area where "the future of the Church and of the world is being played out as we conclude the twentieth century"(4). There is only one cultre: that of

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man, by man and for man(5). And thanks to her Catholic Universities and their humanistic and scientific inheritance, the Church, expert in humanity, as my predecessor, Paul VI, expressed it at the United Nations(6), explores the mysteries of humanity and of the world, clarifying them in the light of Revelation.

4. It is the honour and responsibility of a Catholic University to consecrate itself without reserve to *the cause of truth.* This is its way of serving at one and the same time both the dignity of man and the good of the Church, which has "an intimate conviction that truth is (its) real ally ... and that knowledge and reason are sure ministers to faith"(7). Without in any way neglecting the acquisition of useful knowledge, a Catholic University is distinguished by its free search for the whole truth about nature, man and God. The present age is in urgent need of this kind of disinterested service, namely of *proclaiming the meaning of truth,* that fundamental value without which freedom, justice and human dignity are extinguished. By means of a kind of universal humanism a Catholic University is completely dedicated to the research of all aspects of truth in their essential connection with the supreme Truth, who is God. It does this without fear but rather with enthusiasm, dedicating itself to every path of knowledge, aware of being preceded by him who is "the Way, the Truth, and the Life"(8), the *Logos,* whose Spirit of intelligence and love enables the human person with his or her own intelligence to find the ultimate reality of which he is the source and end and who alone is capable of giving fully that Wisdom without which the future of the world would be in danger.

5. It is in the context of the impartial search for truth that the relationship between faith and reason is brought to light and meaning. The invitation of Saint Augustine, *"Intellege ut credas; crede ut intellegas"*(9), is relevant to Catholic Universities that are called to explore courageously the riches of Revelation and of nature so that the united endeavour of intelligence and faith will enable people to come to the full measure of their humanity, created in the image and likeness of God, renewed even more marvellously, after sin, in Christ, and called to shine forth in the light of the Spirit.

6. Through the encounter which it establishes between the unfathomable richness of the salvific message of the Gospel and the variety and immensity of the fields of knowledge in which that richness is incarnated by it, a Catholic University enables the Church to institute an incomparably fertile dialogue with people of every culture. Man's life is given dignity by culture, and, while he finds his fullness in Christ, there can be no doubt that the Gospel which reaches and renews him in every dimension is also fruitful for the culture in which he lives.

7. In the world today, characterized by such rapid developments in science and technology, the tasks of a Catholic University assume an ever greater importance and urgency. Scientific and technological discoveries create an enormous economic and industrial growth, but they also inescapably require the correspondingly necessary *search for meaning* in order to guarantee that the new discoveries be used for the authentic good of individuals and of human society as a whole. If it is the responsibility of every University to search for such meaning, a Catholic University is called in a particular way to respond to this need: its Christian inspiration enables it to include the moral, spiritual and religious dimension in its research, and to evaluate the attainments of science and technology in the perspective of the totality of the human person.

In this context, Catholic Universities are called to a continuous renewal, both as "Universities" and as "Catholic". For, "What is at stake is the *very meaning of scientific and technological research, of social life and of culture,* but, on an even more profound level, what is at stake is

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the very meaning of the human person'(10). Such renewal requires a clear awareness that, by its Catholic character, a University is made more capable of conducting an *impartial* search for truth, a search that is neither subordinated to nor conditioned by particular interests of any kind.

8. Having already dedicated the Apostolic Constitution *Sapientia Christiana* to Ecclesiastical Faculties and Universities(11), I then felt obliged to propose an analogous Document for Catholic Universities as a sort of "magna carta", enriched by the long and fruitful experience of the Church in the realm of Universities and open to the promise of future achievements that will require courageous creativity and rigorous fidelity.

9. The present Document is addressed especially to those who conduct Catholic Universities, to the respective academic communities, to all those who have an interest in them, particularly the Bishops, Religious Congregations and ecclesial *Institutions,* and to the numerous laity who are committed to the great mission of higher education. Its purpose is that "the Christian mind may achieve, as it were, a public, persistent and universal presence in the whole enterprise of advancing higher culture and that the students of these institutions become people outstanding in learning, ready to shoulder society's heavier burdens and to witness the faith to the world"(12).

10. In addition to Catholic Universities, I also turn to the many Catholic Institutions of higher education. According to their nature and proper objectives, they share some or all of the characteristics of a University and they offer their own contribution to the Church and to society, whether through research, education or professional training. While this Document specifically concerns Catholic Universities, it is also meant to include all Catholic Institutions of higher education engaged in instilling the Gospel message of Christ in souls and cultures.

Therefore, it is with great trust and hope that I invite all Catholic Universities to pursue their irreplaceable task. Their mission appears increasingly necessary for the encounter of the Church with the development of the sciences and with the cultures of our age.

Together with all my brother Bishops who share pastoral responsibility with me, I would like to manifest my deep conviction that a Catholic University is without any doubt one of the best instruments that the Church offers to our age which is searching for certainty and wisdom. Having the mission of bringing the Good News to everyone, the Church should never fail to interest herself in this Institution. By research and teaching, Catholic Universities assist the Church in the manner most appropriate to modern times to find cultural treasures both old and new, *"nova et vetera",* according to the words of Jesus(13).

11. Finally, I turn to the whole Church, convinced that Catholic Universities are essential to her growth and to the development of Christian culture and human progress. For this reason, the entire ecclesial Community is invited to give its support to Catholic Institutions of higher education and to assist them in their process of development and renewal. It is invited in a special way to guard the rights and freedom of these Institutions in civil society, and to offer them economic aid, especially in those countries where they have more urgent need of it, and to furnish assistance in founding new Catholic Universities wherever this might be necessary.

My hope is that these prescriptions, based on the teaching of Vatican Council II and the directives of the Code of Canon Law, will enable Catholic Universities and other Institutes of

higher studies to fulfil their indispensable mission in the new advent of grace that is opening up to the new Millennium.

PART I

IDENTITY AND MISSION

A. THE IDENTITY OF A CATHOLIC UNIVERSITY

1. Nature and Objectives

12. Every Catholic University, *as a university,* is an academic community which, in a rigorous and critical fashion, assists in the protection and advancement of human dignity and of a cultural heritage through research, teaching and various services offered to the local, national and international communities(14). It possesses that institutional autonomy necessary to perform its functions effectively and guarantees its members academic freedom, so long as the rights of the individual person and of the community are preserved within the confines of the truth and the common good(15).

13. Since the objective of a Catholic University is to assure in an institutional manner a Christian presence in the university world confronting the great problems of society and culture(16), every Catholic University, as *Catholic,* must have the following *essential characteristics:*

"1. a Christian inspiration not only of individuals but of the university community as such;

2. a continuing reflection in the light of the Catholic faith upon the growing treasury of human knowledge, to which it seeks to contribute by its own research;

3. fidelity to the Christian message as it comes to us through the Church;

4. an institutional commitment to the service of the people of God and of the human family in their pilgrimage to the transcendent goal which gives meaning to life"(17).

14. "In the light of these four characteristics, it is evident that besides the teaching, research and services common to all Universities, a Catholic University, by *institutional commitment,* brings to its task the inspiration and light of the *Christian message.* In a Catholic University, therefore, Catholic ideals, attitudes and principles penetrate and inform university activities in accordance with the proper nature and autonomy of these activities. In a word, being both a University and Catholic, it must be both a community of scholars representing various branches of human knowledge, and an academic institution in which Catholicism is vitally present and operative"(18).

15. A Catholic University, therefore, is a place of research, where scholars *scrutinize reality* with the methods proper to each academic discipline, and so contribute to the treasury of human knowledge. Each individual discipline is studied in a systematic manner; moreover, the various disciplines are brought into dialogue for their mutual enhancement.

In addition to assisting men and women in their continuing quest for the truth, this research provides an effective witness, especially necessary today, to the Church's belief in the intrinsic value of knowledge and research.

In a Catholic University, research necessarily includes *(a)* the search for an *integration of knowledge, (b)* a *dialogue between faith and reason, (c)* an *ethical concern,* and *(d)* a *theological perspective.*

16. *Integration of knowledge* is a process, one which will always remain incomplete; moreover, the explosion of knowledge in recent decades, together with the rigid compartmentalization of knowledge within individual academic disciplines, makes the task increasingly difficult. But a University, and especially a Catholic University, *"has to be a 'living union' of individual organisms* dedicated to the search for truth ... It is necessary *to work towards a higher synthesis* of knowledge, in which alone lies the possibility of satisfying that thirst for truth which is profoundly inscribed on the heart of the human person"(19). Aided by the specific contributions of philosophy and theology, university scholars will be engaged in a constant effort to determine the relative place and meaning of each of the various disciplines within the context of a vision of the human person and the world that is enlightened by the Gospel, and therefore by a faith in Christ, the *Logos,* as the centre of creation and of human history.

17. In promoting this integration of knowledge, a specific part of a Catholic University's task is to promote *dialogue between faith and reason,* so that it can be seen more profoundly how faith and reason bear harmonious witness to the unity of all truth. While each academic discipline retains its own integrity and has its own methods, this dialogue demonstrates that "methodical research within every branch of learning, when carried out in a truly scientific manner and in accord with moral norms, can never truly conflict with faith. For the things of the earth and the concerns of faith derive from the same God"(20). A vital interaction of two distinct levels of coming to know the one truth leads to a greater love for truth itself, and contributes to a more comprehensive understanding of the meaning of human life and of the purpose of God's creation.

18. Because knowledge is meant to serve the human person, research in a Catholic University is always carried out with a concern for the *ethical* and *moral implications* both of its methods and of its discoveries. This concern, while it must be present in all research, is particularly important in the areas of science and technology. "It is essential that we be convinced of the priority of the ethical over the technical, of the primacy of the person over things, of the superiority of the spirit over matter. The cause of the human person will only be served if knowledge is joined to conscience. Men and women of science will truly aid humanity only if they preserve 'the sense of the transcendence of the human person over the world and of God over the human person"(21).

19. *Theology* plays a particularly important role in the search for a synthesis of knowledge as well as in the dialogue between faith and reason. It serves all other disciplines in their search for meaning, not only by helping them to investigate how their discoveries will affect individuals and society but also by bringing a perspective and an orientation not contained within their own methodologies. In turn, interaction with these other disciplines and their discoveries enriches theology, offering it a better understanding of the world today, and making theological research more relevant to current needs. Because of its specific importance among the academic disciplines, every Catholic University should have a faculty, or at least a chair, of theology(22).

20. Given the close connection between research and teaching, the research qualities indicated above will have their influence on all teaching. While each discipline is taught

systematically and according to its own methods, *interdisciplinary studies,* assisted by a careful and thorough study of philosophy and theology, enable students to acquire an organic vision of reality and to develop a continuing desire for intellectual progress. In the communication of knowledge, emphasis is then placed on how *human reason in its reflection* opens to increasingly broader questions, and how the complete answer to them can only come from above through faith. Furthermore, the *moral implications* that are present in each discipline are examined as an integral part of the teaching of that discipline so that the entire educative process be directed towards the whole development of the person. Finally, Catholic theology, taught in a manner faithful to Scripture, Tradition, and the Church's Magisterium, provides an awareness of the Gospel principles which will enrich the meaning of human life and give it a new dignity.

Through research and teaching the students are educated in the various disciplines so as to become truly competent in the specific sectors in which they will devote themselves to the service of society and of the Church, but at the same time prepared to give the witness of their faith to the world.

2. The University Community

21. A Catholic University pursues its objectives through its formation of an authentic human community animated by the spirit of Christ. The source of its unity springs from a common dedication to the truth, a common vision of the dignity of the human person and, ultimately, the person and message of Christ which gives the Institution its distinctive character. As a result of this inspiration, the community is animated by a spirit of freedom and charity; it is characterized by mutual respect, sincere dialogue, and protection of the rights of individuals. It assists each of its members to achieve wholeness as human persons; in turn, everyone in the community helps in promoting unity, and each one, according to his or her role and capacity, contributes towards decisions which affect the community, and also towards maintaining and strengthening the distinctive Catholic character of the Institution.

22. *University teachers* should seek to improve their competence and endeavour to set the content, objectives, methods, and results of research in an individual discipline within the framework of a coherent world vision. Christians among the teachers are called to be witnesses and educators of authentic Christian life, which evidences attained integration between faith and life, and between professional competence and Christian wisdom. All teachers are to be inspired by academic ideals and by the principles of an authentically human life.

23. Students are challenged to pursue an education that combines excellence in humanistic and cultural development with specialized professional training. Most especially, they are challenged to continue the search for truth and for meaning throughout their lives, since "the human spirit must be cultivated in such a way that there results a growth in its ability to wonder, to understand, to contemplate, to make personal judgments, and to develop a religious, moral, and social sense"(23). This enables them to acquire or, if they have already done so, to deepen a Christian way of life that is authentic. They should realize the responsibility of their professional life, the enthusiasm of being the trained 'leaders' of tomorrow, of being witnesses to Christ in whatever place they may exercise their profession.

24. *Directors* and *administrators* in a Catholic University promote the constant growth of the University and its community through a leadership of service; the dedication and witness of the *non-academic staff* are vital for the identity and life of the University.

25. Many Catholic Universities were founded by Religious Congregations, and continue to depend on their support; those Religious Congregations dedicated to the apostolate of higher education are urged to assist these Institutions in the renewal of their commitment, and to continue to prepare religious men and women who can positively contribute to the mission of a Catholic University.

Lay people have found in university activities a means by which they too could exercise an important apostolic role in the Church and, in most Catholic Universities today, the academic community is largely composed of laity; in increasing numbers, lay men and women are assuming important functions and responsibilities for the direction of these Institutions. These lay Catholics are responding to the Church's call "to be present, as signs of courage and intellectual creativity, in the privileged places of culture, that is, the world of education-school and university"(24). The future of Catholic Universities depends to a great extent on the competent and dedicated service of lay Catholics. The Church sees their developing presence in these institutions both as a sign of hope and as a confirmation of the irreplaceable lay vocation in the Church and in the world, confident that lay people will, in the exercise of their own distinctive role, "illumine and organize these (temporal) affairs in such a way that they always start out, develop, and continue according to Christ's mind, to the praise of the Creator and the Redeemer"(25).

26. The university community of many Catholic institutions includes members of other Churches, ecclesial communities and religions, and also those who profess no religious belief. These men and women offer their training and experience in furthering the various academic disciplines or other university tasks.

3. The Catholic University in the Church

27. Every Catholic University, without ceasing to be a University, has a relationship to the Church that is essential to its institutional identity. As such, it participates most directly in the life of the local Church in which it is situated; at the same time, because it is an academic institution and therefore a part of the international community of scholarship and inquiry, each institution participates in and contributes to the life and the mission of the universal Church, assuming consequently a special bond with the Holy See by reason of the service to unity which it is called to render to the whole Church. One consequence of its essential relationship to the Church is that the *institutional* fidelity of the University to the Christian message includes a recognition of and adherence to the teaching authority of the Church in matters of faith and morals. Catholic members of the university community are also called to a personal fidelity to the Church with all that this implies. Non-Catholic members are required to respect the Catholic character of the University, while the University in turn respects their religious liberty(26).

28. Bishops have a particular responsibility to promote Catholic Universities, and especially to promote and assist in the preservation and strengthening of their Catholic identity, including the protection of their Catholic identity in relation to civil authorities. This will be achieved more effectively if close personal and pastoral relationships exist between University and Church authorities, characterized by mutual trust, close and consistent cooperation and

continuing dialogue. Even when they do not enter directly into the internal governance of the University, Bishops "should be seen not as external agents but as participants in the life of the Catholic University"(27).

29. The Church, accepting "the legitimate autonomy of human culture and especially of the sciences", recognizes the academic freedom of scholars in each discipline in accordance with its own principles and proper methods(28), and within the confines of the truth and the common good.

Theology has its legitimate place in the University alongside other disciplines. It has proper principles and methods which define it as a branch of knowledge. Theologians enjoy this same freedom so long as they are faithful to these principles and methods.

Bishops should encourage the creative work of theologians. They serve the Church through research done in a way that respects theological method. They seek to understand better, further develop and more effectively communicate the meaning of Christian Revelation as transmitted in Scripture and Tradition and in the Church's Magisterium. They also investigate the ways in which theology can shed light on specific questions raised by contemporary culture. At the same time, since theology seeks an understanding of revealed truth whose authentic interpretation is entrusted to the Bishops of the Church(29), it is intrinsic to the principles and methods of their research and teaching in their academic discipline that theologians respect the authority of the Bishops, and assent to Catholic doctrine according to the degree of authority with which it is taught(30). Because of their interrelated roles, dialogue between Bishops and theologians is essential; this is especially true today, when the results of research are so quickly and so widely communicated through the media(31).

B. THE MISSION OF SERVICE OF A CATHOLIC UNIVERSITY

30. The basic mission of a University is a continuous quest for truth through its research, and the preservation and communication of knowledge for the good of society. A Catholic University participates in this mission with its own specific characteristics and purposes.

1. Service to Church and Society

31. Through teaching and research, a Catholic University offers an indispensable contribution to the Church. In fact, it prepares men and women who, inspired by Christian principles and helped to live their Christian vocation in a mature and responsible manner, will be able to assume positions of responsibility in the Church. Moreover, by offering the results of its scientific research, a Catholic University will be able to help the Church respond to the problems and needs of this age.

32. A Catholic University, as any University, is immersed in human society; as an extension of its service to the Church, and always within its proper competence, it is called on to become an ever more effective instrument of cultural progress for individuals as well as for society. Induded among its research activities, therefore, will be a study of *serious contemporary problems* in areas such as the dignity of human life, the promotion of justice for all, the quality of personal and family life, the protection of nature, the search for peace and political stability, a more just sharing in the world's resources, and a new economic and political order that will better serve the human community at a national and international level. University research will seek to discover the roots and causes of the serious problems of our time, paying special attention to their ethical and religious dimensions.

If need be, a Catholic University must have the courage to speak uncomfortable truths which do not please public opinion, but which are necessary to safeguard the authentic good of society.

33. A specific priority is the need to examine and evaluate the predominant values and norms of modern society and culture in a Christian perspective, and the responsibility to try to communicate to society those *ethical and religious principles which give full meaning to human life.* In this way a University can contribute further to the development of a true Christian anthropology, founded on the person of Christ, which will bring the dynamism of the creation and redemption to bear on reality and on the correct solution to the problems of life.

34. The Christian spirit of service to others for the *promotion of social justice* is of particular importance for each Catholic University, to be shared by its teachers and developed in its students. The Church is firmly committed to the integral growth of all men and women(32). The Gospel, interpreted in the social teachings of the Church, is an urgent call to promote "the development of those peoples who are striving to escape from hunger, misery, endemic diseases and ignorance; of those who are looking for a wider share in the benefits of civilization and a more active improvement of their human qualities; of those who are aiming purposefully at their complete fulfilment"(33). Every Catholic University feels responsible to contribute concretely to the progress of the society within which it works: for example it will be capable of searching for ways to make university education accessible to all those who are able to benefit from it, especially the poor or members of minority groups who customarily have been deprived of it. A Catholic University also has the responsibility, to the degree that it is able, to help to promote the development of the emerging nations.

35. In its attempts to resolve these complex issues that touch on so many different dimensions of human life and of society, a Catholic University will insist on cooperation among the different academic disciplines, each offering its distinct contribution in the search for solutions; moreover, since the economic and personal resources of a single Institution are limited, cooperation in *common research projects* among Catholic Universities, as well as with other private and governmental institutions, is imperative. In this regard, and also in what pertains to the other fields of the specific activity of a Catholic University, the role played by various national and international associations of Catholic Universities is to be emphasized. Among these associations the mission of *The International Federation of Catholic Universities,* founded by the Holy See(34), is particularly to be remembered. The Holy See anticipates further fruitful collaboration with this Federation.

36. Through programmes of *continuing education* offered to the wider community, by making its scholars available for consulting services, by taking advantage of modern means of communication, and in a variety of other ways, a Catholic University can assist in making the growing body of human knowledge and a developing understanding of the faith available to a wider public, thus expanding university services beyond its own academic community.

37. In its service to society, a Catholic University *will relate especially to the academic, cultural and scientific world* of the region in which it is located. Original forms of dialogue and collaboration are to be encouraged between the Catholic Universities and the other Universities of a nation on behalf of development, of understanding between cultures, and of the defence of nature in accordance with an awareness of the international ecological situation.

Catholic Universities join other private and public Institutions in serving the public interest through higher education and research; they are one among the variety of different types of institution that are necessary for the free expression of cultural diversity, and they are committed to the promotion of solidarity and its meaning in society and in the world. Therefore they have the full right to expect that civil society and public authorities will recognize and defend their institutional autonomy and academic freedom; moreover, they have the right to the financial support that is necessary for their continued existence and development.

2. Pastoral Ministry

38. Pastoral ministry is that activity of the University which offers the members of the university community an opportunity to integrate religious and moral principles with their academic study and non-academic activities, *thus integrating faith with life.* It is part of the mission of the Church within the University, and is also a constitutive element of a Catholic University itself, both in its structure and in its life. A university community concerned with promoting the Institution's Catholic character will be conscious of this pastoral dimension and sensitive to the ways in which it can have an influence on all university activities.

39. As a natural expression of the Catholic identity of the University, the university community *should give a practical demonstration of its faith in its daily activity,* with important moments of reflection and of prayer. Catholic members of this community will be offered opportunities to assimilate Catholic teaching and practice into their lives and will be encouraged to participate in the celebration of the sacraments, especially the Eucharist as the most perfect act of community worship. When the academic community includes members of other Churches, ecclesial communities or religions, their initiatives for reflection and prayer in accordance with their own beliefs are to be respected.

40. Those involved in pastoral ministry will encourage teachers and students to become more aware of their responsibility towards those who are suffering physically or spiritually. Following the example of Christ, they will be particularly attentive to the poorest and to those who suffer economic, social, cultural or religious injustice. This responsibility begins within the academic community, but it also finds application beyond it.

41. Pastoral ministry is an indispensable means by which Catholic students can, in fulfilment of their baptism, *be prepared for active participation in the life of the Church;* it can assist in developing and nurturing the value of marriage and family life, fostering vocations to the priesthood and religious life, stimulating the Christian commitment of the laity and imbuing every activity with the spirit of the Gospel. Close cooperation between pastoral ministry in a Catholic University and the other activities within the local Church, under the guidance or approval of the diocesan Bishop, will contribute to their mutual growth(35).

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42. Various associations or movements of spiritual and apostolic life, especially those developed specifically for students, can be of great assistance in developing the pastoral aspects of university life.

3. Cultural Dialogue

43. By its very nature, a University develops culture through its research, helps to transmit the local culture to each succeeding generation through its teaching, and assists cultural activities through its educational services. It is open to all human experience and is ready to

dialogue with and learn from any culture. A Catholic University shares in this, offering the rich experience of the Church's own culture. In addition, a Catholic University, aware that human culture is open to Revelation and transcendence, is also a primary and privileged place for a *fruitful dialogue between the Gospel and culture.*

44. Through this dialogue a Catholic University assists the Church, enabling it to come to a better knowledge of diverse cultures, discern their positive and negative aspects, to receive their authentically human contributions, and to develop means by which it can make the faith better understood by the men and women of a particular culture(36). While it is true that the Gospel cannot be identified with any particular culture and transcends all cultures, it is also true that "the Kingdom which the Gospel proclaims is lived by men and women who are profoundly linked to a culture, and the building up of the Kingdom cannot avoid borrowing the elements of human culture or cultures(37). "A faith that places itself on the margin of what is human, of what is therefore culture, would be a faith unfaithful to the fullness of what the Word of God manifests and reveals, a decapitated faith, worse still, a faith in the process of self-annihilation"(38).

45. A Catholic University must become *more attentive to the cultures of the world of today,* and to the *various cultural traditions existing within the Church* in a way that will promote a continuous and profitable dialogue between the Gospel and modern society. Among the criteria that characterize the values of a culture are above all, the *meaning of the human person,* his or her liberty, dignity, *sense of responsibility,* and openness to the transcendent. To a respect for persons is joined *the preeminent value of the family,* the primary unit of every human culture.

Catholic Universities will seek to discern and evaluate both the aspirations and the contradictions of modern culture, in order to make it more suited to the total development of individuals and peoples. In particular, it is recommended that by means of appropriate studies, the impact of modern technology and especially of the mass media on persons, the family, and the institutions and whole of modem culture be studied deeply. Traditional cultures are to be defended in their identity, helping them to receive modern values without sacrificing their own heritage, which is a wealth for the whole of the human family. Universities, situated within the ambience of these cultures, will seek to harmonize local cultures with the positive contributions of modern cultures.

46. An area that particularly interests a Catholic University is the *dialogue between Christian thought and the modern sciences.* This task requires persons particularly well versed in the individual disciplines and who are at the same time adequately prepared theologically, and who are capable of confronting epistemological questions at the level of the relationship between faith and reason. Such dialogue concerns the natural sciences as much as the human sciences which posit new and complex philosophical and ethical problems. The Christian researcher should demonstrate the way in which human intelligence is enriched by the higher truth that comes from the Gospel: "The intelligence is never diminished, rather, it is stimulated and reinforced by that interior fount of deep understanding that is the Word of God, and by the hierarchy of values that results from it... In its unique manner, the Catholic University helps to manifest the superiority of the spirit, that can never, without the risk of losing its very self, be placed at the service of something other than the search for truth"(39).

47. Besides cultural dialogue, a Catholic University, in accordance vith its specific ends, and keeping in mind the various religious-cultural contexts, following the directives promulgated

by competent ecclesiastical authority, can offer a contribution to ecumenical dialogue. It does so to further the search for unity among all Christians. In inter-religious dialogue it will assist in discerning the spiritual values that are present in the different religions.

4. Evangelization

48. The primary mission of the Church is to preach the Gospel in such a way that a relationship between faith and life is established in each individual and in the socio-cultural context in which individuals live and act and communicate with one another. Evangelization means "bringing the Good News into all the strata of humanity, and through its influence transforming humanity from within and making it new... It is a question not only of preaching the Gospel in ever wider geographic areas or to ever greater numbers of people, but also of affecting and, as it were, upsetting, through the power of the Gospel, humanity's criteria of judgment, determining values, points of interest, lines of thought, sources of inspiration and models of life, which are in contrast with the Word of God and the plan of salvation"(40).

49. By its very nature, each Catholic University makes an important contribution to the Church's work of evangelization. It is a living *institutional* witness to Christ and his message, so vitally important in cultures marked by secularism, or where Christ and his message are still virtually unknown. Moreover, all the basic academic activities of a Catholic University are connected with and in harmony with the evangelizing mission of the Church: research carried out in the light of the Christian message which puts new human discoveries at the service of individuals and society; education offered in a faith-context that forms men and women capable of rational and critical judgment and conscious of the transcendent dignity of the human person; professional training that incorporates ethical values and a sense of service to individuals and to society; the dialogue with culture that makes the faith better understood, and the theological research that translates the faith into contemporary language. "Precisely because it is more and more conscious of its salvific mission in this world, the Church wants to have these centres closely connected with it; it wants to have them present and operative in spreading the authentic message of Christ"(41).

PART II

GENERAL NORMS

Article 1. ***The Nature of these General Norms***

§ 1. These General Norms are based on, and are a further development of, the Code of Canon Law(42) and the complementary Church legislation, without prejudice to the right of the Holy See to intervene should this become necessary. They are valid for all Catholic Universities and other Catholic Institutes of Higher Studies throughout the world.

§ 2. The General Norms are to be applied concretely at the local and regional levels by Episcopal Conferences and other Assemblies of Catholic Hierarchy(43) in conformity with the Code of Canon Law and complementary Church legislation, taking into account the Statutes of each University or Institute and, as far as possible and appropriate, civil law. After review by the Holy See(44), these local or regional "Ordinances" will be valid for all Catholic Universities and other Catholic Institutes of Higher Studies in the region, except for Ecclesiastical Universities and Faculties. These latter Institutions, including Ecclesiastical Faculties which are part of a Catholic University, are governed by the norms of the Apostolic Constitution *Sapientia Christiana(45).*

§ 3. A University established or approved by the Holy See, by an Episcopal Conference or another Assembly of Catholic Hierarchy, or by a diocesan Bishop is to incorporate these General Norms and their local and regional applications into its governing documents, and conform its existing Statutes both to the General Norms and to their applications, and submit them for approval to the competent ecclesiastical Authority. It is contemplated that other Catholic Universities, that is, those not established or approved in any of the above ways, with the agreement of the local ecclesiastical Authority, will make their own the General Norms and their local and regional applications, internalizing them into their governing documents, and, as far as possible, will conform their existing Statutes both to these General Norms and to their applications.

Article 2. ***The Nature of a Catholic University***

§ 1. A Catholic University, like every university, is a community of scholars representing various branches of human knowledge. It is dedicated to research, to teaching, and to various kinds of service in accordance with its cultural mission.

§ 2. A Catholic University, as Catholic, informs and carries out its research, teaching, and all other activities with Catholic ideals, principles and attitudes. It is linked with the Church either by a formal, constitutive and statutory bond or by reason of an institutional commitment made by those responsible for it.

§ 3. Every Catholic University is to make known its Catholic identity, either in a mission statement or in some other appropriate public document, unless authorized otherwise by the competent ecclesiastical Authority. The University, particularly through its structure and its regulations, is to provide means which will guarantee the expression and the preservation of this identity in a manner consistent with §2.

§ 4. Catholic teaching and discipline are to influence all university activities, while the freedom of conscience of each person is to be fully respected(46). Any official action or commitment of the University is to be in accord with its Catholic identity.

§ 5. A Catholic University possesses the autonomy necessary to develop its distinctive identity and pursue its proper mission. Freedom in research and teaching is recognized and respected according to the principles and methods of each individual discipline, so long as the rights of the individual and of the community are preserved within the confines of the truth and the common good(47).

Article 3. ***The Establishment of a Catholic University***

§ 1. A Catholic University may be established or approved by the Holy See, by an Episcopal Conference or another Assembly of Catholic Hierarchy, or by a diocesan Bishop.

§ 2. With the consent of the diocesan Bishop, a Catholic University may also be established by a Religious Institute or other public juridical person.

§ 3. A Catholic University may also be established by other ecclesiastical or lay persons; such a University may refer to itself as a Catholic University only with the consent of the competent ecclesiastical Authority, in accordance with the conditions upon which both parties shall agree(48).

§ 4. In the cases of §§ 1 and 2, the Statutes must be approved by the competent ecclesiastical Authority.

Article 4. ***The University Community***

§ 1. The responsibility for maintaining and strengthening the Catholic identity of the University rests primarily with the University itself. While this responsibility is entrusted principally to university authorities (including, when the positions exist, the Chancellor and/or a Board of Trustees or equivalent body), it is shared in varying degrees by all members of the university community, and therefore calls for the recruitment of adequate university personnel, especially teachers and administrators, who are both willing and able to promote that identity. The identity of a Catholic University is essentially linked to the quality of its teachers and to respect for Catholic doctrine. It is the responsibility of the competent Authority to watch over these two fundamental needs in accordance with what is indicated in Canon Law(49).

§ 2. All teachers and all administrators, at the time of their appointment, are to be informed about the Catholic identity of the Institution and its implications, and about their responsibility to promote, or at least to respect, that identity.

§ 3. In ways appropriate to the different academic disciplines, all Catholic teachers are to be faithful to, and all other teachers are to respect, Catholic doctrine and morals in their research and teaching. In particular, Catholic theologians, aware that they fulfil a mandate received from the Church, are to be faithful to the Magisterium of the Church as the authentic interpreter of Sacred Scripture and Sacred Tradition(50).

§ 4. Those university teachers and administrators who belong to other Churches, ecclesial communities, or religions, as well as those who profess no religious belief, and also all students, are to recognize and respect the distinctive Catholic identity of the University. In order not to endanger the Catholic identity of the University or Institute of Higher Studies, the number of non-Catholic teachers should not be allowed to constitute a majority within the Institution, which is and must remain Catholic.

§ 5. The education of students is to combine academic and professional development with formation in moral and religious principles and the social teachings of the Church; the programme of studies for each of the various professions is to include an appropriate ethical formation in that profession. Courses in Catholic doctrine are to be made available to all students(51).

Article 5. ***The Catholic University within the Church***

§ 1. Every Catholic University is to maintain communion with the universal Church and the Holy See; it is to be in close communion with the local Church and in particular with the diocesan Bishops of the region or nation in which it is located. In ways consistent with its nature as a University, a Catholic University will contribute to the Church's work of evangelization.

§ 2. Each Bishop has a responsibility to promote the welfare of the Catholic Universities in his diocese and has the right and duty to watch over the preservation and strengthening of their Catholic character. If problems should arise concerning this Catholic character, the local Bishop is to take the initiatives necessary to resolve the matter, working with the competent

university authorities in accordance with established procedures(52) and, if necessary, with the help of the Holy See.

§ 3. Periodically, each Catholic University, to which Artide 3, 1 and 2 refers, is to communicate relevant information about the University and its activities to the competent ecclesiastical Authority. Other Catholic Universities are to communicate this information to the Bishop of the diocese in which the principal seat of the Institution is located.

Article 6. ***Pastoral Ministry***

§ 1. A Catholic University is to promote the pastoral care of all members of the university community, and to be especially attentive to the spiritual development of those who are Catholics. Priority is to be given to those means which will facilitate the integration of human and professional education with religious values in the light of Catholic doctrine, in order to unite intellectual learning with the religious dimension of life.

§ 2. A sufficient number of qualified people-priests, religious, and lay persons-are to be appointed to provide pastoral ministry for the university community, carried on in harmony and cooperation with the pastoral activities of the local Church under the guidance or with the approval of the diocesan Bishop. All members of the university community are to be invited to assist the work of pastoral ministry, and to collaborate in its activities.

Article 7. ***Cooperation***

§ 1. In order better to confront the complex problems facing modern society, and in order to strengthen the Catholic identity of the Institutions, regional, national and international cooperation is to be promoted in research, teaching, and other university activities among all Catholic Universities, induding Ecclesiastical Universities and Faculties(53). Such cooperation is also to be promoted between Catholic Universities and other Universities, and with other research and educational Institutions, both private and governmental.

§ 2. Catholic Universities will, when possible and in accord with Catholic principles and doctrine, cooperate with government programmes and the programmes of other national and international Organizations on behalf of justice, development and progress.

TRANSITIONAL NORMS

Art. 8. The present Constitution will come into effect on the first day to the academic year 1991.

Art. 9. The application of the Constitution is committed to the Congregation for Catholic Education, which has the duty to promulgate the necessary directives that will serve towards that end.

Art. 10. It will be the competence of the Congregation for Catholic Education, when with the passage of time circumstances require it, to propose changes to be made in the present Constitution in order that it may be adapted continuously to the needs of Catholic Universities.

Art. 11. Any particular laws or customs presently in effect that are contrary to this Constitution are abolished. Also, any privileges granted up to this day by the Holy See

whether to physical or moral persons that are contrary to this present Constitution are abolished.

CONCLUSION

The mission that the Church, with great hope, entrusts to Catholic Universities holds a cultural and religious meaning of vital importance because it concerns the very future of humanity. The renewal requested of Catholic Universities will make them better able to respond to the task of bringing the message of Christ to man, to society, to the various cultures: "Every human reality, both individual and social has been liberated by Christ: persons, as well as the activities of men and women, of which culture is the highest and incarnate expression. The salvific action of the Church on cultures is achieved, first of all, by means of persons, families and educators... Jesus Christ, our Saviour, offers his light and his hope to all those who promote the sciences, the arts, letters and the numerous fields developed by modem culture. Therefore, all the sons and daughters of the Church should become aware of their mission and discover how the strength of the Gospel can penetrate and regenerate the mentalities and dominant values that inspire individual cultures, as well as the opinions and mental attitudes that are derived from it"(54).

It is with fervent hope that I address this Document to all the men and women engaged in various ways in the significant mission of Catholic higher education.

Beloved Brothers and Sisters, my encouragement and my trust go with you in your weighty daily task that becomes ever more important, more urgent and necessary on behalf of Evangelization for the future of culture and of all cultures. The Church and the world have great need of your witness and of your capable, free, and responsible contribution.

Given in Rome, at Saint Peter's, on 15 August, the Solemnity of the Assumption of the Blessed Virgin Mary into Heaven, in the year 1990, the twelfth of the Pontificate.

1 Cf. The letter of Pope Alexander IV to the University of Paris, 14 April 1255, Introduction: *Bullarium Diplomatum...*, vol. III, Turin 1858, p. 602.

2 SAINT AUGUSTINE, *Confes.* X, xxiii, 33: "In fact, the blessed life consists in *the joy that comes from the truth,* since this joy comes from You who are Truth, God my light, salvation of my face, my God". PL 32, 793-794. Cf. SAINT THOMAS AQUINAS, *De Malo,* IX, 1: "It is actually natural to man to strive for knowledge of the truth".

3 JOHN PAUL II, Discourse to the "Institut Catholique de Paris", 1 June 1980: *Insegnamenti di Giovanni Paolo II,* Vol. III/1 (1980), p. 1581.

4 JOHN PAUL II, Discourse to the Cardinals, 10 November 1979: *Insegnamenti di Giovanni Paolo II,* Vol. II/2 (1979), p. 1096; cf. Discourse to UNESCO, Paris, 2 June 1980: AAS 72 (1980), pp. 735-752.

5 Cf. JOHN PAUL II, Discourse to the University of Coimbra, 15 May 1982: *Insegnamenti di Giovanni Paolo II,* Vol. V/2 (1982), p. 1692.

6 PAUL VI, Allocution to Representatives of States, 4 October 1965: *Insegnamenti di Paolo VI,* Vol. III (1965), p. 508.

7 JOHN HENRY CARDINAL NEWMAN, *The Idea of a University,* London, Longmans, Green and Company, 1931, p. XI.

8 *Jn* 14:6.

9 Cf. SAINT AUGUSTINE, Serm. 43, 9: PL 38, 258. Cf. also SAINT ANSELM, *Proslogion,* chap. I: PL 158, 227.

10 Cf. JOHN PAUL II, Allocution to the International Congress on Catholic Universities, 25 April 1989, n. 3: AAS 18 (1989), p. 1218.

11 JOHN PAUL II, Apostolic Constitution Sapientia Christiana concerning the Ecclesiastical Universities and Faculties, 15 April 1979: AAS 71 (1979), pp. 469-521.

12 VATICAN COUNCIL II, Declaration on Catholic Education *Gravissimum Educationis,* n. 10: AAS 58 (1966), p. 737.

13 *Mt* 13:52.

14 Cf. *The Magna Carta of the European Universities,* Bologna, Italy, 18 September 1988, "Fundamental Principles".

15 Cf. VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes,* n. 59: AAS 58 (1966), p. 1080; Declaration on Catholic Education *Gravissimum Educationis,* n. 10: AAS 58 (1966), p. 737. "Institutional autonomy" means that the governance of an academic institution is and remains internal to the institution; "academic freedom" is the guarantee given to those involved in teaching and research that, within their specific specialized branch of knowledge, and according to the methods proper to that specific area, they may search for the truth wherever analysis and evidence leads them, and may teach and publish the results of this search, keeping in mind the cited criteria, that is, safeguarding the rights of the individual and of society within the confines of the truth and the common good.

16 There is a two-fold notion of *culture* used in this document: the *humanistic* and the *socio-historical.* "The word 'culture' in its general sense indicates all those factors by which man refines and unfolds his manifold spiritual and bodily qualities. It means his effort to bring the world itself under his control by his knowledge and his labor. It includes the fact that by improving customs and institutions he renders social life more human both within the family and in the civic community. Finally, it is a feature of culture that throughout the course of time man expresses, communicates, and conserves in his works great spiritual experiences and desires, so that these may be of advantage to the progress of many, even of the whole human family. Hence it follows that human culture necessarily has a historical and social aspect and that the word 'culture' often takes on a sociological and ethnological sense". VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes,* n. 53: AAS 58 (1966), p. 1075.

17 *L'Université Catholique dans le monde moderne. Document final du* 2ème *Congrès des Délégués des Universités Catholiques,* Rome, 20-29 November 1972, § 1.

18 *Ibid.*

19 JOHN PAUL II, Allocution to the International Congress on Catholic Universities, 25 Aprii 1989, n. 4: *AAS* 81 (1989), p. 1219. Cf. also VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World*Gaudium et Spes,* n. 61: AAS 58 (1966), pp. 1081-1082. Cardinal Newman observes that a University "professes to assign to each study which it receives, its proper place and its just boundaries; to define the rights, to establish the mutual relations and to effect the intercommunion of one and all". (Op. cit., p. 457).

20 VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes,* n. 36: AAS 58 (1966), p. 1054. To a group of scientists I pointed out that "while reason and faith surely represent two distinct orders of knowledge, each autonomous with regard to its own methods, the two must finally converge in the discovery of a single whole reality which has its origin in God". (JOHN PAUL II, *Address at the Meeting on Galileo, 9* May 1983, n. 3: AAS 75 [1983], p. 690).

21 JOHN PAUL II, Address at UNESCO, 2 June 1980, n. 22: AAS 72 (1980), p. 750. The last part of the quotation uses words directed to the Pontifical Academy of Sciences, 10 November 1979: *Insegnamenti di Giovanni Paolo II,* Vol. II/2 (1979), p. 1109.

22 Cf. VATICAN COUNCIL II, Declaration on Catholic Education *Gravissimum Educationis,* n. 10: *AAS* 58 (1966), p. 737.

23 VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes,* n. 59: AAS 58 (1966), p. 1080. Cardinal Newman describes the ideal to be sought in this way: "A habit of mind is formed which lasts through life, of which the attributes are freedom, equitableness, calmness, moderation and wisdom". *(Op. cit.,* pp. 101-102).

24 JOHN PAUL II, Post-Synodal Apostolic Exhortation *Christifideles Laici,* 30 December 1988, n. 44: AAS 81 (1989), p. 479.

25 VATICAN COUNCIL II, Dogmatic Constitution on the Church *Lumen Gentium,* n. 31: *AAS* 57 (1965), pp. 37-38. Cf. Decree on the Apostolate of the Laity *Apostolicam Actuositatem,* passim: AAS 58 (1966), pp. 837ff. Cf. also *Gaudium et Spes,* n. 43: *AAS* 58 (1966), pp. 1061-1064.

26 Cf. VATICAN COUNCIL II, Declaration on Religious Liberty *Dignitatis Humanae,* n. 2: AAS 58 (1966), pp. 930-931.

27 JOHN PAUL II, Address to Leaders of Catholic Higher Education, Xavier University of Louisiana, U.S.A., 12 September 1987, n. 4: AAS 80 (1988), p. 764.

28 VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes,* n. 59: *AAS* 58 (1966), p. 1080.

29 Cf. VATICAN COUNCIL II, Dogmatic Constitution on Divine Revelation *Dei Verbum,* nn. 8-10: *AAS* 58 (1966), pp. 820-822.

30 Cf. VATICAN COUNCIL II, Dogmatic Constitution on the Church *Lumen Gentium,* n. 25: *AAS* 57 (1965), pp. 29-31.

31 Cf. "Instruction on the Ecclesial Vocation of the Theologian" of the Congregation for the Doctrine of the Faith of 24 May 1990.

32 Cf. JOHN PAUL II, Encyclical Letter Sollicitudo Rei Socialis,

nn. 27-34: *AAS* 80 (1988), pp. 547-560.

33 PAUL VI, Encyclical Letter *Populorum Progressio,* n. 1: AAS 59

(1967), p. 257.

34 "Therefore, in that there has been a pleasing multiplication of centres of higher learning, it has become apparent that it would be opportune for the faculty and the alumni to unite in common association which, working in reciprocal understanding and close collaboration, and based upon the authority of the Supreme Pontiff, as father and universal doctor, they might more efficaciously spread and extend the light of Christ". (Plus XII, Apostolic Letter *Catholicas Studiorum Universitates,* with which The International Federation of Catholic Universities was established: AAS 42 [1950], p. 386).

35 The Code of Canon Law indicates the general responsibility of the Bishop toward university students: "The diocesan bishop is to have serious pastoral concern for students by erecting a parish for them or by assigning priests for this purpose on a stable basis; he is also to provide for Catholic university centers at universities, even non-Catholic ones, to give assistance, especially spiritual to young people". *(CIC,* can. 813).

36 "Living in various circumstances during the course of time, the Church, too, has used in her preaching the discoveries of different cultures to spread and explain the message of Christ to all nations, to probe it and more deeply understand it, and to give it better expression in liturgical celebrations and in the life of the diversified community of the faithful". (VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes,* n. 58: *AAS* 58 [1966], p. 1079).

37 PAUL VI, Apostolic Exhortation *Evangelii Nuntiandi,* n. 20: *AAS* 68 (1976), p. 18. Cf. VATICAN COUNCIL II, Pastotal Constitution on the Church in the Modern World *Gaudium et Spes,* n. 58: *AAS* 58 (1966), p. 1079.

38 JOHN PAUL II, Address to Intellectuals, to Students and to University Personnel at Medellín, Colombia, 5 July 1986, n. 3: AAS 79 (1987), p. 99. Cf. also VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes,* n. 58: *AAS* 58 (1966), p. 1079.

39 PAUL VI, to the Delegates of The International Federation of Catholic Universities, 27 November 1972: *AAS* 64 (1972), p. 770.

40 PAUL VI, Apostolic Exhortation *Evangelii Nuntiandi,* nn. 18ff.: *AAS* 68 (1976), pp. 17-18.

41 PAUL VI, Address to Presidents and Rectors of the Universities of the Society of Jesus, 6 August 1975, n. 2: AAS 67 (1975), p. 533. Speaking to the participants of the International Congress on Catholic Universities, 25 April 1989, I added (n. 5): "Within a Catholic University the evangelical mission of the Church and the mission of research and teaching become *interrelated* and *coordinated":* Cf. *AAS* 81 (1989), p. 1220.

42 Cf. in particular the Chapter of the Code: "Catholic Universities and other Institutes of Higher Studies" *(CIC,* cann. 807-814).

43 Episcopal Conferences were established in the Latin Rite. Other Rites have other Assemblies of Catholic Hierarchy.

44 Cf. *CIC,* Can. 455, § 2.

45 Cf. *Sapientia Christiana: AAS* 71 (1979), pp. 469-521. Ecclesiastical Universities and Faculties are those that have the right to confer academic degress by the authority of the Holy See.

46 Cf. VATICAN COUNCIL II, Declaration on Religious Liberty *Dignitatis Humanae,* n. 2: *AAS* 58 (1966), pp. 930-931.

47 Cf. VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes,* nn. 57 and 59: *AAS* 58 (1966), pp. 1077-1080; *Gravissimum Educationis,* n. 10: *AAS* 58 (1966), p. 737.

48 Both the establishment of such a university and the conditions by which it may refer to itself as a Catholic University are to be in accordance with the prescriptions issued by the Holy See, Episcopal Conference or other Assembly of Catholic Hierarchy.

49 Canon 810 of CIC, specifies the responsibility of the competent Authorities in this area: § 1 "It is the responsibility of the authority who is competent in accord with the statutes to provide for the appointment of teachers to Catholic universities who, besides their scientific and pedagogical suitability, are also outstanding in their integrity of doctrine and probity of life; when those requisite qualities are lacking they are to be removed from their positions in accord with the procedure set forth in the statutes. § 2 The conference of bishops and the diocesan bishops concerned have the duty and right of being vigilant that in these universities the principles of Catholic doctrine are faithfully observed". Cf. also Article 5, 2 ahead in these "Norms".

50 VATICAN COUNCIL II, Dogmatic Constitution on the Church *Lumen Gentium,* n. 25: *AAS* 57 (1965), p. 29; *Dei Verbum,* nn. 8-10: *AAS* 58 (1966), pp. 820-822; Cf. *CIC,* can. 812: "It is necessary that those who teach theological disciplines in any institute of higher studies have a mandate from the competent ecclesiastical authority".

51 Cf. *CIC,* can 811 § 2.

52 For Universities to which Article 3 §§ 1 and 2 refer, these procedures are to be established in the university statutes approved by the competent ecclesiastical Authority; for other Catholic Universities, they are to be determined by Episcopal Conferences or other Assemblies of Catholic Hierarchy.

53 Cf. *CIC,* can. 820. Cf. also *Sapientia Christiana,* Norms of Application, Article 49: *AAS* 71 (1979), p. 512.

54 JOHN PAUL II, to the Pontifical Council for Culture, 13 January 1989, n. 2: *AAS* 81 (1989), pp. 857-858.

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UNITED STATES CONFERENCE OF CATHOLIC BISHOPS

THE APPLICATION FOR EX CORDE ECCLESIAE FOR THE UNITED STATES

Decree of Promulgation

On November 17, 1999, the Catholic Bishops of the United States, meeting in Plenary Session of the National Conference of Catholic Bishops, approved *The Application of Ex corde Ecclesiae for the United States* implementing the Apostolic Constitution *Ex corde Ecclesiae*, according to the norm of law.

The action was granted recognitio by the Congregation for Bishops in accord with article 82 of the Apostolic Constitution Pastor Bonus and issued by Decree of the Congregation for Bishops signed by His Eminence Lucas Cardinal Moreira Neves, Prefect, and His Excellency Most Reverend Francisco Monterisi, Secretary, and dated May 3, 2000.

As President of the National Conference of Catholic Bishops, I hereby decree that *The Application of Ex corde Ecclesiae* for the United States will be in force as particular law for the United States on May 3, 2001.

Given at the offices of the National Conference of Catholic Bishops in Washington, DC, on June 1, 2000.

Most Reverend Joseph A. Fiorenza
Bishop of Galveston-Houston
President, National Conference of Catholic Bishops

Reverend Monsignor Dennis M. Schnurr
General Secretary

Introduction

Catholic higher education in the United States has a unique history. The opening of Georgetowr in 1789 and subsequent growth into 230 Catholic colleges and universities is a remarkable achievement for the Church and the United States.

Catholic colleges and universities are related to the ecclesial community, to the higher educatior enterprise of the United States and to the broader society. Founded and developed principally b religious communities of women and men, they now involve lay administrators, professors and trustees who are Catholic and not Catholic—all committed to the vision of Catholic higher education.

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Catholic colleges and universities, where culture and faith intersect, bring diversity to American higher education. Diversity is present among the institutions themselves: two-year colleges and graduate program universities; liberal arts colleges and research universities; schools for the professions and schools for technical education.

To all participating in Catholic higher education, the Bishops of the United States express their admiration and sincere gratitude, knowing that both the nation and ecclesial community are affected by their commitments and talents. Bishops want to maintain, preserve and guarantee the Catholic identity of Catholic higher education, a responsibility they share in various ways wit sponsoring religious communities, boards of trustees, university administration, faculty, staff anc students.

Part One: Theological and Pastoral Principles

1. Ex corde Ecclesiae

On August 15, 1990, Pope John Paul II issued an apostolic constitution on Catholic higher education entitled *Ex corde Ecclesiae*.[1] The Apostolic Constitution described the identity and mission of Catholic colleges and universities and provided General Norms to help fulfill its vision

The General Norms are to be applied concretely by episcopal conferences, taking into account the status of each college and university and, as far as possible and appropriate, civil law. Accordingly, recognizing that the Apostolic Constitution *Ex corde Ecclesiae* is normative for the Church throughout the world, this document seeks to apply its principles and norms to all Catholic colleges, universities, and institutions of higher learning within the territory encompassed by the United States Catholic Conference of Bishops.

2. The Ecclesiological Concept of Communion

The Church is made up of individual faithful and communities linked with one another through many active ecclesial relationships. A true understanding of these dynamic relationships flows from the faith-conviction that God the Father, through His incarnate Son, Jesus Christ, has revealed His desire to incorporate all people into the life of the Trinity. It is in the Church, throug the indwelling of the Holy Spirit, that this relationship of all persons and communities with the Triune God takes place. This body of dynamic relationships held together by the unity of faith is aptly described in the theological concept of communion.[2]

The dynamic of communion unites on a deeper and more productive level the various communities in the Church through which so much of her mission of salvation, and consequentl human progress, is carried out. More specifically, ecclesial communion furnishes the basis for the collaborative relationships between the hierarchy and Catholic universities contemplated in *Ex corde Ecclesiae*: "Every Catholic University is to maintain communion with the universal Church and the Holy See; it is to be in close communion with the local Church and in particular with the diocesan bishops of the region or the nation in which it is located."[3] The Catholic university is a vital institution in the communion of the Church and is "a primary and privileged place for a fruitful dialogue between the Gospel and culture."[4]

The richness of communion illuminates the ecclesial relationship that unites the distinct, and yet complementary, teaching roles of bishops and Catholic universities. In the light of communion, the teaching responsibilities of the hierarchy and of the Catholic universities retain their distinctive autonomous nature and goal but are joined as complementary activities contributing t the fulfillment of the Church's universal teaching mission. The communion of the Church

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embraces both the pastoral work of bishops and the academic work of Catholic universities, thu linking the bishops' right and obligation to communicate and safeguard the integrity of Church doctrine with the right and obligation of Catholic universities to investigate, analyze and communicate all truth freely.

The communion of all the faithful with the Triune God and with one another is a theological reality expressing the will of God. It is by understanding and living this communion that bishops and Catholic universities can most effectively collaborate to fulfill their proper mission within the Church. In carrying out its mission to search for truth, the Catholic university is uniquely situated to serve not only the people of God but the entire human family "in their pilgrimage to the transcendent goal which gives meaning to life."[5]

3. The Catholic University's Twofold Relationship

Catholic universities are participants in the life of the universal Church, the local Church, the higher education community of the United States and the civic community. As such, they "are called to continuous renewal, both as 'universities' and as 'Catholic.'"[6] This twofold relationship is described in the May 22, 1994, joint document of the Congregation for Catholic Education and the Pontifical Councils for the Laity and for Culture, which states that the Catholic university achieves its purpose when

. . . it gives proof of being rigorously serious as a member of the international community of knowledge and expresses its Catholic identity through an explicit link with the Church, at both local and universal levels—an identity which marks concretely the life, the services and the programs of the university community. In this way, by its very existence, the Catholic university achieves its aim of guaranteeing, in institutional form, a Christian presence in the university world. . . .7

One of the ways this relationship is clarified and maintained is through dialogue that includes faculty of all disciplines, students, staff, academic and other administrative officers, trustees, an sponsoring religious communities of the educational institutions, all of whom share responsibility for the character of Catholic higher education. The bishop and his collaborators in the local Church are integral parties in this dialogue.

The Catholic university is related to the local and universal ecclesial community[8] as well as to th broader society[9] and the higher education academy.[10] In this document we are directing special attention to the relationship between universities and Church authorities. *Ex corde Ecclesiae* provides one of the ecclesiological principles to address this specific relationship.

Bishops have a particular responsibility to promote Catholic Universities, and especially to promote and assist in the preservation and strengthening of their Catholic identity, including the protection of their Catholic identity in relation to civil authorities. This will be achieved more effectively if close personal and pastoral relationships exist between University and Church authorities, characterized by mutual trus close and consistent cooperation and continuing dialogue. Even though they do not enter directly into the internal government of the University, Bishops "should be seen not as external agents but as participants in the life of the Catholic University." [italics added][11]

Each of these elements in the pastoral relationship of bishops with Catholic universities warrant attention.

4. Mutual Trust Between University and Church Authorities

Mutual trust goes beyond the personalities of those involved in the relationship. The trust is grounded in a shared baptismal belief in the truths that are rooted in Scripture and Tradition, as interpreted by the Church, concerning the mystery of the Trinity: God the Father and Creator, who works even until now; God the Son and incarnate Redeemer, who is the Way and the Truth and the Life; and God the Holy Spirit, the Paraclete, whom the Father and Son send. In the spiri of *communio*, the relationship of trust between university and Church authorities, based on thes shared beliefs with their secular and religious implications, is fostered by mutual listening, by

collaboration that respects differing responsibilities and gifts, and by a solidarity that mutually recognizes respective statutory limitations and responsibilities.

5. Close and Consistent Cooperation Between University and Church Authorities
Collaborating to integrate faith with life is a necessary part of the "close personal and pastoral relationships"[12] to which universities and bishops are called. Within their academic mission of teaching and research, in ways appropriate to their own constituencies and histories, including their sponsorship by religious communities, institutions offer courses in Catholic theology that reflect current scholarship and are in accord with the authentic teaching of the Church.

Many cooperative programs, related to Gospel outreach, already flourish throughout the country It is highly desirable that representatives of both educational institutions and Church authorities jointly identify, study, and pursue solutions to issues concerning social justice, human life and th needs of the poor.

Allocation of personnel and money to assure the special contributions of campus ministry is indispensable. In view of the presence on campus of persons of other religious traditions, it is a concern of the whole Church that ecumenical and inter-religious relationships should be fostere with sensitivity.

A structure and strategy to insure ongoing dialogue and cooperation should be established by university and Church authorities.

6. Continuing Dialogue Among University Representatives and Church Authorities
Dialogues occasioned by *Ex corde Ecclesiae* may be graced moments characterized by

a. a manifest openness to a further analysis and local appropriation of Catholic identity;

b. an appreciation of the positive contributions that campus-wide conversations make; and

c. a conviction that conversation can develop and sustain relationships.

A need exists for continued attention and commitment to the far-reaching implications—curricular, staffing, programming—of major themes within *Ex corde Ecclesiae*. These include Catholic identity, communio, relating faith and culture, pastoral outreach, the New Evangelization, and relationship to the Church.

7. Catholic Identity
Catholic identity lies at the heart of *Ex corde Ecclesiae*. In 1979, Pope John Paul II, in an address to the Catholic academic community at The Catholic University of America, stressed th importance of the Catholic character of Catholic institutions of higher learning:

> Every university or college is qualified by a specified mode of being. Yours is the qualification of being Catholic, of affirming God, his revelation and the Catholic Church as the guardian and interpreter of that revelation. The term 'Catholic' will never be a mere label either added or dropped according to the pressures of varying factors.[13]

Catholic universities, in addition to their academic commitments to secular goals and programs, should excel in theological education, prayer and liturgy, and works of charity. These religious activities, however, do not alone make a university "Catholic." *Ex corde Ecclesiae* highlights fou distinctive characteristics that are essential for Catholic identity:

1. Christian inspiration in individuals and the university community;

2. Reflection and research on human knowledge in the light of the Catholic faith;

3. Fidelity to the Christian message in conformity with the magisterium of the Church;

4. Institutional commitment to the service of others.[14]

Catholic universities cherish their Catholic tradition and, in many cases, the special charisms of the religious communities that founded them. In the United States, they enjoyed the freedom to incorporate these religious values into their academic mission. The principles of *Ex corde Ecclesiae* afford them an opportunity to re-examine their origin and renew their way of living out this precious heritage.

Catholic universities enjoy institutional autonomy: as academic institutions their governance "is and remains internal to the institution."[15] In order to maintain and safeguard their freely-chosen Catholic identity, it is important for Catholic universities to set out clearly in their official documentation their Catholic character and to implement in practical terms their commitment to the essential elements of Catholic identity, including the following:

5. Commitment to be faithful to the teachings of the Catholic Church;

6. Commitment to Catholic ideals, principles and attitudes in carrying out research, teaching and all other university activities, including activities of officially-recognized student and faculty organizations and associations, and with due regard for academic freedom and the conscience of every individual;[16]

7. Commitment to serve others, particularly the poor, underprivileged and vulnerable members c society;

8. Commitment of witness of the Catholic faith by Catholic administrators and teachers, especially those teaching the theological disciplines, and acknowledgment and respect on the part of non-Catholic teachers and administrators of the university's Catholic identity and mission

9. Commitment to provide courses for students on Catholic moral and religious principles and their application tc critical areas such as human life and other issues of social justice;

10. Commitment to care pastorally for the students, faculty, administration and staff;

11. Commitment to provide personal services (health care, counseling and guidance) to students, as well as administration and faculty, in conformity with the Church's ethical and religious teaching and directives; and

12. Commitment to create a campus culture and environment that is expressive and supportive (a Catholic way of life.

Catholic universities should make every effort to enhance their communion with the hierarchy sc that through this special relationship they may assist each other to accomplish the mission to which they are mutually committed.
In a secular world the strong Catholic identity of our institutes of higher learning is invaluable in witnessing to the relationship of truth and reason, the call of the revealed Word, and the authentic meaning of human life. "The present age is in urgent need of this kind of disinterested service, namely of proclaiming the meaning of truth, that fundamental value without which freedom, justice and human dignity are extinguished."[17]

Part Two: Particular Norms

The chief purpose of the following norms is to assist Catholic colleges and universities in their internal process of reviewing their Catholic identity and clarifying their essential mission and goals. They are intended to provide practical guidance to those committed to the enterprise of Catholic higher education as they seek to implement the theological and pastoral principles of *E corde Ecclesiae*. Accordingly, the norms follow the basic outline of the General Norms found in *Ex corde Ecclesiae* and provide concrete steps that will facilitate the implementation of the Holy Father's document in the context of the relevant sections of the Code of Canon Law and complementary Church legislation.[18]

Art. 1. The Nature of the Particular Norms

1. These particular norms are applicable to all Catholic colleges, universities and institutions of higher learning within the territory encompassed by the National Conference of Catholic Bishops, contrary particular laws, customs or privileges notwithstanding.[19]

2. Catholic universities are to observe the general norms of *Ex corde Ecclesiae* and the following particular norms as they apply to their individual institutions, taking into account their own statutes and, as far as possible and appropriate, relevant provisions of applicable federal and state law, regulations and procedures.

a. Those universities established or approved by the Holy See, by the NCCB, by other hierarchical assemblies, or by individual diocesan bishops are to incorporate, by reference and in other appropriate ways, the general an particular norms into their governing documents and conform their existing statutes to such norms. Within five years of the effective date of these particular norms, Catholic universities are to submit the aforesaid incorporation for review and affirmation to the university's competent ecclesiastical authority.

b. Other Catholic universities are to make the general and particular norms their own, include them in the university's official documentation by reference and in other appropriate ways, and, as much as possible, conform their existing statutes to such norms. These steps to ensure their Catholic identity are to be carried out in agreement with the diocesan bishop of the place where the seat of the university is situated.[20]

c. Changes in statutes of universities established by the hierarchy, religious institutes or other public juridic persons that substantially affect the nature, mission or Catholic identity of the university require the approval of competent ecclesiastical authority.[21]

3. Those establishing or sponsoring a Catholic university have an obligation to make certain that they will be abl to carry out their canonical duties in a way acceptable under relevant provisions of applicable federal and state law, regulations and procedures.[22]

Art. 2. The Nature of a Catholic University

1. The purpose of a Catholic university is education and academic research proper to the disciplines of the university. Since it enjoys the institutional autonomy appropriate to an academic institution, its governance is an remains internal to the institution itself. This fundamental purpose and institutional autonomy must be respected and promoted by all, so that the university may effectively carry out its mission of freely searching for all truth.[23]

2. Academic freedom is an essential component of a Catholic university. The university should take steps to ensure that all professors are accorded "a lawful freedom of inquiry and of thought and of freedom to express their minds humbly and courageously about those matters in which they enjoy competence."[24] In particular, "[t]hose who are engaged in the sacred disciplines enjoy a lawful freedom of inquiry and of prudently expressing their opinions on matters in which they have expertise, while observing the submission [*obsequio*] due to the magisterium of the Church."[25]

3. With due regard for the common good and the need to safeguard and promote the integrity and unity of the faith, the diocesan bishop has the duty to recognize and promote the rightful academic freedom of professors in Catholic universities in their search for truth.[26]

4. Recognizing the dignity of the human person, a Catholic university, in promoting its own Catholic identity and fostering Catholic teaching and discipline, must respect the religious liberty of every individual, a right with whicl each is endowed by nature.[27]

5. A responsibility of every Catholic university is to affirm its essential characteristics, in accord with the principles of *Ex corde Ecclesiae*, through public acknowledgment in its mission statement and/or its other official documentation of its canonical status[28] and its commitment to the practical implications of its Catholic identity, including but not limited to those specified in Pa One, Section 7 of this document.

6. The university (in particular, the trustees, administration, and faculty) should take practical steps to implement its mission statement in order to foster and strengthen its Catholic nature an character.[29]

Art. 3. The Establishment of a Catholic University

1. A Catholic university may be established, or an existing university approved, by the Holy See, the National Conference of Catholic Bishops, other hierarchical assemblies, or individual diocesan bishops. It may also be

established by a religious institute or some other public juridic person, or by individual Catholics, acting singly or in association, with proper ecclesiastical approval.[30]

2. At the time of its establishment the university should see to it that its canonical status is identified, including the ecclesiastical authority by which it has been established or approved or to which it otherwise relates.[31]

3. The statutes of Catholic universities established by hierarchical authority or by religious institutes or other public juridic persons must be approved by competent ecclesiastical authority.[32]

4 .No university may assume the title Catholic without the consent of the competent ecclesiastical authority.[33]

Art. 4. The University Community

1. The responsibility for safeguarding and strengthening the Catholic identity of the university rests primarily with the university itself. All the members of the university community are called to participate in this important task in accordance with their specific roles: the sponsoring religious community, the board of trustees, the administration and staff, the faculty, and the students.[34] Men and women of religious faiths other than Catholic, on the board of trustees, on the faculty, and in other positions, can make a valuable contribution to the university. Their presence affords the opportunity for all to learn and benefit from each other. The university should welcome them as full partners in the campus community.

2. *The Board of Trustees*

a. Each member of the board must be committed to the practical implications of the university's Catholic identity as set forth in its mission statement or equivalent document.

b. To the extent possible, the majority of the board should be Catholics committed to the Church.

c. The board should develop effective ways of relating to and collaborating with the local bishop and diocesan agencies on matters of mutual concern.[35]

d. The board should analyze ecclesiastical documents on higher education, such as *Ex corde Ecclesiae* and this Application, and develop specific ways of implementing them appropriate to the structure and life of the university.

e. The board should see to it that the university periodically undertakes an internal review of the congruence of its mission statement, its courses of instruction, its research program, and its service activity with the ideals, principles and norms expressed in *Ex corde Ecclesiae*.

3. *Administration and Staff*

a. The university president should be a Catholic.[36]

b. The administration should inform faculty and staff at the time of their appointment regarding the Catholic identity, mission and religious practices of the university and encourage them to participate, to the degree possible, in the spiritual life of the university.

c. The administration should be in dialogue with the local bishop about ways of promoting Catholic identity and the contribution that the university can make to the life of the Church in the area.

4. *Faculty*

a. In accordance with its procedures for the hiring and retention of professionally qualified faculty and relevant provisions of applicable federal and state law, regulations and procedures, the university should strive to recruit and appoint Catholics as professors so that, to the extent possible, those committed to the witness of the faith will constitute a majority of the faculty. All professors are expected to be aware of and committed to the Catholic mission and identity of their institutions.

b. All professors are expected to exhibit not only academic competence and good character but also respect for Catholic doctrine.[37] When these qualities are found to be lacking, the university statutes are to specify the competent authority and the process to be followed to remedy the situation.[38]

c. Catholic theology should be taught in every Catholic university, and, if possible, a department or chair of Catholic theology should be established. Academic events should be organized on a regular basis to address theological issues, especially those relative to the various disciplines taught in the university.[39]

d. Both the university and the bishops, aware of the contributions made by theologians to Church and academy, have a right to expect them to present authentic Catholic teaching. Catholic professors of the theological

disciplines have a corresponding duty to be faithful to the Church's magisterium as the authoritative interpreter c Sacred Scripture and Sacred Tradition.

e. Catholics who teach the theological disciplines in a Catholic university are required to have a *mandatum* granted by competent ecclesiastical authority.[40]
i. The *mandatum* is fundamentally an acknowledgment by Church authority that a Catholic professor of a theological discipline is a teacher within the full communion of the Catholic Church.

ii. The *mandatum* should not be construed as an appointment, authorization, delegation or approbation of one's teaching by Church authorities. Those who have received a *mandatum* teach in their own name in virtue of their baptism and their academic and professional competence, not in the name of the Bishop or of the Church's magisterium.[41]

iii. The *mandatum* recognizes the professor's commitment and responsibility to teach authentic Catholic doctrine and to refrain from putting forth as Catholic teaching anything contrary to the Church's magisterium.

iv. The following procedure is given to facilitate, as of the effective date of this Application, the process of requesting and granting the *mandatum.* Following the approval of the Application, a detailed procedure will be developed outlining the process of requesting and granting (or withdrawing) the *mandatum.*

1. The competent ecclesiastical authority to grant the *mandatum* is the bishop of the diocese in which the Catholic university is located; he may grant the *mandatum* personally or through a delegate.[42]

2.Without prejudice to the rights of the local bishop,[43] a *mandatum*, once granted, remains in effect wherever an as long as the professor teaches unless and until withdrawn by competent ecclesiastical authority.

3.The *mandatum* should be given in writing. The reasons for denying or removing a *mandatum* should also be i writing.[44]

5.Students. With due regard for the principles of religious liberty and freedom of conscience, students should have the opportunity to be educated in the Church's moral and religious principles and social teachings and to participate in the life of faith.[45]

a. Catholic students have a right to receive from a university instruction in authentic Catholic doctrine and practice, especially from those who teach the theological disciplines. They also have a right to be provided with opportunities to practice the faith through participation in Mass, the sacraments, religious devotions and other authentic forms of Catholic spirituality.

b. Courses in Catholic doctrine and practice should be made available to all students.

c. Catholic teaching should have a place, if appropriate to the subject matter, in the various disciplines taught in the university.[46] Students should be provided with adequate instruction on professional ethics and moral issues related to their profession and the secular disciplines.

Art. 5. The Catholic University in the Church

1.*The Universal Church*

a.The university shall develop and maintain a plan for fulfilling its mission that communicates and develops the Catholic intellectual tradition, is of service to the Church and society, and encourages the members of the university community to grow in the practice of the faith.[47]

b.The university plan should address intellectual and pastoral contributions to the mission of communicating Gospel values,[48] service to the poor, social justice initiatives, and ecumenical and inter-religious activities.

2.*The Local Church*

a. In accordance with Church teaching and the universal law of the Church, the local Bishop has a responsibility to promote the welfare of the Catholic universities in his diocese and to watch over the preservation and strengthening of their Catholic character.[49]

b. Bishops should, when appropriate, acknowledge publicly the service of Catholic universities t the Church and support the institution's Catholic identity if it is unjustifiably challenged.

c. Diocesan and university authorities should commit themselves mutually to regular dialogues t achieve the goals of *Ex corde Ecclesiae* according to local needs and circumstances.

d. University authorities and the local diocesan bishop should develop practical methods of collaboration that are harmonious with the university's structure and statutes. Similar forms of collaboration should also exist between the university and the religious institute to which it is related by establishment or tradition.[50]

e. Doctrinal Responsibilities: Approaches to Promoting Cooperation and Resolving Misunderstandings between Bishops and Theologians, approved and published by the National Conference of Catholic Bishops, June 17, 1989, can serve as a useful guide for diocesan bishops, professors of the theological disciplines and administrators of universities to promote informal cooperation and collaboration i the Church's teaching mission and the faithful observance within Catholic universities of the principles of Catholic doctrine.

f. Disputes about Church doctrine should be resolved, whenever possible, in an informal manner. At times, the resolution of such matters may benefit from formal doctrinal dialogue as proposed by *Doctrinal Responsibilities* and adapted by the parties in question.[51]

g. The National Conference of Catholic Bishops, through an appropriate committee structure, should continue t dialogue and collaborate with the Catholic academic community and its representative associations about ways of safeguarding and promoting the ideals, principles and norms expressed in *Ex corde Ecclesiae*.

Art. 6. Pastoral Ministry

1. The diocesan bishop has overall responsibility for the pastoral care of the university's student: faculty, administration and staff.[52]

2.The university, in cooperation with the diocesan bishop, shall make provision for effective campus ministry programs, including the celebration of the sacraments, especially the Eucharist and penance, other liturgical celebrations, and opportunities for prayer and spiritual reflection.[53]

3. When selecting pastoral ministers—priests, deacons, religious and lay persons—to carry on the work of campus ministry, the university authorities should work closely with the diocesan bishop and interested religious institutes. Without prejudice to the provision of canon 969, §2, priests and deacons must enjoy pastoral faculties from the local ordinary in order to exercise their ministry on campus.

4. With due regard for religious liberty and freedom of conscience, the university, in cooperation with the diocesan bishop, should collaborate in ecumenical and interfaith efforts to care for the pastoral needs of students, faculty and other university personnel who are not Catholic.

5. In these pastoral efforts, the university and the diocesan bishop should take account of the prescriptions and recommendations issued by the Holy See and the guidance and pastoral statements of the National Conference of Catholic Bishops.[54]

Art. 7. Cooperation

1. Catholic universities should commit themselves to cooperate in a special way with other Catholic universities, institutions and professional associations, in the United States and abroad, in order to build up the entire Cathol academic community.[55]

2. In collaborating with governmental agencies, regional associations, and other universities, whether public or private, Catholic universities should give corporate witness to and promote the Church's social teaching and its moral principles in areas such as the fostering of peace and justice, respect for all human life, the eradication of poverty and unjust discrimination, the development of all peoples and the growth of human culture.[56]

Conclusion

This Application will become effective one year after its *recognitio* by the Holy See. During the five years following the effective date of this Application, the National Conference of Catholic Bishops in collaboration with representatives of Catholic universities should develop a mutually agreeable process to review and evaluate the implementation of *Ex corde Ecclesiae* and this Application, particularly regarding the nature, mission and Catholic identity of the universities.

Ten years after the effective date of this Application, the National Conference of Catholic Bishops will review this Application of *Ex corde Ecclesiae* for the United States.

The Bishops of the United States, in offering this application of *Ex corde Ecclesiae*, join in sentiments expressed by Pope John Paul II:

I turn to the whole Church, convinced that Catholic universities are essential to her growth and to the development of Christian culture and human progress. For this reason, the entire ecclesial community is

*invited to give its support to Catholic institutions of higher education and to assist them in their process o development and renewal. . . .*57

Notes

1. Pope John Paul II, *Apostolic Constitution on Catholic Universities Ex corde Ecclesiae*, August 15, 1990, AAS 82 (1990) pp. 1475-1509 [cited throughout the remainder of this document as ECE]. English translation: Origins CNS Documentary Service, October 4, 1990. In accordance with canon 455, §1, the United States Conference Bishops promulgates this Application as a response to the special mandate of the Apostolic See (cf. ECE, II, Art 1, §2). The Application refers to Catholic universities and other institutes of higher learning (cf. canons 807-814) excluded from the Application's treatment are ecclesiastical universities and faculties (cf. canons 815-821), whic are governed by the Apostolic Constitution, *Sapientia Christiana* (see below footnote 19).

2. See Vatican Council II, Dogmatic Constitution on the Church (*Lumen Gentium*) 4, 7, 9-29 (Chapter II: the People of God) and *passim*; Congregation for the Doctrine of the Faith, "Letter to the Bishops of the Catholic Church on Some Aspects of the Church Understood as Communion," *Origins* 22 (1992), 108-112; *Catechism of the Catholic Church*, nn. 787-801 and passim; 1985 Extraordinary Synod of Bishops, "A Message to the People of God," *Origins* 15 (1985), 441-444, and "The Final Report," *Origins* 15 (1985), 444-450.
3. ECE, II, Art. 5, §1.

4. ECE, I, n. 43. See also ECE, I, n. 49. For purposes of stylistic simplicity, this document, in both the "Theological and Pastoral Principles" and "Particular Norms," uses the word "university" as a generic term to include universities, colleges and other institutions of higher learning.
5. ECE, I, 13, quoting from "The Catholic University in the Modern World," the final document of the Second International Congress of Delegates of Catholic Universities, Rome, November 20-29, 1972, Sec. 1.

6. ECE, Introduction, n. 7.

7. "The Church's Presence in the University and in University Culture," II, §2, *Origins*, June 16, 1994, 74-80.

8. ECE, I, nn. 27-29, 31.

9. Ibid., I, nn. 32-37.

10. Ibid., I, nn. 12, 37; II, Art. 7, §§1-2.

11. Ibid., I, n. 28. The citation at the end is from John Paul II, *Address to Leaders of Catholic Higher Education*, Xavier University of Louisiana, U.S.A., September 12, 1987, n. 4: AAS 80 (1988) 764.

12. ECE, I, n. 28.

13. Pope John Paul II, Address "Ad prope et exstantes sedes Studiorum Universitatis Catholicae profectus hanc allocutionem fecit ad moderatores et doctores eiusdem Athenaei atque ad legatos Collegiorum Universitatumqu Catholicarum totius Nationis," October 6, 1979, *AAS* 71:13 (1979) 1260.

14. ECE, I, n. 13 [quoting "The Catholic University in the Modern World," the final document of the Second International Congress of Delegates of Catholic Universities, Rome, November 20-29, 1972, Sec. 1].

15. See *ECE*, I, n. 12 and footnote 15; Vatican Council II, Pastoral Constitution on the Church in the Modern World (Gaudium et Spes) 59; Declaration on Catholic Education (Gravissimum educationis) 10.

16. See *ECE*, II, Art. 2, §§4-5.

17. ECE, I, n. 4.

18. See *ECE*, II, Art. 1, §§1 & 2.

19. ECE, II, Art. 11: "Any particular laws or customs presently in effect that are contrary to this constitution are abolished. Also, any privileges granted up to this day by the Holy See whether to physical or moral persons that are contrary to this present constitution are abolished." These Particular Norms are not applicable to ecclesiastical universities and faculties insofar as they are governed by the Apostolic Constitution *Sapientia Christiana*.

20. See *ECE*, II, Art. 1, §3.

21. See *ECE*, II, Art. 3, §4.

22. See canon 807 and ECE, Art. 3; Congregation for Catholic Education, *Directives to Assist in the Formulatior of the Ordinances for the Apostolic Constitution "Ex corde Ecclesiae,"* not dated, n. B1.

23. See above footnote 15.

24. Vatican Council II, Pastoral Constitution on the Church in the Modern World (*Gaudium et Spes*) 62. A university's commitment to Catholic ideals, principles and attitudes is not only consistent with academic freedom and the integrity of secular subjects, it requires "[f]reedom in research and teaching" and respect for "the principles and methods of each individual discipline." *ECE*, II, Art. 2, §5.

25. C. 218.

26. See *ECE*, II, Art. 2, §5.

27. Though thoroughly imbued with Christian inspiration, the university's Catholic identity should in no way be construed as an excuse for religious indoctrination or proselytization. See Vatican Council II, Declaration on Religious Liberty (*Dignitatis humanae*) 2-4.

28. See footnote 31 for a listing of canonical categories.

29. In this regard, the university may wish to establish a "mission effectiveness committee" or some other appropriate structure to develop methods by which Catholics may promote the university's Catholic identity and those who are not Catholic may acknowledge and respect this identity.

30. ECE, II, Art. 3, §§1-3, cf. Canon 808. Note that, under Canon 322, private associations of the faithful can acquire juridic personality by the issuance of a formal decree of competent ecclesiastical authority (§1) and approval of their statutes, retaining, all the while, their private character (§2).

31. A Catholic university may be established by various ecclesiastical authorities or entities (e.g., the Holy See) or by individual Catholics. Moreover, the university may be erected as a self-standing public juridic person or it may be simply be a complex "activity" or "apostolate" of a public juridic person. The following alternatives outline different categories that describe a Catholic university from the canonical perspective:

a. The university as an apostolate of the Holy See. The Holy See may erect a university or approve an already-established university as an apostolate of the Holy See itself. Such universities, which are sometimes granted th title of "pontifical," are erected or approved by a decree of the Holy See and their statutes must be approved by the Holy See. The "competent ecclesiastical authority" to which such universities are related is the Holy See through the Congregation for Catholic Education.

b. The university as an apostolate of the National Conference of Catholic Bishops. An episcopal conference has the right to erect a university or approve an already-established university as an apostolate of the conference itself through the issuance of a decree and approval of its statutes. The "competent ecclesiastical authority" to which such a university is related is the National Conference of Catholic Bishops.

c. The university as an apostolate of a diocesan bishop or a group of diocesan bishops. Diocesan bishops, actir individually or jointly, have the right to erect a university or approve an already-established university as a diocesan or inter-diocesan apostolate through the issuance of a decree and approval of its statutes. The "competent ecclesiastical authority" to which such a university is related is the individual diocesan bishop or the group of diocesan bishops establishing or approving it.

d. The university as an apostolate of a public juridic person. A university may be established or approved as an apostolate of a public juridic person (such as a religious institute). In such cases the consent of the bishop of the diocese in which the seat of the university is situated (or of a group of bishops, the NCCB or the Holy See) and approval of its statutes are required. Such a university relates to the public juridic person that established or approved it and to the diocesan bishop (or group of bishops, the NCCB or the Holy See) as its "competent ecclesiastical authority."

e. The university as public juridic person. A university may itself be erected as a public association of the faithful or some other type of public juridic person (*universitas rerum or universitas personarum*). Such juridic personalit requires the issuance of a decree of erection and approval of the statutes by the Holy See, the National Conference of Catholic Bishops, or an individual or group of diocesan bishops.

f. The university established by individuals. Individual Catholics may found a university or convert an existing university into a Catholic institution without its being established or approved by the Holy See, the National Conference of Catholic Bishops, individual diocesan bishops or a public juridic person. Nonetheless, in accordance with canon 808, such a university may refer to itself as Catholic only with the consent of the competent ecclesiastical authority.

32. ECE, II, Art. 3, §4.

33. C. 808.

34. ECE, II, Art. 4, §1. In these norms the phrases "board of trustees," "president" and "administration" are used to denote the highest bodies of governance within the university's corporate and operational structure. If, in an individual case, the university's governance uses a different structure or other titles, the norms should be applie accordingly.

35. In individual situations, it may be possible and appropriate to invite the diocesan bishop or his delegate to be a member of the board itself. In other cases, arranging periodic meetings to address the university's Catholic identity and mission may prove more practical and effective.

36. Upon assuming the office of president for the first time, a Catholic should express his or her commitment to the university's Catholic identity and to the Catholic faith in accordance with canon 833, §7 (see also Congregation for the Doctrine of the Faith, *Formula Professio Fidei et Iusiurandum*, July 1, 1988, *AAS* 81 [1989] 104-106; and Congregation for the Doctrine of the Faith, *Rescriptum ex audientia SS. mi Quod Attinet*, September 19, 1989, AAS 81 [1989] 1169). When a candidate who is not a Catholic is being considered for

appointment as president of a Catholic university, the university should consult with the competent ecclesiastica authority about the matter. In all cases, the president should express his or her commitment to the university's Catholic mission and identity.

37. The identity of a Catholic university is essentially linked to the quality of its professors and to respect for Catholic doctrine. The Church's expectation of "respect for Catholic doctrine" should not, however, be misconstrued to imply that a Catholic university's task is to indoctrinate or proselytize its students. Secular subjects are taught for their intrinsic value, and the teaching of secular subjects is to be measured by the norms and professional standards applicable and appropriate to the individual disciplines. See *ECE*, II, Art. 4, §1 and above footnotes 24 and 27.

38. C. 810, §1.

39. Gravissimum educationis 10.

40. C. 812 and *ECE*, II, Art. 4, §3.

41. "Mandatum" is a technical term referring to the juridical expression of the ecclesial relationship of communio that exists between the Church and the Catholic teacher of a theological discipline in the Catholic university. Th prescription of canon 812 is grounded in the right and responsibility of bishops to safeguard the faithful teaching of Catholic doctrine to the people of God and to assure the authentic presentation of the Church's magisterium. Those with such a *mandatum* are not agents of the magisterium; they teach in their own name, not in the name of the bishop. Nonetheless, they are not separate from the Church's teaching mission. Responding to their baptismal call, their ecclesial task is to teach, write and research for the benefit of the Church and within its communion. The *mandatum* is essentially the recognition of an ecclesial relationship between the professor and the Church (see canon 229, §3).

Moreover, it is not the responsibility of a Catholic university to seek the *mandatum*; this is a personal obligation each professor. If a particular professor lacks a *mandatum* and continues to teach a theological discipline, the university must determine what further action may be taken in accordance with its own mission and statutes (se canon 810, §1).

42. The attestation or declaration of the professor that he or she will teach in communion with the Church can b expressed by the profession of faith and oath of fidelity or in any other reasonable manner acceptable to the on issuing the *mandatum*.

43. Although the general principle is that, once granted, there is no need for the *mandatum* to be granted again by another diocesan bishop, every diocesan bishop has the right to require otherwise in his own diocese.

44. Administrative acts in the external forum must be in writing (c. 37). The writing not only demonstrates the fulfillment of canon 812, but, in cases of denial or removal, it permits the person who considers his or her rights to have been injured to seek recourse. See canons 1732-1739.

45. In *Gravissimum educationis* 10, the Vatican Council expressed the hope that students in Catholic institution of higher learning will become "truly outstanding in learning, ready to shoulder society's heavier burdens and to witness the faith to the world."

46. See above footnotes 27 and 37.

47. See *ECE*, I, n. 38 ff. and footnote 44.

48. See *ECE*, I, nn. 48-49.

49. See *ECE*, II, Art. 5, §2. See also the responsibilities of the diocesan bishop set forth in canons 392, §1; 394, §1; 756, §2; 810, §2; 813.

50. The following are some suggestions for collaboration:

a. Arranging for the diocesan bishop or his delegate and members of the religious institute to be involved in the university's governance, perhaps through representation on the board of trustees or in some other appropriate manner.

b. Sharing the university's annual report with the diocesan bishop and the religious institute, especially in regard to matters affecting Catholic identity and the religious institute's charism.

c. Scheduling regular pastoral visits to the university on the part of the diocesan bishop and the religious institute's leadership and involving the members of the diocese and the institute in campus ministry.

d. Collaborating on evangelization and on the special works of the religious institute.

e. Conducting dialogues on matters of doctrine and pastoral practice and on the development of spirituality in accordance with the religious institute's charism.

f. Resolving issues affecting the university's Catholic identity in accordance with established procedures. (See *ECE*, II, Art. 5, §2 and *ECE* footnote 51.)

g. Participating together in ecumenical and inter-faith endeavors.

h. Contributing to the diocesan process of formulating the quinquennial report to the Holy See.

51. See National Conference of Catholic Bishops, *Doctrinal Responsibilities: Approaches to Promoting Cooperation and Resolving Misunderstandings between Bishops and Theologians*, June 17, 1989, Washington, D.C.: USCC, III, C, pp. 16-22. When such disputes are not resolved within the limits of informal or formal dialogue, they should be addressed in a timely manner by the competent ecclesiastical authority through appropriate doctrinal and administrative actions, taking into account the requirements of the common good and the rights of the individuals and institutions involved.

52. See canon 813

53. See *ECE*, II, Art. 6, §2.

54. See *ECE*, II, Art. 7, §1; National Conference of Catholic Bishops, "Sons and Daughters of the Light: A Pastoral Plan for Ministry with Young Adults," *Origins*, November 28, 1996, 384-402, especially 398-401; "Letter to College Students," *Origins*, December 7, 1995, 429-430; *Empowered by the Spirit*, Washington, D.C.: USCC, 1985.

55. See *ECE*, I, n. 35 and *ECE*, II, Art. 7, §2.

56. See *ECE*, I, nn. 32-35.

57. Ibid., Introduction, n. 11.

In November 1999, Most Reverend Joseph A. Fiorenza, president of the National Conference of Catholic Bishops, petitioned the Apostolic See that these executive norms of the apostolic constitution *Ex corde Ecclesiae*, approved according to the norm of law by a plenary session of the Conference, be duly granted recognition. In May 2000, the Congregation for Bishops, after consultation with the Congregation for Catholic Education and the Pontifical Council for the Interpretation of Legislative Texts, found these norms in conformity with universal canon law and declared them valid. These norms are printed here as *The Application of Ex corde Ecclesiae for the United States*, which is authorized for publication by the undersigned.

Monsignor Dennis M. Schnurr
General Secretary, NCCB/USCC

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DUQUESNE UNIVERSITY
OFFICE OF THE PRESIDENT

April 4, 2011

The Most Reverend David Zubik
Bishop of the Diocese of Pittsburgh
111 Boulevard of the Allies
Pittsburgh, PA 15222

Dear Bishop Zubik:

Enclosed for your review is a report "Living Out the Mission of Duquesne University," authored by Vice President Fr. Jim McCloskey, C.S.Sp., in compliance with the request of the USCCB that American bishops and presidents of Catholic universities begin a ten-year review of the application of *Ex* Corde *Ecclesiae*.

I hope you will agree that the report is evidence of Duquesne's strong commitment to our Catholic identity and the spirit of *Ex Corde*. I would add three points to the report. First, it is my belief that every faculty member at Duquesne who is subject to the requirement of the *mandatum* has asked for and received it. Fr. Stuba and I work together every fall to review the list of new faculty in theology to keep current on this part of *Ex Corde*.

Second, our required curriculum for all undergraduates reflects our Catholic intellectual tradition. One course in Theology and one is Philosophy is required; as is a course each in Faith and Reason, Global Diversity, and Social Justice. There is also an innovative requirement to take at least one course with a substantial "service learning" component—putting our students into direct contact with others in need.

ER-7

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FAX 412.396.5811
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Education for the Mind, Heart, and Spirit

Living Out the Catholic Mission of Duquesne University

Ten-Year Review of the Application of Ex Corde Ecclesiae

April 4, 2011

At Duquesne, the Catholic character of the university is manifest in the myriad forms that define most Catholic colleges and universities; namely, a strong department of theology, a core curriculum that places emphasis upon a Catholic world-view and the Catholic Intellectual Tradition, the leadership of the President and senior administrators for whom Catholic identity is a vital issue in the daily life of the university, and the presence of the founding religious congregation, the Spiritans, who continue to minister actively in all aspects of campus life at Duquesne, including the classroom. The Board of Directors understands the critical importance of Catholic identity and mission – and a separate committee devoted to this issue reports regularly to the full Board at its meetings. Hiring for mission is an important consideration at the university – and mission factors are included in annual performance appraisals for all university employees, including faculty and administrators. And finally, but not least, the presence of an active campus ministry program supports the spiritual and moral formation of our student community in matters of faith, virtue, and vocation.

Programming for Catholic Identity and Mission

There is a regular cycle of activities that have direct, explicit bearing upon consciousness of Catholic identity and mission formation at the university. These activities include the following:

- Liturgical celebrations (both campus wide and group specific) that strengthen mission awareness
- Mission orientation programs for faculty, staff, administrators, and students
- Special programming, in the form of symposia, conferences, or events that feature the Catholic and Spiritan mission of Duquesne as its primary focus
- Service programs for students and faculty, including collaboration with immediate neighbors in the Hill District
- Faith formation programs
- Pastoral and spiritual counseling
- Ecumenical and interreligious dialogue

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A sampling of these many programs is detailed below:

- **The liturgical life of Duquesne** – Daily Eucharist is celebrated at the university, at multiple times during the day, in the university chapel, the Spiritan residences on campus, and in the Towers dormitory on Sundays. The university also celebrates cross-cultural Masses and numerous holy and feast days throughout the academic year. The academic year begins

with the celebration of the Mass of the Holy Spirit, presided by the Bishop. The sacrament of Reconciliation is offered every day of the academic year, along with frequent (approximately seventy) celebrations annually of the Sacrament of Matrimony. The Rite of Christian Initiation of Adults (RCIA) culminates each year in the Baptism of a number of young people into the Catholic Church. Special liturgical ceremonies are frequently held, including prayer services for particular schools of the university (commissioning ceremonies for pharmacy students, for example) and special seasonal services, such as Ash Wednesday and Advent liturgical prayer services.

- **Service Programs** – In addition to the Center for Service Learning and an array of community service partnerships offered through the Health Sciences and other Schools of the university, large panoply of volunteer and service-oriented programs and projects is offered regularly to students and staff at Duquesne. These popular offerings include cross-cultural mission experiences in Immokalee (Florida), New Orleans, West Virginia, and the Dominican Republic. The Laval Project seeks to prepare students to understand the deeper issues of social justice underlying systemic poverty while engaging in active service to the poor. Spring Clean-Up, an annual event that involves more than 600 volunteers from the university and local community, serves to involve students in both service and consciousness of larger environmental issues. The St. Vincent de Paul Society serves the indigent poor in downtown Pittsburgh with food and clothing, while large scale projects such as support for Haiti and the Sudan through Catholic Relief Services are strong, regular events at Duquesne.
- **Faith Formation and Retreat Programs** – Weekly Catholic Bible Study gatherings for faculty, staff, and students, retreats (such as the Faith Alive Program for Freshmen), the Theology on Tap program for young adults, Spiritual Life formation programs in the residence halls, and other unique offerings such as My Life With the Saints, Liturgical Arts Retreats, or Libermann Luncheons for faculty and staff provide regular spiritual and theological formation for the university community.
- **Centers, Institutes, and Endowed Chairs** – The Center for Health Care Ethics, the Center for the Study of Catholic Social Thought, the Center for Spiritan Studies, and the proposed Institute for Newman Studies complement the formal discipline of theology and the study of pastoral ministry at Duquesne. Endowed Chairs in Social Justice for Vulnerable Populations, Mission, and Ethics further reinforce the Catholic identity and foundation of education at Duquesne.
- **Lecture Series, Conferences, and Symposia :**
  1. **The Catholic Intellectual Tradition Lecture Series** – The first lecture, entitled "Six Challenges Facing Catholic Higher Education," was delivered on March 10, 2011 by James Heft, SM, the Alton Brooks Professor of Religion at the University of Southern California and president of the Institute for Advanced Catholic Studies. Father Heft has recently been awarded the Reverend Theodore Hesburgh CSC award for distinguished

contributions to Catholic higher education by the Association of Catholic Colleges and Universities.

2. **The Monsignor Rice Lecture Series** – Sponsored by the Center for Catholic Social Thought, this lecture series focuses upon issues of human rights, social justice, and Catholic Social Teaching. The topics of such lectures include health care reform, globalization, environmental concerns such as the Gulf Oil Spill, and, most recently, a lecture delivered on the topic of torture by Mark Altman, a scholar in the area of post-war ethics and the just war theory. His recent book on war, peace, and the Christian tradition was recently awarded the College Theology Society Book of the Year Award (2009).

3. **The Beatification of John Cardinal Newman**, a presentation delivered on April 16,2010 by Monsignor Roderick Strange, Rector of Beda College, Rome, was co-sponsored by the Division of Mission and Identity and the McAnulty College. The presentation and companion sessions with doctoral students, undergraduates, and faculty members was funded through the Richard T. and Marion A Byrnes Lecture Series called "Exploring Ideas in the Catholic Intellectual Tradition."

4. **Rethinking Development: Institutional Collaboration for Sustainable Societies** was a lecture and moderated discussion co-sponsored by the Center for Catholic Social Thought and the Palumbo-Donahue School of Business. The goal of this conference, held on April 14,2010, was to promote an understanding of sustainability at the intersection of business practice, economic policy, and Catholic Social Thought.

5. **The Rita M. McGinley Symposium** - This program in the School of Nursing examined one of today's most important healthcare issues – the care of elderly persons – through the lens of social justice. Entitled "Exploring Social Justice for Vulnerable Populations: The Face of the Elderly," the Symposium offers four keynote speakers, including Fr. William J. Byron, S.J., Professor of Business and society at St. Joseph's university and past president of The Catholic University of America, and Fr. Brian V. Johnstone, C.Ss.R., Warren Blanding Chair of Religion and Culture at The Catholic University of America.

6. **The Holy Spirit Lecture and Colloquium** – This ongoing series of lectures and colloquia is intended to encourage the exploration of ideas pertaining to the theology of the Holy Spirit within an ecumenical context and in dialogue with contemporary issues. The 2010 lecture and award in Pneumatology were given to the Reverend Robert D. Hughes III, professor of theology at the South School of Theology in Sewanee, Tennessee. Professor Hughes is author "Beloved Dust: Tides of the Spirit in the Christian Life."

7. **The Paluse Lecture Series** - Sponsored by the Center for Catholic Social Thought, is dedicated to study and inquiry on social justice issues from the critical lens of various

disciplines. Papers were recently presented from faculty members in theology, rhetorical studies, and psychology, and included a presentation from Fr. Jocelyn Gregoire, C.S.Sp. on the "Examination of the Impact of the Roman Catholic Church on the Individual and Collective Racial-Cultural Identity Development of Mauritian Code."

8. **Philosophical Education Against Contemporary Culture**, a presentation by Professor Alasdair Macintyre, was co-sponsored by the McAnulty College and several offices and departments of the university, Macintyre is the O'Brien Senior Research Professor of philosophy at the University of Notre Dame. His influential books include *God, Philosophy, Universities* (2009) and *Edith Stein: A Philosophical Prologue* (2006).

Other Programs:

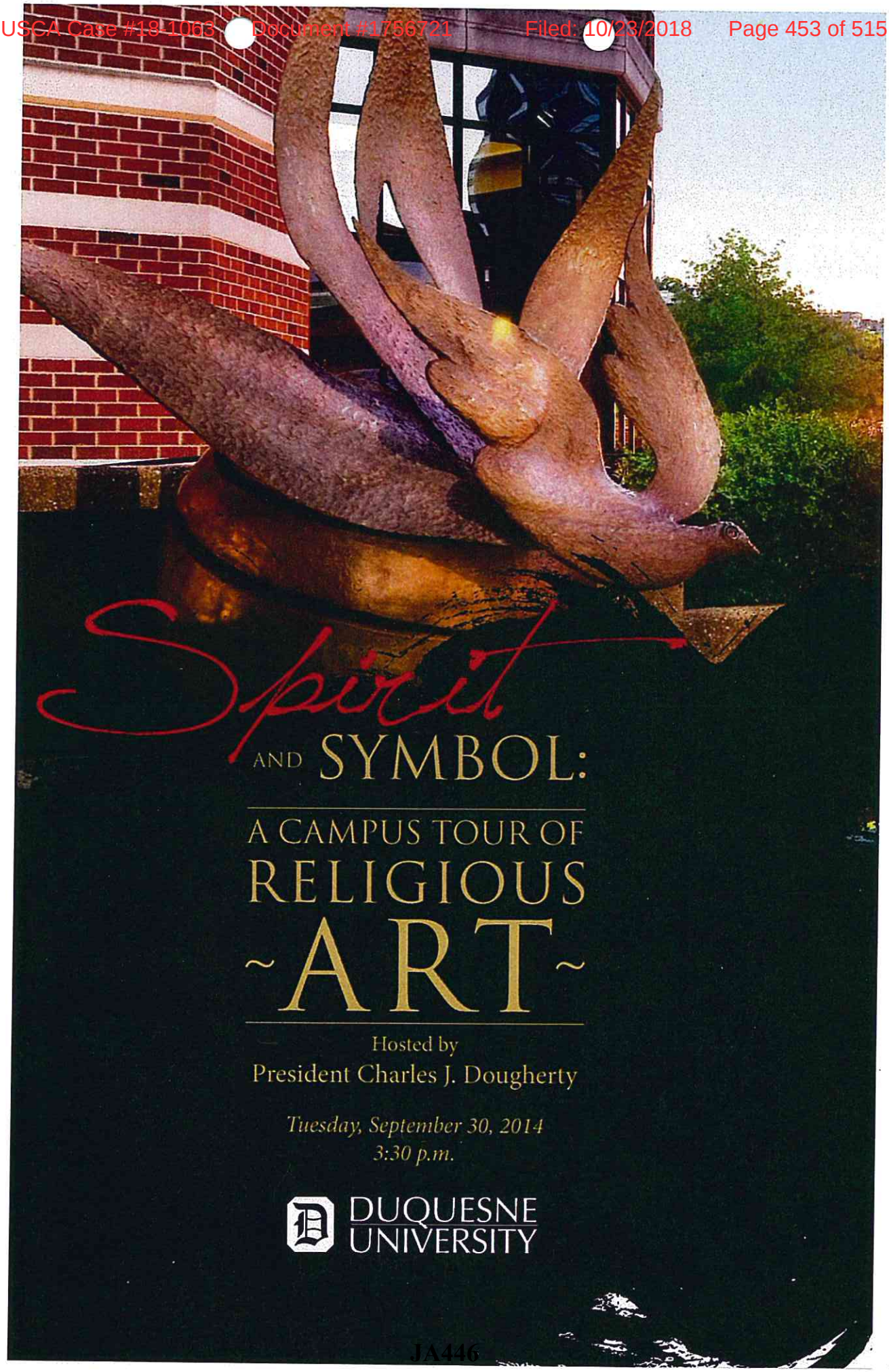
1. **Founder's Week 2011** – *"Refugees, Migrants, and the Spiritan Tradition."* Celebrated during the first week of February, the theme for the week is chosen upon recommendations from the Mission and Identity Advisory Committee and the Directors of the Division of Mission and Identity (Campus Ministry, the Center for Catholic Social Thought, and the Center for Spiritan Studies). Four Spiritans who are directly engaged in ministry with refugees and migrants, including the director of refugee services for the international congregation, will present overviews of their ministries with migrants and refugees. Keynote speaker for the Week was E.J. Dionne, syndicated columnist for the Washington Post.
1. **Mission Presentations** - Presentations and "conversations" on mission and identity are scheduled frequently throughout each semester. The target audience for each session varies widely from new employees to division/department leaders to student groups. Some presentations focus upon the Catholic character of the university, others upon the Spiritan charism of the institution, and still others upon particular aspects of the mission such as the qualities of Spiritan leadership or mission and finance.
2. **Catholic Relief Services** – Strengthening ties with Catholic Relief Services, a program was held to raise consciousness about the Sudan. Through "Social Justice Theater" presentations in dining halls and general meeting places, the placement of table tents about peacekeeping efforts and Catholic Social teaching in Africa, "Teach-Ins," (a distribution of informational materials on the current political and social climate of the country), and advocacy efforts, students were invited to participate in this unique program.
3. **A Program of Study on Catholic Social Thought and Global Social Justice Issues** – The primary objective of this proposed program of study is to introduce faculty to Catholic Social Thought as a resource for teaching and research. Foreseen as a summer seminar/workshop , the program will enable faculty to integrate Catholic Social Thought into their courses, through the study of key themes (dignity of the human person, option for the poor, economic justice, etc) and specific social justice issues (criminal justice, capital punishment, human trafficking, etc).
4. **Leadership for Mission** – Offered through the School of Leadership and Professional Advancement, this program, based in Rome, offers an advanced degree to women religious

from developing nations in leadership. Courses include strategic planning, organizational behavior, personnel management, and the spirituality of leadership.

5. **Law School Summer Program, Rome** – Re-structured for the summer semester, 2011, the program will offer three courses for regularly matriculated students of the law school and a program for Continuing Legal Education for practicing attorneys. One of the courses to be offered will be "Spirituality and Justice," an overview of Catholic Social Teaching and justice. Contact with the Vatican Congregation for Justice and Peace, the Pontifical Academy of Social Sciences, and the Congregation for the Doctrine of the Faith has been established for the purpose of conversation with Vatican officials on current matters of justice in the Church.

Conclusion

Deeply committed to the founding vision of Duquesne as Catholic and Spiritan, the university attempts to build a culture of faith and service – in its classrooms and residence halls, among its alumni and friends, and for the wider Church of the Diocese of Pittsburgh and the world. Outreach to Africa forms a critical component of the university strategic plan – and will be translated into a Center for African Studies and new service initiatives throughout the African continent. Duquesne's commitment to Haiti continues through its micro-lending program (Fonkoze) in the School of Business and its support for Spiritan educational endeavors there. Research directed towards the alleviation of poverty, systemic injustice, global health care, and conflict resolution and peace occupies Duquesne's academic and professional attention. And reverence for the Catholic Intellectual Tradition – and attempts to inform the curriculum and form faculty and students in this tradition – are strong. The commitment of the university to its Catholic identity and mission is unwavering.


Spirit
AND SYMBOL:
A CAMPUS TOUR OF
RELIGIOUS
~ART~
Hosted by
President Charles J. Dougherty
Tuesday, September 30, 2014
3:30 p.m.
DUQUESNE
UNIVERSITY

ER 9

Welcome to *Spirit and Symbol: A Campus Tour of Religious Art*, sponsored by the Center for the Catholic Intellectual Tradition in the Division of Mission and Identity.

Throughout this walking tour of our Bluff, you will learn about the history and symbolism of key pieces of public art that reflect and celebrate our Catholic and Spiritan identity. These pieces not only beautify our campus, they contribute to making us a community of "One Heart, One Spirit."

As you progress through the tour, please use this guide to further understand the significance of these works of art and to gain a better appreciation of how they represent our Catholic artistic tradition.

Sincerely,

Charles J. Dougherty, Ph.D.
Duquesne University President

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1 *Spiritan Triennial*

by Nick Perredo

The *Spiritan Triennial* blends several traditional symbols for the Holy Spirit. In addition to depicting the Holy Spirit as a dove, the sculpture uses the symbols of flame, water and wind.

The flame calls to mind the Spirit's presence in the tongues of fire that empowered the disciples at Pentecost to spread the good news of the Gospel around the world. The water evokes a baptismal font, where we are born anew into the life of the Spirit. The dove is positioned as if circling the world, suggesting the movement of the wind. The Spirit breathes life into our community, as we affirm in our motto "*Spiritus est qui vivificat*" ("*It is the Spirit who gives life*").

2 *Lourdes Grotto*

by The Rev. Vernon Gallagher, C.S.Sp.

The Rev. Vernon F. Gallagher, C.S.Sp., the eighth president of Duquesne University, designed and worked on the construction of the grotto. Funds for building materials, as well as volunteers to aid with labor, were provided by the Kappa Sigma Phi fraternity.

The grotto features a variety of plants and flowers growing amid stones that originated in Ohio and provides a secluded place for quiet prayer and reflection, along with striking views of Pittsburgh from our Bluff.

3 *Risen Christ*

by Sebastien Touret

The *Risen Christ*, located in Duquesne's Chapel of the Holy Spirit, was created by the French artist Sebastien Touret. It is an exact replica of a sculpture that is located before Blessed Daniel Brottier's tomb at the Spiritan orphanage at Auteuil in Paris. Father Brottier spent a career building this once small orphanage into one of the largest and most progressive in France.

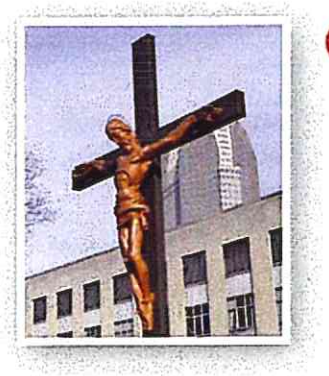
In 2013 Touret attended the dedication of his work at Duquesne. He shared this reflection:
"It is quite an impressive mission to find oneself having to represent Christ. Is it even possible to show Him? We can evoke

Him through an attitude, a gesture, within the challenges of carving and the reality of a material—oak wood in this case.

"The oak, not long ago, was a living tree full of sap. It was cut down and became a beam, in a neat square shape, and lifeless. The sculptor seizes it, and work begins as precise tools bring out the sawdust and shavings. The beam loses its rigidity, its inertia. Thanks for your commissioning of the sculpture and to the sculpting work, a character appears—a man. The wood has become living, the most alive of the living, the Risen Christ resurrected. He comes out of the tomb, springing from his shroud.

"This sculpture has a twinned presence in Paris, which I sculpted with my late father, Jean Touret, for the Chapel of Orphans in d'Auteuil. With hope this sculpture lives up to the huge ambition of the humble sculptor: creating a life-giving presence in this place of yours and in your midst."

Here in the Chapel, lighting is used to create two shadows that represent the thieves who were crucified with Christ.



4 *Crucifix*

by José Pirkner

Crucifix, a copper statue created by Austrian sculptor José Pirkner, was made in Bilthoven, Holland, and was originally installed adjacent to the Administration Building in 1960. The piece, which was commissioned by The Rev. Vernon F. Gallagher, C.S.Sp., was funded through a gift from the Duquesne University Women's Guild.

In November 2013 the sculpted portion of the statue was removed from its original wooden cross base for refurbishing. It was re-installed on March 6, 2014, on a new wooden cross. It is now located between the Rockwell Hall Skywalk and the upper entrance to the School of Health Sciences.

5 *I Am Because We Are: A Celebration of Spiritans in Africa*

by Gerry Tonti

This 39-by-34-foot mural gracing the side of Laval House depicts the Holy Spirit above two African women locking arms over a baobab tree, which artist Gerry Tonti says is known as the tree of life in Africa.

Kente, the distinctive woven cloth of West Africa, serves as the background and represents the commitment of the University to Africa, a commitment that is woven into the University's Strategic Plan.

Intertwined in the Kente cloth are two symbols:

- Nkonsonkonson, the chain link, represents unity and human relations. It serves as a reminder to contribute to the community because in unity lies strength.
- Osram ne nsoromma, the moon and the star, which symbolize love, faith and harmony. These two West African symbols stress the importance of community, love and faith.

According to Tonti the mural depicts ideals that resonate both in Africa and at Duquesne: community, unity and spirituality. The title, he says, is taken from Ubuntu, a South African term that reflects a philosophy of interconnectedness and the idea "I am what I am because of who we all are."

Tonti used brushes, an air gun and stenciling to paint the mural.

6 *Caribbean Cross*

by unknown artist

Across campus one can find crosses in a range of styles. The variety honors the worldwide presence of our Spiritans, the diversity found within our Duquesne community, and the global citizenship for which we prepare our students.

The steel used in this cross is reminiscent of steel drums seen throughout the Caribbean.

7 *Spiritus Vivus*

by Gerry Tonti

Installed in 2013, this unusual lenticular mural is constructed from 32 different copies of a digital painting that have been interlaced so that they work like animation frames. *Spiritus Vivus* (*Spirit Alive*) depicts a dove being released and flying across campus, spreading its spirit. This image seeks to remind us every day that, at Duquesne, the Spirit who gives life runs through and with us.

The main panel is bound by two side panels that shift between being doves and the trademark Duquesne "D." Depending on where you are and how fast you walk next to the painting, your view of the work will change each time.

Printed in New York by one of only three companies around the world to produce large-scale lenticular works, the piece has a custom-built, ridged lens over it to expose one frame at a time.

8 *The Spirit of Duquesne*

by Kathleen Mulcahy and Ros Desmett

This sculpture was installed in 2008 to commemorate the 130th birthday of Duquesne University.

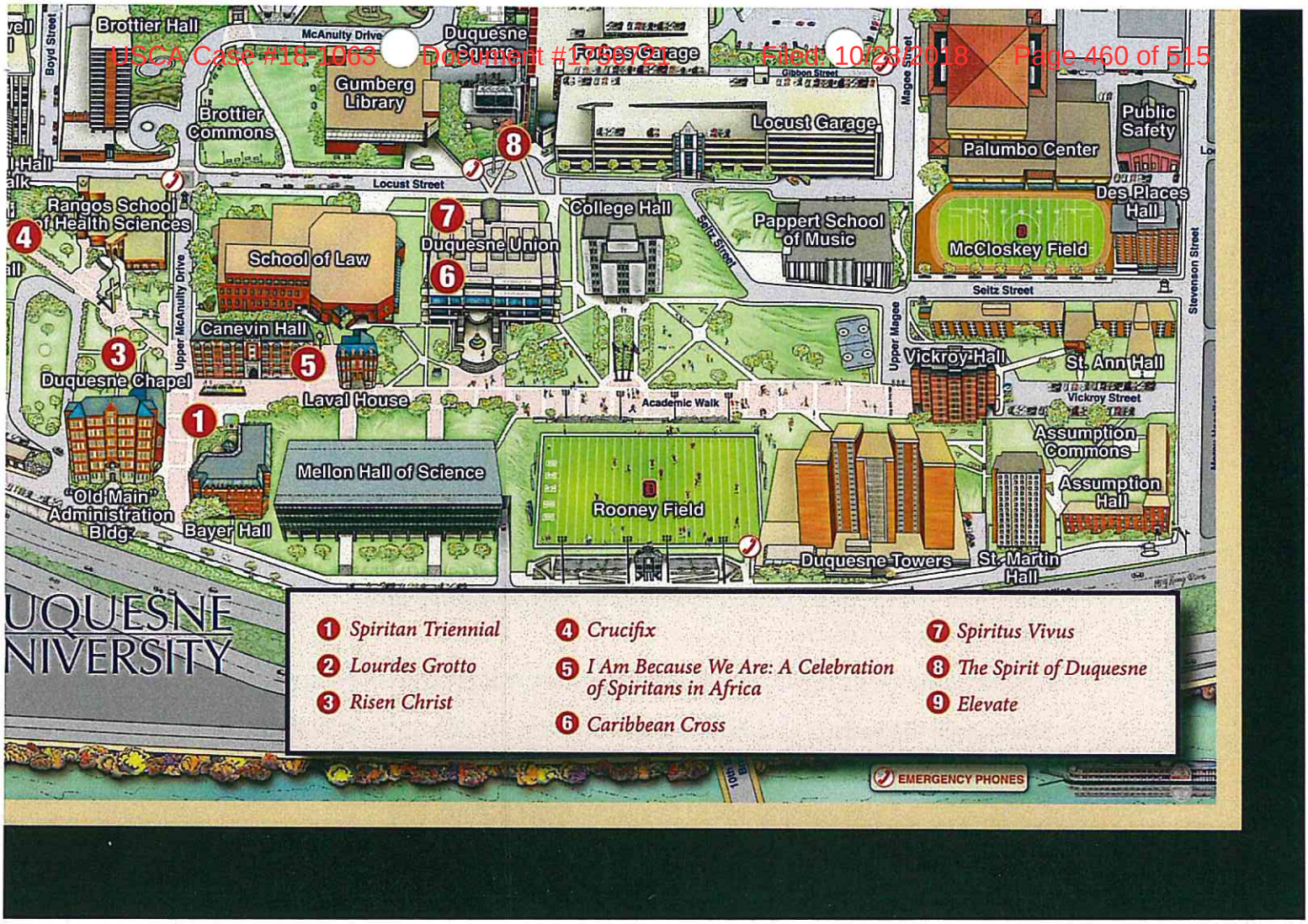
A symbolic flame represents the Holy Spirit. The steel and glass materials evoke Pittsburgh's industrial heritage. At night the sculpture is lit from below in University colors.

9 *Elevate*

by Gerry Tonti

Dedicated in 2010, *Elevate* depicts a rising dove, symbolizing the Holy Spirit. The mural uses the red and blue colors of Duquesne University and serves as a striking sign of our Catholic and Spiritan identity.

Prominently displayed along the busy Forbes Avenue corridor and across from the main entrance to our campus, *Elevate's* streetscape location reminds viewers of Duquesne's important relationship with the surrounding communities. *Elevate* also evokes the inspiring presence of the Spirit and the uplifting effects of education.


Brottier Hall
McAnulty Drive
Duquesne Square
Forbes Garage
Gibbon Street
Boyd Street
Gumberg Library
Brottier Commons
Locust Garage
Magee Street
Public Safety
Palumbo Center
Locust Street
Rangos School of Health Sciences
College Hall
Pappert School of Music
Des Places Hall
Seitz Street
McCloskey Field
Stevenson Street
School of Law
Duquesne Union
Upper McAnulty Drive
Canevin Hall
Upper Magee
Vickroy Hall
St. Ann Hall
Duquesne Chapel
Laval House
Academic Walk
Vickroy Street
Assumption Commons
Mellon Hall of Science
Assumption Hall
"Old Main" Administration Bldg.
Rooney Field
Bayer Hall
Duquesne Towers
St. Martin Hall
DUQUESNE UNIVERSITY
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9 Elevate
EMERGENCY PHONES

About the CATHOLIC ARTISTIC IMAGINATION SERIES

The Catholic Artistic Imagination Series, now in its second year, explores the idea of the Catholic artistic imagination through informal events that strive to foster a broad and inclusive understanding of the Catholic intellectual tradition. The series:

- Promotes collegiality and collaboration across divisional and disciplinary boundaries
- Creates conditions in which cross-disciplinary scholarship may emerge
- Showcases the artistic and intellectual expertise and the gifts of Duquesne faculty, graduate students and staff
- Creates the opportunity to share beautiful works of art with interesting people.

Upcoming Events in the Catholic Artistic Imagination Series

Music as Therapy
Presented by Elaine Abbott
Tuesday, October 21, 4 p.m.
Union 613

Memory, Time and Sacred Proportion in the Music of Guillaume Du Fay
Presented by Jessica Wiskus
Tuesday, November 18, 4 p.m.
Union 613

Gregorian Chant: Liturgical Music and Catholic Intellectualism
Presented by Sister Marie Agatha Ozah
Wednesday, December 10, 4 p.m.
Chapel of the Holy Spirit

For more information contact the Center for Catholic Intellectual Tradition at ***412.396.2224****. To* ***RSVP****, email* ***universityevents@duq.edu****.*

ABOUT DUQUESNE UNIVERSITY

One of the nation's top Catholic universities, Duquesne University provides a well-rounded education that will challenge you academically while nourishing your spiritual and ethical development. You'll learn from scholar-teachers who provide an excellent classroom experience and produce some of the most important research in their fields. In fact, the *The Chronicle of Higher Education* ranked Duquesne No. 16 among 61 small research universities rated according to faculty productivity. You'll also benefit from a 14:1 student-to-faculty ratio and an academic experience hallmarked by personal attention from an award-winning faculty. In fact, almost half of all classes have 20 or fewer students, which means you'll have plenty of opportunities for direct interaction with your professors.

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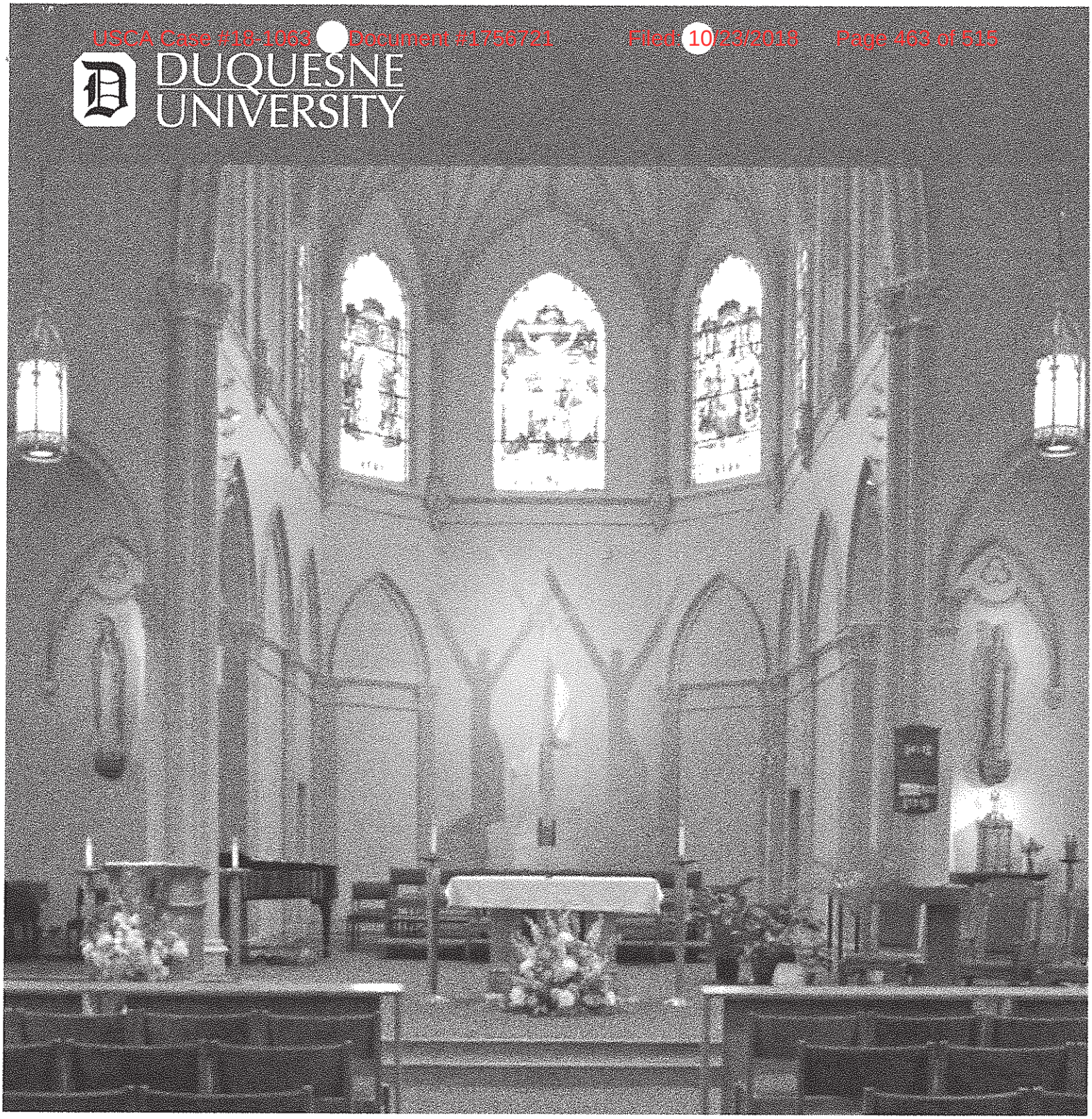
DUQUESNE UNIVERSITY



CODE OF STUDENT RIGHTS, RESPONSIBILITIES AND CONDUCT

ER11

2014-2015

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For a complete copy of the Student Handbook, go to: **www.duq.edu/student-handbook**.

Information contained in this publication may be changed at any time, updated on the web site, and subsequently published in the next printing.

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PRESIDENT'S MESSAGE

Welcome to Duquesne Students,

You are embarking on an adventure that will affect your future relationships, career, and well-being as a person. Duquesne University is proud that you have chosen our university to begin this journey. During the next four or more years, you will invest much time, effort, and more importantly, yourself in pursuit of your dreams. This Code summarizes the rules that we are confident will help you each step of the way.

We have assembled for you some of the best faculty in the world. They are teacher-scholars who care about teaching as they contribute to the advancement of their academic disciplines. We also have a group of outstanding Student Life administrators dedicated to you and living out the University's values for you. Get to know them. You will find them welcoming and concerned for your development.

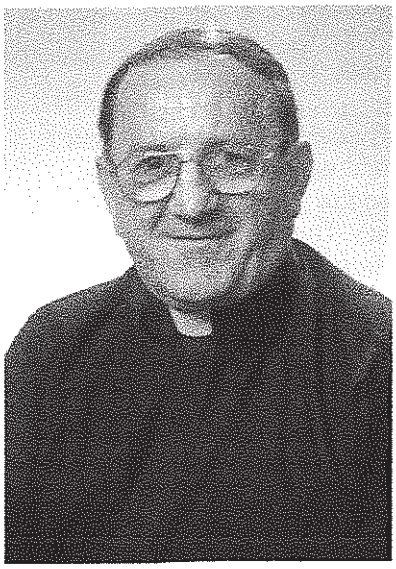
Explore the campus when you arrive. There are many amenities available to you that will enrich your living and learning experiences. Participate in a wide range of activities; education occurs outside the classroom too. Attend religious services and programs. Serve God by serving others. Our whole University and surrounding community needs you.

Duquesne faculty, staff, and administrators believe that the education you receive here is not only for your mind, but for your heart and spirit. We are committed to this as the very foundation of Duquesne University. The University was established and is sponsored by the Congregation of the Holy Spirit who have a deep tradition of service to others. The whole Duquesne family is concerned with your academic, moral, and spiritual growth. Your success as a person is important to us.

My best wishes for a wonderful experience as a student at Duquesne. For six generations, Duquesne University of the Holy Spirit has been changing lives on our Bluff. You are now a part of that inspiring and inspired tradition.

Charles J. Dougherty, Ph.D.
President

EXECUTIVE VICE PRESIDENT FOR STUDENT LIFE'S MESSAGE



Dear Student,

One hundred and thirty-six years ago, the members of the Congregation of the Holy Spirit Fathers and Brothers, a Catholic religious community, founded a school so that women and men of every race, creed, and class would have the opportunity to fulfill their aspirations, to enrich their society, and to serve God through professional leadership inseparably linked to high personal values. Time has blessed their enterprise and ratified their principles. Duquesne invites you, regardless of your faith, race, or status, to create for yourself a life of fulfillment, enrichment and service through growth in both academic knowledge and personal values. Take a few moments to read and understand the Mission of the University and Expectations, where those founding principles are explained. You will find that academic excellence is just one of the ideals Duquesne supports. You will see that service to others, tolerance, personal integrity and values, and an open and affectionate view of the world and its people are equally important.

By all means seek academic excellence, but also

- Learn to appreciate the value and goodness of those around you—and your own innate goodness and dignity.
- Strive to be kind to and at peace with yourself, with others and even with this planet by avoiding substances and behaviors which cause harm.
- Understand your own moral, ethical and spiritual values and principles as well as those around you.
- Be Duquesne-able, demonstrate pride through pursuit of excellence, respect, integrity, diversity and ethical decision-making.
- Develop your social skills and take advantage of the activities of the campus and the city.

The opportunities for learning are abundantly visible here, but just as abundant are the opportunities for personal and spiritual development. The women and men of the Student Life Division and Spiritan Campus Ministry pledge to give personal, private counseling assistance in all of the minor and major decisions about your life that you contemplate while you are here, and to help you achieve your ideal of personal and spiritual growth.

God bless you,

Sean Hogan C.S.Sp.

Rev. Sean Hogan, C.S.Sp.
Executive Vice President for Student Life

CODE OF STUDENT RIGHTS, RESPONSIBILITIES AND CONDUCT

The purpose of the Code of Student Rights, Responsibilities and Conduct is to enumerate the standards, policies and procedures essential to safeguard student rights and freedom to learn; to provide a clear and concise statement of University expectations concerning student conduct and achievement; and to provide a means of student self-government within the University wherever appropriate.

Duquesne University provides a well-rounded education that will challenge you academically while nourishing your spiritual and ethical development. Duquesne University is the only Spiritan institution of higher education in the United States. This means we share in the Spiritans' values and are deeply committed to:

- Educational excellence
- Moral and spiritual values
- An ecumenical atmosphere open to diversity
- Service to the Church, the community, the nation and the world

In living these values, students are expected to respect themselves, others, the University, and the extended community. The Mission and Expectations of a Duquesne Student serves as the basis for the University's Code of Student Rights, Responsibilities and Conduct.

STATEMENT OF NON-DISCRIMINATION

Motivated by its Catholic identity, Duquesne University values equality of opportunity, human dignity, and racial, cultural and ethnic diversity, both as an educational institution and as an employer. Accordingly, the University prohibits and does not engage in discrimination or harassment on the basis of race, color, religion, national origin, gender, sexual orientation, age, disability, status as a veteran and any other protected classes. Further, Duquesne University will continue to take affirmative steps to support and advance these values consistent with the University's mission statement.

This policy applies to all educational programs and activities of the University, including, but not limited to, employment practices, admission, educational policies, scholarship and loan programs, and athletic or other University-sponsored programs. This is a commitment by the University in accordance with its religious values and applicable federal, state and local laws and regulations including Title IX of the Education Amendment Acts of 1972. Nothing herein, however, should be interpreted as a waiver by the University of its own Constitutional and legal rights based upon its religious affiliation.

Revised: December 2011

MISSION STATEMENT

Duquesne University of the Holy Spirit is a Catholic University, founded by members of the Congregation of the Holy Spirit, the Spiritans, and sustained through a partnership of laity and religious. Duquesne serves God by serving students through commitment to excellence in liberal and professional education, through profound concern for moral and spiritual values, through the maintenance of an ecumenical atmosphere open to diversity, and through service to the Church, the community, the nation and the world.

EXPECTATIONS

1. Read, understand and accept the values contained in the Mission Statement.
2. Build upon the values you have received from your parents or guardians and strive to meet their expectations.
3. Be diligent and sincere in the pursuit of education, open to learning and change, and strive to achieve academic excellence.
4. Be honest and have integrity in all that you do.
5. Recognize the importance of service to others and the community in which we live.
6. Grow spiritually, preparing for life, not just a career.
7. Appreciate diversity; be open-minded.
8. Respect your body and avoid substances that have a negative effect.
9. Develop a sense of self while defining your ethical and spiritual values.
10. Develop friendships by appreciating yourself and respecting others.
11. Be proud of Duquesne; show school spirit.
12. Be at peace with God and with yourself

ARTICLE I: RIGHTS AND RESPONSIBILITIES OF STUDENTS

A. SHORT TITLE

This Code of Student Rights, Responsibilities and Conduct shall be known as the "Student Code."

B. DEFINITIONS

1. The term "University" means Duquesne University of the Holy Spirit.

2. The term "student" includes all persons taking courses at the University, or in any University sponsored program regardless of location, both full and part-time, pursuing undergraduate, graduate, or professional studies and those who attend post-secondary education other than Duquesne University. Persons who withdraw after allegedly violating the Student Code, who are not officially enrolled for a particular semester but have a continuing relationship with the University, are considered students, as are persons who are residing in University Living Learning Centers although not enrolled in the University.

3. The term "faculty member" means any person hired by the University to conduct instructional activities.

4. The term "University official" includes any person employed by the University in an administrative or professional capacity who is performing assigned administrative or professional responsibilities.

5. The term "University employee" includes any person employed by the University who is neither a faculty member nor a University official as defined above.

6. The term "member of the University community" includes any person who is a student, faculty member, University official or University employee. A person's status in a particular situation shall be determined by the Executive Vice President for Student Life.

7. The term "University premises" includes all land, buildings, facilities and other property in the possession of or owned, used or controlled by the University (including integral streets and sidewalks).

8. The term "organization" means a number of persons who have complied with the formal requirements for University recognition as provided in Article II.

9. The term "group" means a number of persons acting as an organization who have not complied with the formal requirements for becoming an organization.

10. The term "student publication" means either an organization whose primary purpose is to publish and distribute any publication on campus or a regular publication of an organization.

11. The term "Hearing Body" means any person or persons authorized by the Executive Vice President for Student Life to determine whether a student has committed a violation of the Student Code and to recommend imposition of sanctions.

12. The term "student conduct proceeding" means any action conducted by a Hearing Body.

13. The term "Director of Student Conduct" means a University official authorized by the Executive Vice President for Student Life who is responsible for the establishment and activities of all hearing bodies and for the imposition of sanctions upon students determined to have violated the Student Code. The Executive Vice President for Student Life may authorize the Director of Student Conduct to serve simultaneously as Director of Student Conduct and the sole member or one of the members of a Hearing Body.

14. The term "Student Conduct Officer" means a University official authorized on a case-by-case basis by the Executive Vice President for Student Life to impose sanctions upon student(s) who were found to have violated the Student Code.

15. The term "Appellate Board" means any person or persons authorized by the Executive Vice President for Student Life or by the Director of Student Conduct to consider an appeal from a Hearing Body's determination that a student has committed a violation of the Student Code or appeal of a determination related to a charge of sexual violence or sexual harassment.

16. The term "shall" is used in the imperative sense.

17. The term "may" is used in the permissive sense.

18. The Executive Vice President for Student Life is that person designated by the University President to be responsible for the administration of the Division of Student Life.

19. The term "policy" means the written regulations of the University as found in, but not limited to, the Student Code, Residence Life Handbook, the graduate and undergraduate catalogs, and the University website.

20. The term "cheating" includes but is not limited to: (1) use of any unauthorized assistance in taking quizzes, tests, examinations; (2) use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments; (3) the acquisition, without permission, of tests or other academic material belonging to a member of the University faculty or staff; (4) engaging in any behavior specifically prohibited by a faculty member in the course syllabus or class discussion.

21. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation of the published or unpublished work of another person without full or clear acknowledgement. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

22. The term "complainant" means any person who submits a charge alleging that a student violated the Student Code.

C. BASIC RIGHTS

All students, as members of the University community, shall have the following rights. This should not be construed to deny any other rights which students enjoy in their capacity as members of the student body or as citizens of the community at large:

1. Freedom of expression and assembly subject to the limitations of the Student Code and other University regulations and policies.

2. Freedom to pursue educational goals.

3. The right to notification by the instructor, during the first week of class and in the form of a written syllabus, of all course requirements. Such notification should include, but not be limited to, course subject matter for each class meeting, all assignments and due dates, types of examinations and examination dates, instructor's office hours, required texts and procedures for determination of final grades (including the use of plus/minus grades). All students have the right to adequate notice of substantive changes in course content.

4. Freedom from unreasonable search and seizure by University officials subject to Article I, Sections H and I of the Student Code and other University regulations and policies.

5. The right to student conduct procedures as defined in Article V.

6. The right to privacy and confidentiality of student records according to the Family Educational Rights and Privacy Act (FERPA).

7. The right to be evaluated fairly in all academic endeavors and to challenge an academic evaluation in accordance with Academic Due Process. (See Student Handbook, www.duq.edu/Documents/academic-affairs/_pdf/Academic-Due-Process.pdf.)

D. BASIC RESPONSIBILITIES

Students, as members of the University community, shall have the following responsibilities. This should not be construed to exclude other responsibilities which students inherit as members of the student body or as citizens of the community at large:

1. The responsibility for maintaining academic integrity and other standards of academic performance as established by University policies and regulations.

2. The responsibility for acting in such a manner as to insure that other students may enjoy the rights declared under the Student Code.

3. The responsibility for respecting and complying with the Mission Statement of the University and the Expectations of a Duquesne Student, as well as University rules, regulations, and procedures.

4. The responsibility for respecting and complying with provisions of local, state and federal laws.

5. The responsibility for acting in a manner which promotes an atmosphere of learning, free expression and respect for the rights, dignity and worth of every individual in the University community.

E. CLASSROOM EXPRESSION

1. Discussion and expression of all views relevant to the subject matter are permitted in the classroom and subject to the responsibility of the faculty member to maintain order and to adhere to class time limitations.
    a. Students are responsible for learning the content of any course in which they are enrolled.
    b. Students are responsible for all stated course requirements, as found in the syllabus of that course.

2. Academic evaluation of student performance shall be neither prejudicial nor capricious.

3. Information about student views, beliefs and political associations acquired in confidence by faculty members in the course of their teaching, advising and counseling should remain confidential.

F. CAMPUS EXPRESSION

1. Discussion and expression of all views are permitted within the University subject to requirements for the maintenance of order.
    a. Support of any cause by orderly means that does not disrupt the operation of the University is permitted
    b. Public statements and demonstrations by individual members of the University community or organizations shall be clearly identified as representative only of those individuals or organizations and not of the University.

2. Students, groups and organizations may invite persons on campus subject to the requirements for use of University facilities and permission from the Executive Vice President for Student Life. An honest effort shall be made to provide University facilities for speakers and/or programs invited to the campus by a recognized campus organization. Sponsorship of guest speakers and/or programs does not necessarily imply approval or endorsement of the views expressed either by the sponsoring organization(s) or the University.

G. PUBLICATIONS

1. The University recognizes that student publications can be a valuable aid in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration of the campus. They can be a means of bringing student concerns to the attention of the University community and of formulating student opinion. All student publications shall be published in accordance with guidelines established by the University Publications Board. These guidelines shall adapt generally accepted journalistic standards to the University setting.

2. Student publications shall be free of censorship and advance approval of copy, and their editors and managers shall be free to develop their own editorial policies and news coverage.
    a. Similar freedom and responsibilities shall apply to the University radio and television stations.
    b. This sense of free expression shall recognize the religious character of the University and shall be sensitive to that character.
    c. This editorial freedom entails a corollary obligation to honor those generally accepted journalistic standards as interpreted by the University Publications Board, including but not limited to, the avoidance of libel, indecency, undocumented allegations, attacks on

personal integrity, techniques of harassment and innuendo, and to follow applicable regulations of the Federal Communications Commission. Editorial policy is to be consistent with the provisions of the Student Code.

3. Editors and managers of student publications shall not be arbitrarily suspended or removed from office because of student, faculty, administrative, alumni or public disapproval of editorial policy or content. Editors and managers shall be subject to sanctions only for proper and stated causes in violation of proscribed conduct in their role as editors or managers, and when the conduct in question pertains to publications as defined in this Code. Such sanctions shall normally be imposed only as a part of established University student conduct procedures for students; provided, however, that nothing herein shall be construed to limit the authority of the University Publications Board in dealing with wrong-doing or breaches of accepted journalistic ethics or standards by any student editor, reporter or publications manager or staff person.

4. All student communications shall explicitly state on the editorial page or in broadcast that the opinions expressed are not necessarily those of the University community.

5. A University student or recognized group or organization may distribute printed material on campus without prior approval providing such distribution does not disrupt the operation of the University and conforms to Mission of the University and regulations.

6. Posting or distribution of printed materials in or on University buildings shall be in accordance with the Mission of the University and regulations established for each building.

H. RESIDENCE LIFE

1. The only University officials who are normally allowed to seek access to a student room in the Living Learning Centers are members of the Residence Life staff and/or maintenance staff, according to established procedures. When one of these staff members seeks access to a student room to determine compliance with this Code, applicable laws or regulations, or for improvement or repairs, an attempt will be made to notify the residents in advance.

2. There may be entry, without notice, in emergency situations by a member of the Residence Life staff, the maintenance staff, or the University police. An emergency situation exists when foreseeable danger to life, safety, health or property is feared. In such cases the front desk attendant on duty should be advised of the situation as soon as possible, preferably prior to actual entry. The attendant will immediately notify the Resident Director and/or the Resident Assistant on duty.

   Resident Directors and University Police do not need consent to enter a residents room in a non-emergency situations, if there is probable cause. In non-emergency situations a member of the Residence Life staff and/or the University police may conduct a search of a student room in a Living Learning Center without prior notification. Such a search can occur when there is probable cause to believe that a violation of University policy has occurred or is occurring. "Probable cause" exists when a member of the above stated staffs has reasonably trustworthy information which would warrant a person of reasonable caution to believe that an offense has been or is being committed. For routine checks, notification will be posted in lobby area eight hours in advance giving reason for check. A resident of the room need not be present and need not consent for a search to be conducted for the items specified. Failure of students to observe such posting does not restrict Residence Life access.

I. COOPERATION WITH LAW ENFORCEMENT

1. As a matter of policy, the University shall cooperate with the University police or outside law enforcement agencies whenever a legal search warrant is presented. In such situations a member of the Residence Life staff, University Police and the student to whom the search warrant is directed shall be present whenever possible.

2. If a legal search warrant is not presented, the University shall cooperate only if there is likelihood that a crime will be committed.

J. COMMUNICATION (August 2010)

1. Your Duquesne University personal email account is the official method of communication for Duquesne administrative matters. You are required to periodically check your account for time critical notices such as billing notifications, insurance requirements or other important alerts or administrative notices requiring a timely response. Notice will be considered received one day following the date the notice is posted to your email account. Failure to check your email account does not excuse or exempt you from any actions required of you by the University.

ARTICLE II: CAMPUS ORGANIZATIONS

A. INTEREST GROUPS AND SCHOOL CLASSES

1. Groups seeking only Residence Life recognition are not subject to the provisions delineated under "University Recognition" below. Such groups shall contact the Office of Residence Life for the applicable regulations and procedures.

2. School classes, e.g., pharmacy freshmen, education juniors, etc., only recognized by their respective school, are not subject to the provisions delineated under "University Recognition" below. Such groups shall contact their respective school for the applicable regulations and procedures. The College and Schools will submit a list of the groups granted recognition to the Assistant Vice President for Student Life.

B. UNIVERSITY RECOGNITION

Student organizations are recognized in order to support the rights of students to freely form associations compatible with the mission statement and goals and objectives of the University while maintaining the right of the University to choose those student organizations it recognizes; define the relationship between the University and student organizations; insure that the requirements for recognition, the privileges which accompany recognition, and the policies and procedures that govern student are upheld. Not withstanding approval by the Student Government Association, the University may deny recognition to any group.

1. Organizations and groups may be established within the University for any legitimate purpose in accord with the stated Mission and Expectations of the University. Affiliation with an external organization shall not, in itself, disqualify the University branch or chapter from University privileges. Recognized organizations must have a minimum Quality Point Average of at least a 2.0 for membership and must have a minimum active membership of at least ten students.

a. Interfraternity Council affiliated fraternities, Panhellenic Council affiliated sororities, Professional Greek-Lettered fraternal organizations, Honor and Recognition Greek-Lettered organizations, and Service Greek-Lettered fraternal organizations are administered by the Director of Greek Life.
b. All other organizations are administered by the Assistant Vice President for Student Life.
c. All organizations are required to provide to the relevant administrator: an annual roster of members by September 15 of each year; a list of associates or new members for each semester within one week of bid acceptance; and a revised roster of all members, including newly inducted members, within one week of induction.

2. Groups in formation for a legitimate purpose may be granted temporary use of facilities and services for four (4) months by the Assistant Vice President for Student Life. The Assistant Vice President shall inform the Student Government Association of any such temporary privileges, which include the right to hold meetings and social events on campus, and the opportunity to use University facilities and the counsel and assistance of the faculty, University officials and the Student Government Association.
   a. During the temporary granting of privileges, each new group shall write a constitution in compliance with the established format available in the Center for Student Involvement.
   b. Temporary granting of privileges period may be extended at the discretion of the Assistant Vice President.
   c. Groups which form for a specific short-term purpose, ad hoc, will only be given temporary granting of privileges and will not be required to draft a constitution, as determined by the Assistant Vice President.

3. All groups requesting temporary granting of privileges or permanent recognition must submit a statement of purpose, membership eligibility requirements and present number of members to the Assistant Vice President for Student Life.

4. A group requesting permanent status shall submit its constitution to the Assistant Vice President for Student Life during that group's temporary granting of privileges period. The Assistant Vice President shall either:
   a. Accept the constitution in its entirety and forward it to the Student Government Association Constitution Committee for review;
   b. Approve the constitution in principle and forward it to the Student Government Association Constitution Committee with recommendations; or
   c. Request revisions in the constitution and return it to the group. Once the necessary revisions have been made, the group may resubmit the constitution for approval. If no further revisions are necessary, the Assistant Vice President shall forward it to the Student Government Association Constitution Committee for review.
   d. Reject the constitution if the purpose of the proposed organization is similar to that of an already recognized student organization or if the purpose is not consistent with the University Mission.

5. Where there is external affiliation, the constitution and bylaws of the external affiliate must be filed with the Assistant Vice President as soon as possible after receiving temporary granting of privileges. Only after all appropriate documents are on file with the Assistant Vice President, shall the constitution of the local chapter be submitted to the Student Government Association.

6. Upon recognition, the Assistant Vice President for Student Life shall be forwarded a copy of the approved constitution by the Student Government Association.

7. Should a group not be granted University recognition, it is encouraged and has the right to seek Student Government Association guidance and support.

8. When an organization is officially recognized it shall have (in addition to the rights given during temporary recognition) the right to schedule events on University calendars and to use the University name in connection with their programs and activities subject to the provisions stated in Section E of this article.

9. For serious cause given, the Executive Vice President for Student Life, the Assistant Vice President for Student Life or the Director of Greek Life may withdraw the recognition of a University recognized organization or group. Upon such withdrawal, all University support for such an organization or group will cease and the organization or group must cease to identify itself as an official organization or group of this University, including any use of the University's name. For serious cause given to, and approved by, the Executive Vice President for Student Life, the Student Government Association shall have similar authority with regard to those student groups or organizations dependent upon the Student Government Association for recognition.

10. Duquesne University believes auxiliary women's groups organized by men's fraternity chapters, commonly known as "little sisters," are inconsistent with the concept and philosophy of separate and equal women's fraternities or sororities and are, therefore, prohibited.

11. Duquesne University requires all national and local general and professional fraternal organizations to obtain general liability insurance, as approved by policy administered through the Office of Greek Life. Failure to possess general liability insurance will result in immediate suspension of University recognition.

C. ANNUAL REGISTRATION

1. To remain officially recognized, each organization shall annually file a new registration form and membership roster with the Assistant Vice President for Student Life by September 15 and within three weeks after the election of new officers.

2. All organizations are required to have a full-time Duquesne faculty or staff member, or official as an advisor. If the advisor resigns, the organization has the responsibility to locate an advisor within thirty (30) calendar days.

3. All changes in officers and advisors, other than by annual elections, must be filed with the Assistant Vice President for Student Life or the Director of Greek Life within one (1) week after they take effect.

4. All changes in and/or amendments to the name, constitution or bylaws of the organization shall be submitted in accordance with the process outlined in Article II, Section B, 4 and 5 of this Code.

5. Failure to comply with any of the above paragraphs will result in probation for the organization. Privileges may be revoked for a period of time equal to the length of time the organization was delinquent in complying with any of these regulations.

D. SOCIAL ACTIVITY REGULATIONS

1. For any event outside of normal classroom activity involving the use of University facilities, applications for space may be obtained from the Center for Student Involvement. Consideration of all applications shall be in accordance with the scheduling policy available in the Center for Student Involvement.

2. To requisition any Living Learning Center or athletic facility, the respective office shall be contacted.

3. University facilities may be scheduled and used by registered organizations for regular business meetings, for social programs and for programs open to the public according to the policies outlined in this section.
    a. Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of the space assigned, to regulate time and use, and to ensure proper maintenance and order.
    b. Allocation of space shall be based on priority of requests and the demonstrated needs of the organization.
    c. Reasonable charges may be imposed to cover any costs for the use of facilities. Physical abuse of assigned facilities or disregard for specific regulations pertaining to a given facility may result in reasonable limitations on future allocations of space to offending parties as well as restitution for damages.
    d. The organization requesting space must inform the University of the names of outside speakers and the general purpose of any meeting open to persons other than members.
    e. No speaker sponsored by a registered organization shall be denied appearance on campus for arbitrary or capricious reasons. Reasons for denial include, but are not limited to, probability of disruption of campus activities, endangerment of the University's tax exempt status, and/or reasonable expectation of danger to life or property.

4. The sponsoring organization and its officers are responsible for:
    a. Informing the advisor(s) in advance of all functions sponsored by the organization. All organizational activities must receive the prior approval of the advisor. Advisors must be present for the entire event.
    b. The behavior of persons attending the function including but not limited to Student Code violations, and any illegal acts either engaged in or knowingly permitted by the organization.
    c. Any damage to utilized facilities.
    d. Activities of the organization and for its compliance with the Mission of the University and regulations.

5. The sponsoring organization(s) and/or group(s) may require presentation of valid I.D. cards for admission to an event held on the University campus. Functions may be closed to other than members of the sponsoring organization(s) and/or group(s) and to their invited or accompanied guests.

6. Functions which are held in University facilities may end no later than the established closing hours of the facility concerned unless prior arrangements are made with the appropriate office.

7. Alcoholic beverage policies are based on the Pennsylvania Liquor Code and other relevant statutes. The drinking age in this state is 21 years of age or over. No person under 21 years of age is permitted to consume, transport, possess, be in the presence of, or be supplied with any

alcoholic beverage. It is also illegal in Pennsylvania for any individual to facilitate underage drinking of alcohol or to provide an environment in which underage drinking of alcohol takes place.

8. No alcoholic beverages may be purchased through student organization funds nor may the purchase of same for members or guests be undertaken or coordinated by any member in the name of or on behalf of the student organization.

9. Commercial enterprises of any kind (solicitation, sales, distribution, etc.) by students or organizations are permitted on campus or in University buildings only with permission of the Assistant Vice President for Student Life. Commercial enterprises other than solicitation, sales or distribution by students must have the approval of the Vice President for Management and Business. No credit card application solicitation is permitted on campus. No outside solicitation of any kind is permitted in the Living Learning Centers.

10. Sound trucks or outdoor amplifying systems are not allowed on campus for any purpose without the approval of the Student Government Association and the Assistant Vice President for Student Life.

E. POLITICAL ACTIVITY GUIDELINES FOR STUDENTS AND RECOGNIZED STUDENT ORGANIZATIONS

The Internal Revenue Code Section 501(3) provides that "an educational institution qualifies for tax exemption provided that the institution "does not participate in, or intervene in (including the publishing and distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office."

In order to protect the tax-exempt status of Duquesne University and to comply with the above section of the Internal Revenue Code, students and student organizations must adhere to the following guidelines:

- Only educational, non-party biased political activities are permitted with consent of the Assistant Vice President for Student Life.
- Sponsorship or participation in any form of partisan campaigning on Duquesne's campus is not permitted.
- Political campaign posters or banners are not permitted on campus.
- Any form of campaigning for a particular candidate or party while walking around campus or directly approaching anyone is not permitted.
- Campaigning for a particular candidate or party via social media by student organizations is not permitted.
- Use of University funds and/or soliciting funds in support of particular candidate or party is not permitted.
- Duquesne University's name, logo or seal may not be used on stationary, social media sites or other materials used for political purposes.

One Dimension of a Duquesne University education is Global Mindedness, which encourages our students to appreciate the importance of community in local and global contexts and to recognize an individual's potential to effect change in organizations, environments and society at large. Accordingly, students are strongly encouraged to fully participate in the political process in their own name and using their own resources. Initiating Voter Registration within the Duquesne community supports this effort. Voter Registration IS permitted on campus subject to the following rules:

- Voter Registration initiatives are to be coordinated only by the Student Government Association.
- Voter Registration is permitted only in designated areas approved by the Assistant Vice President for Student Life /SGA Advisor.
- Voter Registration tables must be staffed only by Duquesne University students.

PLEASE NOTE: Students and recognized student organizations must adhere to the above mentioned guidelines, as well as the policies set forth in Duquesne University's The Administrative Policy - TAP 27. Failure to comply with these guidelines and policies may result in student conduct proceedings and/or loss of student organization privileges and recognition status.

(Revised: June 2013)

F. USE OF UNIVERSITY NAME

1. No organization shall use the University's name without written authorization of the University. University approval or disapproval of any political or social issue shall not be stated or implied by an organization.

2. The official letterhead stationery, logo or seal of the University shall not be used in any publication, correspondence, or other printed or electronic material prepared or distributed by the organization or its officers without prior submission of the material to, and written permission from, the Vice President for University Relations.

3. In the event that the name of the University is used in a letterhead on organizational stationery, it shall appear below the name of the organization and in small type or at the bottom of the page.

G. ORGANIZATIONAL FUNDS

All organizations and groups which receive University funding or which use the University name in the solicitation of funds or the generation of revenue must keep such funds on deposit with the University and make use of the normal University disbursement process in the expenditure of these funds.

H. ENFORCEMENT OF REGULATIONS

1. Interpretation and enforcement of this article is within the jurisdiction of the Assistant Vice President for Student Life, the Director of Greek Life, and/or the Director of Student Conduct.

2. Violations of these regulations shall be referred to in Article IV of this Code.

I. LEGAL COMPLIANCE

All organizations and groups shall be in compliance with all applicable federal, state and local laws.

ARTICLE III: INSTITUTIONAL GOVERNANCE

A. STUDENT PARTICIPATION IN UNIVERSITY GOVERNANCE

1. The University recognizes that students are entitled to participate in the formulation of rules, regulations and policies directly affecting Student Life. Participation shall be provided through the Student Government Association and through student participation on University committees and councils.

2. The Student Government Association shall have primary responsibility for recognizing student organizations, enforcing Student Government rules, regulations and legislative actions, and budgeting and administering University funds allocated to it.

B. DEMONSTRATIONS

It is recognized that free speech is essential in a democratic society. Students are permitted to demonstrate in support of or in opposition to University, city, state or national policy consistent with Article II, Section D, and providing that no acts are performed which:

1. Cause damage to personal or University property.

2. Cause physical injury and/or harassment to any individual.

3. Prevent any member of the University community from entering or leaving any University premises, attending classes or attending any special program sponsored or supervised by the University whether or not it takes place on University premises.

4. Prevent administrative officers, faculty, students, employees or invited guests of the University from performing duties they are authorized to perform.

5. Block the normal business of the University.

6. Block the normal flow of pedestrian or vehicular traffic.
    a. The freedom to demonstrate on campus is reserved to the students and staff of Duquesne University. Demonstrators shall be prepared to identify themselves as members of the University community.
    b. Orderly picketing and other forms of peaceful demonstrations are permitted on University premises.
    c. Persons wishing to set up booths or tables for distribution of literature explaining their point of view may do so in areas normally used for such purposes, and with the approval of the appropriate office.
    d. Every student has the right to be interviewed on campus by any legal enterprise desiring to recruit at the University. Any such student group or organization may protest against any such enterprise provided that the protest does not interfere with any other student's right to have such an interview.
    e. Persons who are not members of the University community are expected to comply with the provisions of this Code while on University property and at properly authorized and scheduled events.
    f. Any individual who conducts him/herself in such a way as to obstruct or disrupt the normal operation of the University or deliberately abridge the rights of others may be subject not only to arrest and prosecution by civil authorities, but also to University disciplinary procedures which may lead to suspension or expulsion from the University.

ARTICLE IV: UNIVERSITY STANDARDS

A. JURISDICTION OF THE UNIVERSITY

The University standards shall apply to conduct that occurs on University premises, at University sponsored activities, and to off-campus conduct that adversely affects the University community and/or pursuits of its objectives and Mission. Each student shall be responsible for his/her conduct from the time of matriculation through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between semesters or actual enrollment. The Student Code shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. The Director of Student Conduct shall decide whether the Student Code shall be applied to conduct occurring off-campus, on a case-by-case basis.

The University reserves the right to proceed in all cases regardless of a student's withdrawal.
Any student who withdraws or fails to return to the University while disciplinary action is pending or fails to appear for a scheduled hearing will be ineligible for readmission, registration, receipt of a transcript, or diploma until the outstanding matter is resolved. Consideration for readmission would require an appeal in writing to the Executive Vice President for Student Life.

The University reserves the right to formally restrict individual(s) from the Duquesne University grounds while such disciplinary action is pending.

A student who plans to study abroad is advised to notify the Office of International Programs immediately of any pending disciplinary action as such a matter could change a student's disciplinary status with the University and jeopardize a student's ability to participate in a study abroad program.

Duquesne's Code of Student Rights, Responsibilities and Conduct and the procedures through which it is implemented will apply to students studying abroad.

B. RACISM, SEXUAL HARASSMENT, SEXUAL VIOLENCE AND OTHERS FORMS OF DISCRIMINATION

Duquesne University seeks to foster a safe environment conducive to learning and the free exchange of ideas. In accordance with the Mission of the University and all policies residing under the Student Code, any offense motivated by discrimination will not be tolerated. An offense motivated by racism, sexual harassment, sexual violence, or others forms of discrimination wherein the accused intentionally selects the alleged victim(s) because of race, color, religion, disability, national origin, sexual orientation, political affiliation, gender, gender identity, age, marital status, or inclusion in any group protected by law is considered an offense motivated by discrimination. Students found responsible for violations of the Student Code based on bias will be subject to stringent sanctions.

C. TITLE IX: SEXUAL HARASSMENT AND VIOLENCE

Pursuant to Title IX of the Educational Amendments of 1972 and 34 C.F.R. Part 106, Duquesne University's Title IX Coordinator is the designated agent of the University responsible for Title IX compliance incidents related to sexual harassment and sexual violence involving students. Duquesne University's Title IX Coordinator is: Mr. Sean Weaver, weavers2@duq.edu, 412.396.2560.

D. RETALIATION

It is unlawful to retaliate against an individual because he or she made a complaint, testified or participated in any manner in an investigation or proceeding. Duquesne will vigorously enforce this prohibition against retaliation.

E. CONDUCT—RULES AND REGULATIONS

The following acts are violations of the University standards and will result in disciplinary actions as stated in Article V.

1. Academic Dishonesty (see Academic Integrity Policy, page 30).
    a. Attempted or actual acts of dishonesty.
    b. Cheating on examinations, tests, and assignments.
    c. Plagiarism.
    d. Giving or offering gifts, services or favors for the purpose of affecting grades or academic standing.
    e. Misrepresenting one's credentials.

2. Lying, Identification Misuse
    a. Furnishing false information to any University official, faculty member, or office.
    b. Forgery, alteration, or misuse of any document, record or instrument of identification.
    c. Tampering with the election of any University recognized student organization.
    d. Refusing to present identification upon request by any authorized personnel acting within their authority.

3. Attempted or actual theft of property of the University, property of a member of the University community, or other personal or public property.

4. Attempted or actual damage to property of the University or property of a member of the University or other public property, on or off-campus.

5. Attempted or actual abuse.
    a. Physical abuse.
    b. Incivility through language or actions.
    c. Sexual violence (See Sexual Violence Policy on pages 45-47).
    d. Sexual harassment (See Sexual Harassment Policy on pages 49-50).
    e. Sexual misconduct.
    f. Relationship/Dating Violence.
    g. Stalking. Defined as repetitive and/or menacing pursuit, following, harassment, and/or interference with the peace and/or safety of a member of the University community; or the safety of any of the immediate family of members of the community.
    h. Harassment.
    i. Coercion. Coercion is the use of force, or the threat of force, the use of a threat of immediate or future harm, or the use of physical or severe and/or pervasive emotional intimidation to cause or attempt to cause another person to engage in or submit to certain activities. Coercion also includes the administration of a drug, intoxicant or similar substance that impairs the faculties of a person.

j. Conduct which threatens or endangers the health or safety of any person.
k. Fighting.
l. Bullying. Defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally.

6. Harassment or discrimination based on race, color, religion, disability, national origin, sexual orientation, political affiliation, gender, age, marital status, or inclusion in any group protected by law.

7. Weapons (see Weapons policy, page 52)
   a. Possession and/or use of weapons, explosives, fireworks, chemicals, or other objects designed and/or used to inflict injury or damage while on University premises, even if the student possesses a valid concealed weapons permit or other lawful permission to carry a weapon.
   b. Possession of weapons or other dangerous items including but not limited to BB guns, pellet guns, paint guns, bows and arrows, brass knuckles, martial arts equipment, and knives with a blade over 3" in length, and/or switchblade knives of any size.
   c. Possession of facsimile of a weapon designed to look like a firearm, explosive, or dangerous weapon is also prohibited by this policy.
   d. Failure to report the presence of illegal or unauthorized firearms, explosives, other weapons, or dangerous chemicals or use of any such item to an appropriate University official.

8. Alcohol and Other Controlled Substances (see Alcohol and Drug Policy, page 36)
   a. Use, possession of narcotics or other controlled substances except as expressly permitted by law. Odor of a controlled substance will be considered the same as use.
   b. In the presence of narcotics or other controlled substances except as expressly permitted by law.
   c. Distribution of narcotics or other controlled substances except as expressly permitted by law.
   d. Possession of paraphernalia related to a controlled substance (i.e., bongs, hookahs, pipes, funnels).
   e. Use, possession, or distribution of alcoholic beverages except as expressly permitted by Pennsylvania law and University regulations.
   f. In the presence of alcoholic beverages except as expressly permitted by Pennsylvania law and University regulations.
   g. Public intoxication.
   h. Driving under the influence of alcohol and/or drugs.
   i. Possession and/or use of any drug classified as a "date rape" drug.

9. Gambling. Illegal gambling at any time, in any form, is prohibited.

10. Smoking in non-designated areas (see Smoking Policy, page 50).

11. Disorderly conduct.

12. Lewd or indecent behavior.

13. Attempted or actual hazing (see Hazing Policy, page 41).

14. Attempted or actual disruption or obstruction of teaching, research, administration, meetings, and/or disciplinary proceedings.

15. Failure to comply with requests or directions of University officials or law enforcement officers acting in performance of their duties and/or failure to identify oneself as required.

16. Conduct which is a breach of peace.
    a. Excessive noise or behavior that disturbs others.
    b. Violation of quiet hours in Living Learning Centers (see Office of Residence Life Handbook at www.duq.edu/residence-life).

17. Visitation/Guest Policy
    a. Allowing a guest to violate University policy and/or federal, state or local law.
    b. Violating the visitation/guest policies within the Living Learning Centers (see Office of Residence Life Handbook at www.duq.edu/residence-life).

18. Participating in an on-campus or off-campus demonstration, riot, or activity that disrupts the normal operation of the University and/or infringes on the rights of other members of the University community; leading or inciting others to disrupt the scheduled and/or normal activities within any campus building or area.

19. Unauthorized sales or solicitation in any University building.

20. Unauthorized possession, duplication, or use of keys to any University premises.

21. Unauthorized entry or use of University premises.

22. Unauthorized posting on University premises.

23. Violation of published University policies, rules, regulations, and/or procedures published in hard copy or available electronically on the University website.

24. Violation of federal, state or local laws or ordinances.

25. Community Safety Violations.
    a. Starting fires and/or causing explosions.
    b. False reporting of a fire, bombs, and/or emergencies.
    c. Tampering with fire safety or security equipment.
    d. Misuse of fire safety equipment (i.e., spraying extinguishers inappropriately).
    e. Dropping, throwing, or propelling objects from windows, roofs, and/or balconies.
    f. Fireworks.
    g. Failure to exit the building during a fire drill or fire alarm.
    h. Possession of prohibited fire safety items within the Living Learning Centers (a complete listing can be found in the Office of Residence Life Handbook: www.duq.edu/residence-life.
    i. Obstruction of the free flow of pedestrian or vehicular traffic on University premises or at University sponsored or supervised functions.
    j. Unauthorized animals in a University building. Guide dogs accompanying blind or deaf individuals are exceptions to this rule. Pets brought on University grounds must be leashed.

k. Violation of sporting activity restrictions. Due to safety and facility concerns, the following is not allowed:
    1. Riding of skateboards and use of in-line skates, roller skates, the use of water guns, water balloons, and water launchers are prohibited in University buildings and on University property, unless as expressly permitted within a recreational facility.
    2. Bicycles, throwing of Frisbees, balls and other objects are prohibited in buildings, unless as expressly permitted within a recreational facility.

26. Computer Misuse. Attempted or actual theft or other abuse of computer time, computing facilities access, and/or electronic mail accounts, to include but not limited to:
    a. Unauthorized entry, transfer, or altering files.
    b. Unauthorized use of another individual's identification and/or password.
    c. Use of computing technology to interfere with work of another student, faculty, or University official as well as the normal operation of the University infrastructure in accordance with the Mission of the University.
    d. Use of computing resources and facilities to send obscene, harassing, or abusive messages.
    e. Use of computing resources and facilities for fraudulent acquisition of goods or services, conducting activity for private profit, or in violation of any published University regulations.
    f. Use of computing facilities and resources in violation of copyright law.

27. Unauthorized or inappropriate use of technology and social media.

28. Failure to report illegal activity and/or violation of the Code of Student Rights, Responsibilities and Conduct.

29. Social conduct that does not reflect the Mission and Expectations of the University whether on or off-campus.

30. Abuse of the Student Conduct System. This includes, but is not limited to, the following:
    a. Failure to obey the summons of a Hearing Body or University official.
    b. Falsification, distortion or misrepresentation of information before a Hearing Body.
    c. Disruption or interference with the orderly conduct of a student conduct proceeding.
    d. Initiation of a student conduct proceeding knowingly without cause.
    e. Attempt to discourage an individual's proper participation in, or use of, the student conduct system.
    f. Attempt to influence the impartiality of a member of a Hearing Body prior to, or during the course of, a student conduct proceeding.
    g. Retaliation, harassment, and/or intimidation of a member of a Hearing Body or complainant or other person alleging misconduct, prior to, during, or after the student conduct proceeding.
    h. Failure to comply with the sanction(s) imposed under the Student Code.
    i. Influencing or attempting to influence another person to commit an abuse of the student conduct system.

E. VIOLATION OF LAW AND STUDENT CONDUCT PROCEEDINGS

1. In a situation where a student is charged with an off-campus violation of federal, state or local laws, student conduct action may be taken and sanctions imposed for conduct, which demonstrates disregard for the University community, and/or pursuit of its objectives and Mission.

2. University student conduct proceedings may be instituted against a student charged with conduct that potentially violated both the criminal law and Student Code (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Determinations made or sanctions imposed under the Student Code shall not be subject to change because criminal charges arising out of the same facts giving rise to violations of student conduct rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

3. When a student is charged by federal, state, or local authorities with a violation of law, the University, at its sole discretion, may request or agree to special consideration for that individual because of his or her status as a student. If the alleged offense is also being processed under the Student Code, the University may inform off-campus authorities of the existence of the University's standards and how such matters are typically handled within the University community. The University may cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators (provided that the conditions do not conflict with campus rules or sanctions). Individual students and other members of the University community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.

ARTICLE V: CONDUCT POLICIES AND PROCEDURES

A. CHARGES AND HEARINGS

1. Any member of the University community may file charges against any student for alleged violations of the Student Code. A charge shall be prepared in writing and sent to the Director of Student Conduct who is responsible for the administration of the Student Conduct system. Absent extraordinary circumstances, the written complaint must be filed within one year.

2. All charges shall be presented to the accused student(s) in written form. Students are required to respond to the letter and schedule an appointment with 48 hours of receipt. A time shall be set for an initial hearing, not less than three nor more than thirty calendar days after the student has been notified. Notice will be considered received one day following the date the notice is posted at the United States Postal Service facility, placed in the student's mailbox, or delivered to the Living Learning Center. Failure to collect one's mail from the box or failure to receive or sign for a mailing does not void the fact that the notice was delivered. Maximum time limits for scheduling of hearings may be extended at the discretion of the Director of Student Conduct and/or Student Conduct Officer.

3. At this initial meeting, the accused student(s) shall be presented with a description of hearing types. There are five hearing types: Responsible Plea, Administrative Hearing (with Resident Director, Student Conduct Officer or Director of Student Conduct), University Conduct, Sexual Violence Administrative Hearing, Sexual Violence Board Hearing Board. The accused student may request, or the Director of Student Conduct and/ or Resident Director/Student Conduct Officer may require, that the allegation be resolved through an Administrative Hearing or through a University Conduct Board. The Director of Student Conduct and/or Resident Director/Student Conduct Officer shall consider the preference of the accused student, the nature of the allegations, and student conduct board members availability. In all hearings, the respondent and complaiant retain all rights contained in 4a through 4j.
    a. Responsible Plea: The student accepts responsibility for his/her actions and agrees to the sanction given by the Director of Student Conduct or Resident Director/Student Conduct Officer. There is no appeal with this option.
    b. Administrative Hearing: An Administrative Hearing is held either with the Director of Student Conduct or Resident Director/Student Conduct Officer. Information is provided by a complainant, accused student, and any witnesses.
    c. University Conduct Board: A University Conduct Board shall normally be convened no more than thirty days from the initial meeting with the Director of Student Conduct. The University Conduct Board may be composed of one at-large student and two faculty and/or administrative staff members. The Director of Student Conduct shall act as a convener for such a Hearing Body, but shall have no vote in the Board's determination. A majority vote is necessary to find a student in violation of any charge, and each charge must be voted upon separately.
    d. Sexual Violence Administrative Hearing: A Sexual Violence Administrative Hearing is with the Director of Student Conduct, or their designee. Information is provided by a complainant, accused student, and witnesses.
    e. Sexual Violence Conduct Board: A Sexual Violence Conduct Board shall normally be convened no more than thirty days from the initial meeting with the Director of Student Conduct. The Sexual Violence Conduct Board may be composed of three faculty and/or administrative staff members. The Director of Student Conduct shall act as a convener for such a Hearing Body, but shall have no vote in the Board's determination. A majority vote is necessary to find a student in violation of any charge, and each charge must be voted upon separately. Time limits may be extended at the discretion of the Director of Student Conduct and/or Student Conduct Officer.

4. Hearings shall be conducted according to the following guidelines:
    a. Hearings shall be conducted in private.
    b. The complainant, accused student(s), and their advisors, if any, shall be allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). No other individuals are allowed admission due to the confidentiality rights of students.
    c. In hearings involving more than one accused student, the Director of Student Conduct and/or Student Conduct Officer, in his or her discretion, may permit the hearings concerning each student to be conducted either separately or jointly.
    d. The complainant and the accused student have the right to be assisted by an advisor. If criminal charges are pending, the respondent may be accompanied by an attorney who must follow all requirements of an advisor. The complainant will have the same rights as the respondent in these cases. The advisor must be a current member of the Duquesne University community and may not function as an attorney. The complainant and/or the accused student is responsible for presenting his or her own information and, therefore,

advisors are not permitted to speak or to participate directly in any hearing. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing because delays will not normally be allowed due to scheduling conflicts of the advisor.

e. The complainant, the accused student, and/or Hearing Body shall have the privilege of presenting witnesses subject to the right of questioning by the Hearing Body.
f. Pertinent records, exhibits, and written statements may be accepted as evidence for consideration at the discretion of the Hearing Body.
g. All procedural questions are subject to final decision by the Student Conduct Officer and/or voting members of the Student Conduct Board, in consultation with the Director of Student Conduct. The Hearing Body may choose to suspend the hearing to consider such questions.
h. The board's determination shall be made on the basis of whether it is more likely than not that the accused student violated the Student Code.
i. Formal legal rules of process, procedure, and/or technical rules of evidence, such as those applied in criminal or civil court, are not used in University student conduct hearing.
j. Questioning of witnesses are conducted by the Hearing Body.

5. There shall be a single record of all hearings before a Hearing Body. The record shall be the property of the University. Deliberations shall not be recorded.

6. If an accused student, with notice, does not appear before a University Student Conduct Board, the information in support of the charges shall be presented and considered even if the accused student is not present.

7. The University Student Conduct Board may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused student, and/or witness during the hearing by providing alternative means of testimony, where and as determined in the sole judgment of the Director of Student Conduct to be appropriate.

8. In general cases arising in the Living Learning Centers, a Resident Director serves as the Student Conduct Officer. The Director of Residence Life may, on occasion, transfer cases to the Office of Student Conduct.

9. Proceedings under the Student Code are not criminal proceedings and shall not be construed as such. Duquesne University adopts, for the purpose of this Student Code, the following due process procedures for students: notice of charges, opportunity for a hearing and right to appeal.

10. Upon conclusion of the student conduct proceedings, notification of a decision and sanctions will be mailed to the respondent (and victims of crimes of violence, including sexual harassment and sexual violence) no later than two weeks. Time limits may be extended at the discretion of the Director of Student Conduct and/or Student Conduct Officer.

B. ORGANIZATIONAL CONDUCT VIOLATIONS

Greek organizations, student organizations, clubs, or similarly organized groups in, or recognized by the University, are subject to the same standards as individuals in the community. The committing of any offense by such groups or the failure of any organized group to exercise preventative measures relative to violations of the Student Code by their members shall constitute an organizational offense. Both an individual and an organization can be held accountable for misconduct originating from one event or activity. A Student Conduct Hearing for an organizational offense will be conducted in a manner similar

to the procedures outlined in Article V: Student Conduct Policies, A. Charges and Hearings. The sanctions which may be imposed upon an organization are outlined below.

C. SANCTIONS

1. The following sanctions may be imposed upon any student, organization, or group found in violation of the Student Code:
    a. Warning – a notice in writing which states that violation of policy has occurred.
    b. Probation – a written reprimand for a violation of specified regulations. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student, group or organization is found in violation of any institutional regulation(s) during the probationary period. Students, organizations or groups on probation may not be allowed to participate in University activities.
    c. Loss of Privileges – denial of specified privileges for a designated period of time.
    d. Fines – an assessment of a proportionate monetary penalty.
    e. Restitution – compensation for loss, damage or injury. This may take the form of appropriate service and/or monetary or material replacement.
    f. Discretionary sanctions – work assignments, essays, service to the University or other related discretionary sanctions.
    g. Living Learning Center suspension – separation of the student from the Living Learning Centers for a definite period of time after which he/she is eligible to return. During the period of suspension all visitation rights are revoked. Conditions for readmission may be specified.
    h. Living Learning Center expulsion – permanent separation of the student from the Living Learning Centers. All visitation rights are permanently revoked.
    i. University suspension – separation from the University for a definite period of time. During the period of suspension all visitation rights are revoked. Conditions for readmission may be specified.
    j. University expulsion – permanent separation of the student from the University and includes no trespassing on any University property.
    k. Revocation of admission and/or degree – admission to the University or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violations of University standards in obtaining a degree, or for other serious violations committed by a student prior to graduation.
    l. Withholding degree – the University may withhold awarding a degree otherwise earned until completion of the process set forth in the Student Code, including the completion of sanctions imposed.
    m. More than one of the above types of sanctions may be imposed for any single violation.

2. Other than revocation of a degree, disciplinary sanctions shall not be made part of the student's permanent academic record but shall become a part of the student's confidential record. A student's confidential disciplinary record will be expunged of disciplinary actions after seven years from the date of the incident. University expulsion and suspension; Residence Life expulsion; and Title IX Sexual Violence are exceptions and will remain on file permanently in the Office of Student Conduct.

3. After conducting an investigation and hearing, the Director of Greek Life and/or the Assistant Vice President for Student Life, as appropriate, can recommend sanctions against groups or organizations. In all cases, the sanctions will be determined and imposed by the Director of Student Conduct. Such sanctions shall include:
    a. Those sanctions listed in Section C.1.

b. Deactivation – loss of all privileges, including University recognition, for a specified period of time.

4. In each case in which a Hearing Body determines that a student and/or group or organization is in violation of the Student Code, the sanction(s) shall be determined and imposed by the Director of Student Conduct. In cases in which persons other than, or in addition to, the Director of Student Conduct have been authorized to serve as the Hearing Body, the recommendation of all members of the Student Conduct Board shall be considered by the Director of Student Conduct in determining and imposing sanctions. In all cases, the determination of which sanction(s) to impose shall be made by the Director of Student Conduct, and the Director of Student Conduct is not limited to sanctions recommended by members of the Student Conduct Board. Following the hearing, the Director of Student Conduct shall advise the accused student(s) in writing of the determination and of the sanction(s) imposed, if any.

D. TUITION CREDIT/REFUND FOR A DISCIPLINARY SUSPENSION OR EXPULSION

1. A student who is suspended from the University during the semester in which the incident occurred is eligible for a tuition credit that will be applied to the semester immediately following the period of suspension. The amount of tuition credited will be based upon the tuition refund schedule for a voluntary withdrawal and the tuition rate in effect during the semester in which the incident occurred less any required financial aid adjustments and any outstanding balance on the student's account. The date used to calculate the tuition credit will be the date of the incident that resulted in the suspension. Tuition credit not utilized in the semester immediately following the period of suspension is forfeited.

2. A student who is expelled from the University forfeits all payments for tuition and fees incurred for the semester the incident occurred.

3. Housing charges will not be reimbursed to any student found responsible of a Student Code of Conduct violation resulting in suspension or expulsion from the University. Appeals may be directed to the Executive Vice President for Student Life.

4. The University may, in its sole discretion, place a hold on the student's academic records at the time of the incident, which will limit access to transcripts and other educational records until the disciplinary process is complete.

E. INTERIM LIVING LEARNING CENTER OR UNIVERSITY SUSPENSION

In extraordinary circumstances, the Executive Vice President for Student Life, or his/her designee, may consider a University or Living Learning Center suspension prior to a hearing through the student conduct process.

1. Interim suspension may be imposed only: a) to ensure the safety and well-being of members of the University community or preservation of University property; b) to ensure the student's own physical or emotional safety and wellbeing; c) if the student poses a definite and/or ongoing threat of disruption or interference to the normal conduct of operations of the University; and/or d) if the student's behavior is in direct conflict with the moral and spiritual values of the University.

2. During the period of interim suspension, the student shall be denied access to the Living Learning Centers and/or denied access to the University (including being barred from classes) and/or all

other University activities or privileges for which he/she might otherwise be eligible, as the Executive Vice President for Student Life or his/her designee may determine to be appropriate.

3. The interim suspension does not replace the regular process, which shall proceed on the normal schedule, up to and through a University Student Conduct Board hearing, if required.

F. APPEALS

1. An appeal of a decision reached or sanctions imposed by a Hearing Body may be made by a respondent within five (5) calendar days from the date of hearing outcome letter. For cases involving Sexual Violence or Sexual Harassment, the complainant (if the complainant is the victim of the violation) may also file an appeal within the seven school day timeframe. Such appeals shall be in writing and shall be delivered to the Director of Student Conduct.

2. Responsible plea waivers have no appeal option.

3. An accused student may appeal a decision reached and sanction imposed by the Resident Director to the Director of Student Conduct.

4. An accused student may appeal a decision reached and sanction imposed by the Director of Student Conduct or the University Student Conduct Board to an appellate body.

5. An accused student and victim may appeal a decision reached or sanction imposed by the Sexual Violence Conduct Board to an appellate body.

6. An appeal shall be limited to a review of the record of the initial hearing and supporting documents for one or more of the following purposes, except as required to explain the basis of new evidence.
    a. To determine whether the original hearing was conducted fairly in light of the charges and evidence presented, and in conformity with prescribed procedures giving the accused student (and complainant, if the victim of a violation involving sexual violence and/or sexual harassment) a reasonable opportunity to prepare and to present his/her information.
    b. To determine whether the sanction(s) imposed was appropriate to the violation.
    c. To consider new evidence, sufficient to alter a decision, or other relevant facts not available at the original hearing because it was not known to the person appealing at the time of the original hearing. An Appellate Body shall determine the propriety and admissibility of any new evidence.

7. The sole basis of an appeal is the written statement of appeal. The written statement should be as complete as possible in setting forth the basis for appeal as described above.

8. Following an Appellate Board decision, the Executive Vice President for Student Life may review the case. The student must request a review from the Executive Vice President for Student Life in writing within forty-eight hours upon receipt of the Appellate Board decision.

G. STUDENT CONDUCT AUTHORITY

1. The Director of Student Conduct shall have the responsibility of determining the composition and authority of Student Conduct and Appellate Boards.

2. The Director of Student Conduct is charged with development of policies for the administration of the student conduct program and procedural rules for the conduct of hearings which are not inconsistent with provisions of the Student Code.
3. Decisions made by a Hearing Body and/or Director of Student Conduct shall be final pending the normal appeal process.

4. The Hearing Bodies may give advisory opinions, at their sole discretion, on issues not before any Hearing Body and where no violation of institutional regulations has taken place. Such opinions shall not be binding nor may they automatically be used as precedent.

5. A Hearing Body may be designated as arbiter of disputes within the student community. All parties must agree to arbitration and agree to be bound by the decision with no right of appeal.

ARTICLE VI: AMENDMENTS

Any member of the University community may recommend a change in the Student Code to the Executive Vice President for Student Life. If endorsed by the Executive Vice President for Student Life, the proposal and any appropriate recommendations shall be forwarded to the President for final approval.

Amendments may be adopted at any time and will be effective upon promulgation through a University publication.

ARTICLE VII: INTERPRETATION AND APPROVAL

Any question of interpretation regarding the Student Code shall be referred to the Executive Vice President for Student Life or his/her designee for final determination.

The Student Code shall be adopted upon final approval by the President

The Student Code shall be reviewed for possible revision on an on-going basis under the direction of the Director of Student Conduct.

ARTICLE VIII: ADDITIONAL CODES OF RESPONSIBILITY

A school may propose to the Vice President for Academic Affairs a disciplinary code to apply to academic, professional and interpersonal matters arising solely within the province of that school. If approved, such disciplinary code, in addition to the Student Code, shall apply to all students registered in that school.

In cases where an act charged would be a violation of both the Student Code and a school code, the general rule shall be that academic, professional and interpersonal matters will be deferred to the school code for resolution; matters covered only by one code shall be resolved under that code.

In any event, all of the following types of offenses shall be handled under the Student Code:

- any incident involving fire, and all violations alleged under Article IV
- any incident concerning Living Learning Centers
- any incident in which not all persons are registered in the same school
- any incident not promptly handled under a school code

All other disputes as to whether a matter shall be handled under the Student Code or under a school code shall be resolved according to the sound discretion of the Executive Vice President for Student Life and the Vice President for Academic Affairs or their designee. Sanctions previously imposed under one code may be considered in subsequent proceedings under another code. In no case, however, shall a sanction imposed under a school code be considered to grant immunity as to any sanction imposed under the Student Code.

STUDENT POLICIES: ACADEMIC INTEGRITY

I. INTRODUCTION

An essential element of Duquesne University's mission to educate the mind, the heart, and the spirit is the University's commitment to maintaining and promoting an atmosphere where knowledge and inquiry are respected and encouraged. At Duquesne, as at other American institutions of higher education, our individual and collective search for truth and understanding is founded on the core principle of academic integrity. For Duquesne students and professors alike, academic integrity is essential to our efforts to master existing knowledge, to discover or create new knowledge, and to demonstrate or transmit our knowledge or understanding through academic endeavors like test-taking, writing, and teaching.

Academic integrity at Duquesne can be summarized briefly. In its simplest terms, academic integrity is the pursuit of knowledge and understanding in an honest and forthright manner. This is because intellectual endeavors—on site or online; in the library or the laboratory; in a classroom, a Living-Learning Center, or any off-campus learning environment—can only be conducted in an atmosphere of respect for the truth, commitment to the unfettered spirit of inquiry, and acknowledgment of the different contributions and perspectives of others.

- Academic integrity means pursuing truth with true passion while maintaining the humility to recognize and accept that our own understanding may be incomplete or contingent.
- Academic integrity means acknowledging the contributions of others, specifically and completely, using the conventions for acknowledging sources that are appropriate to particular intellectual traditions or disciplines.
- Academic integrity means representing others' work accurately and distinguishing clearly our own ideas and insights, and our language, from the work (and wording) of others.
- Academic integrity means seeking or receiving credit (including grades and other measures of accomplishment) only insofar as we have earned it as a result of our own intellectual efforts; it means not taking credit for work that is not our own.
- Academic integrity means representing ideas and opinions with which we may disagree in a clear and fair manner, according the same respect to material we may criticize that we would wish for our own work.
- Academic integrity means taking examinations and completing assessments honestly, and according to directions, so that results are a true measure of our own attainments.
- Academic integrity means treating the work of others—in laboratories, collaborative projects, or any learning endeavors—with the respect we would wish for our own work.

Academic integrity means, in short, that we at Duquesne are dedicated to pursuing our academic and intellectual endeavors with honesty and honor.

The Policy and Procedures set forth here govern the administration of academic integrity throughout Duquesne University and cover the specific roles and responsibilities of individual schools and programs. All student appeals related to academic integrity are to be governed exclusively by the University (and College/School) Academic Integrity Policy and Procedures. The University Policy and Procedures will be promulgated on the Duquesne University website, in the Student Handbook, and through other means so they may be easily accessed by all members of the Duquesne community.

All members of the Duquesne University community—including faculty, students, administration, and staff—are responsible for upholding academic integrity and maintaining a culture in which academic integrity can flourish.

Faculty responsibilities include maintaining integrity in their own work and professional lives. Faculty are also responsible for teaching students about academic integrity, particularly in accordance with the specific expectations and conventions of their disciplines, and structuring assignments and examinations in ways that will help students maintain academic integrity. If faculty believe or suspect that academic integrity may have been violated, they must also play a central role in investigating and judging violations and administering sanctions.

Student responsibilities include maintaining academic integrity in all class assignments, examinations, research and/or writing projects, and any other academic endeavors related to their courses of study.

II. DEFINITIONS AND STANDARDS: VIOLATIONS OF ACADEMIC INTEGRITY

Academic integrity can be compromised in any number of ways. Individuals who seek or receive credit for intellectual work that is not their own violate academic integrity, as do individuals who falsify or ignore data or who destroy or contaminate data or intellectual property. Violations of academic integrity may include, but are not limited to, the following:

- **Cheating.** Cheating on quizzes, tests, examinations, or projects may include giving, receiving, or using unauthorized assistance or material. (Unauthorized material may include, but is not limited to, notes or other written documents as well as wireless communication or computing devices, calculators, formulas, computers, computer programs, software, data, or text.) In other contexts (e.g., group projects, labs), cheating may include forms of deception intended to affect grades or other outcomes. Cheating may also include, but is not limited to, student use of sources beyond those authorized by the instructor in fulfilling assignments such as writing papers, preparing reports, developing course projects, or solving problems. Cheating may also include student possession without permission of tests or other academic material belonging to a member of the University faculty or staff.

- **Plagiarism.** Plagiarism in papers or other written, electronic, or oral work (including essays, research papers, theses, dissertations, presentations, class projects, or work for publication) may include, but is not limited to, the use—whether by summary, paraphrase, copying, direct quotation, or a combination of such methods—of the published or unpublished work or the specific ideas of another person or source without full, clear, and specific acknowledgment (including the use of quotation marks or other conventions to indicate the source's language). Plagiarism may include the submission of material from sources accessed through the Internet or by other means, or from other individuals, without proper attribution. Also, plagiarism may include the submission of a paper prepared in whole or in part by another person or persons or an agency or entity engaged in providing or selling term papers or other academic materials. Plagiarism may also include the submission, without the instructor's approval, of work submitted for credit in another course.

- **Deceit in academic matters.** Deceit may include, but is not limited to, deliberately furnishing false information or withholding relevant information to any University instructor, official, or office.

- **Misuse of documents.** Misuse may include, but is not limited to, forgery, alteration, or improper use of any University document, record, or instrument of identification (written or computerized). It may also include misappropriation, mutilation, or destruction of tangible assets such as books, journals, electronic data, and related resources available in libraries and offices.

- **Assistance in the violation of academic integrity.** Assistance may include, but is not limited to, any knowing facilitation of intellectual dishonesty by another person or persons.

III. ACADEMIC SANCTIONS

Violations of academic integrity—whether or not they are the result of a deliberate intent to deceive—are subject to academic sanctions, including (but not limited to) lowered grade or failure on an assignment; lowered course grade; course failure; suspension or dismissal from a course; suspension or dismissal from the College or School or from the University; and/or revocation of a degree. If a student is accused of an academic integrity violation before the published course withdrawal deadline, he or she may not withdraw to avoid a course grade sanction. If a student is guilty of violating academic integrity, information regarding the violation and sanction will be maintained by the Director, Office of Student Conduct.

ACADEMIC INTEGRITY PROCEDURES

All schools of the University will have academic integrity policies and procedures that are consistent with the University Policy and Procedures. As a rule, School (College) procedures will specify standards and expectations appropriate to that School and its mission; students enrolled in courses offered by that School will be governed by its procedures. School procedures will specify mechanisms for insuring that students accused of academic integrity violations are afforded the protections of due process, including the availability of School-level appeals processes. While individual faculty members will generally have responsibility for course-level sanctions (that is, sanctions up to and including a reduced or failing course grade), schools will develop procedures for handling more serious situations involving students enrolled in their programs or taking their courses, that is, situations that could potentially lead to more severe sanctions than failure in a course (for example, repeated or particularly egregious violations that might lead to suspension or dismissal from the School or University). The College and individual schools are responsible for

- promulgating School policies and procedures to their students and faculty alike and providing ready access to their policies and procedures (e.g., on School websites);

- educating students about School expectations regarding academic integrity and specific methods and conventions for maintaining it;

- overseeing academic integrity in their courses and programs;

- reporting violations to the Director, Office of Student Conduct and (where applicable) to other schools and maintaining School (College) records of academic integrity violations.

In courses that are not offered by a specific School (e.g., University Core courses), the policy and procedures of the offering department or faculty member will apply. In areas of the University that do not have their own policy and procedures (e.g., the Honors College), the policy and procedures of the McAnulty College and Graduate School of Liberal Arts will apply by default.

All academic integrity violations leading to a sanction, even a minimal sanction, must be reported to appropriate officials, including the Director, Office of Student Conduct, who maintains records of violations of academic integrity. Each School (College) should develop guidelines for contacting the Director, Office of Student Conduct, with inquiries about whether a particular student has committed a prior academic integrity violation and evaluating any information received.

I. ROLES AND RESPONSIBILITIES WITHIN THE COLLEGE OR THE SCHOOLS

Course instructors are responsible for upholding academic integrity in regard to work under their supervision performed both in and outside of class. They have primary responsibility for evaluating evidence of violations and imposing appropriate sanctions. All cases which result in a sanction greater than failure on the assignment on which the violation allegedly occurred must be discussed with the instructor's department chair or program director. If the student is majoring in a different area from the one where the violation occurred, the relevant department chair or Dean should be notified. If the instructor determines that the sanction to be applied is greater than failure on the assignment, the student should be informed of the sanction in writing or via email and should also be informed that it is his or her right to appeal the instructor's finding of a violation and/or imposition of a sanction to the School (College) Academic Integrity Appeals Committee or its equivalent. Student appeals should be initiated within a specified time period after the instructor has communicated with the student regarding a violation or sanction.

The recommendation of the School (College) Academic Integrity Appeals Committee will be communicated in writing or via email to the Dean, and, if the student is not enrolled in that School, the Dean of the student's School. The Dean or Deans may impose the sanction as recommended or impose a lesser sanction. For especially serious sanctions (e.g., suspension or dismissal from the University), the Dean(s) will forward a recommendation to the Provost/Vice President of Academic Affairs for implementation.

A School (College) Academic Integrity Committee should have oversight of matters related to academic integrity in the School (College).

II. ROLE AND RESPONSIBILITIES OF UNIVERSITY PROVOST/VICE PRESIDENT OF ACADEMIC AFFAIRS

In the most serious cases, ones which might lead to suspension or dismissal from the University, the Dean's recommendation is transmitted to the University Provost/Vice President for Academic Affairs for implementation. If the student requests a University level review (see below), or if the Provost has any concerns about the evidence or the fairness of the School's proceedings, the Provost may refer the case to the University Academic Integrity Appeals Committee.

III. ROLE AND RESPONSIBILITIES OF THE UNIVERSITY ACADEMIC INTEGRITY APPEALS COMMITTEE

A student has the right to a University-level review of his or her case. Often this will be conducted informally, by the Provost (or his or her designee) reviewing the written record of the case. A review by the University Academic Integrity Appeals Committee may be conducted, at the discretion of the Provost,

if the student presents compelling evidence that the proceedings in the School or College were inadequate. The Appeals Committee, at its discretion, may wish to go beyond an examination of the written record and hold a hearing at which the student and other witnesses might appear.

Membership of the University Academic Integrity Appeals Committee hearing an academic integrity case will consist of three faculty members chosen by lot from a pool of eleven elected faculty representing all schools in the University plus the Gumberg Library and two students chosen by lot from a pool of ten elected students representing all schools in the University. Faculty and students chosen to serve on any academic integrity case may not be members of the department in which the alleged infraction occurred. Undergraduate representatives will participate in cases dealing with undergraduate students and graduate representatives in cases dealing with graduate students.

IV. ROLE AND RESPONSIBILITIES OF THE UNIVERSITY ACADEMIC INTEGRITY COMMITTEE

Oversight of matters related to academic integrity is vested in the University Academic Integrity Committee, which is advisory to the Provost/Vice President of Academic Affairs. The committee will include representatives from the schools and College, Gumberg Library, the Graduate and Professional Students Association, and the Student Government Association. Among its responsibilities are monitoring University and School (College) policies and procedures pertaining to academic integrity and advising the Provost on academic integrity issues. In concert with the staff of the Center for Teaching Excellence and/or Gumberg Library, the committee will identify and share resources and best practices for maintaining academic integrity.

Originally approved by Academic Council on May 2, 2005; revised and reviewed by Academic Council on March 6, 2006. This revision was approved by Academic Council on **March 26, 2012**.

STUDENT POLICIES: ALCOHOL AND OTHER DRUGS

Duquesne University prohibits the unlawful use, possession, and/or distribution of drugs and alcohol both on campus in University buildings and on University property as well as off campus. As members of the Duquesne community, all students are required to observe relevant federal, state and local laws as well as the Student Code. Neither the name nor funding may be used to assist students to consume alcohol.

Duquesne University supports the Drug Free Schools and Community Act Amendments of 1989. This legislation promotes the adoption and implementation of a program to prevent the abuse of alcohol and illicit use of alcohol and other drugs by employees and students (see TAP 32). This program directs Duquesne University to compile and distribute educational material annually to each employee and student affiliated with the university.

One purpose of this material is to educate the campus community on the health risks involved with alcohol and drug use and abuse as well as the resources available for treatment. The policy also includes the legal consequences at federal, state, and local levels and possible University sanctions.

The drinking age in this state is 21 years or over. No person under 21 years of age is permitted to consume, transport, possess, or be in the presence of any alcoholic beverage or paraphernalia.

Violation of this policy will result in disciplinary action and sanctions may include, but are not limited to, a warning, written reprimand, fines, suspension, expulsion, mandatory participation in a the University alcohol and drug education program (CARES), an assessment from a licensed and approved facility, and/or successful completion of an approved alcohol or drug abuse assistance or rehabilitation program.

RESIDENCE LIFE POLICIES FOR ALCOHOL AND OTHER DRUGS

All matters relating to alcohol are governed by the Pennsylvania Liquor Code and related state statutes. As members of the general public of the Commonwealth, students are expected to have a full knowledge of these laws. As members of the resident body, students are required to observe Pennsylvania laws.

It is permissible to have beer or malt beverages in cans, wine, and liquor in individual rooms if the student is 21 years of age or older, all persons in the room are 21 years of age and older, and the alcohol has been properly registered. In no event are kegs, beer balls, bottled beer or malt beverages, boxed wine, bottled wine coolers, premixed alcohol products, or common sources of alcohol permitted in the living areas of the Living Learning Centers.

Alcoholic beverages are not permitted in St. Ann or St. Martin halls at any time. Students under the age of 21 are also prohibited from having full or empty alcohol containers and/or paraphernalia in the Living Learning Centers. This includes, but is not limited to, cans, bottles, shot glasses, and bongs/funnels.

In Assumption Hall, Duquesne Towers, Des Places, Vickroy Hall and Brottier all alcoholic beverages must be registered at the front desk of the hall prior to entrance and must be in its original container with clearly marked labels. Failure to register alcoholic beverages will result in disciplinary action. Registered alcohol is intended for a student's personal, individual use in their own private rooms. The amount of alcohol a student of legal age may sign in to the Living Learning Centers on a weekly basis is as follows:

- One case of beer or malt beverage (cans only); or
- One (0.75 liters) bottle of distilled spirits, i.e. whiskey, bourbon, vodka, etc.; or
- One bottle of wine (1.5 liter)

Students may not have open containers of any kind in common areas, lounges, hallways, elevators, etc. Residence Life staff members have the right to revoke any drinking privileges at any time at their own discretion. Any alcohol or alcohol-related accessories (taps, kegs, etc.) confiscated by a Residence Life staff member will not be returned. Alcohol-related behavior which is harmful to the person consuming the alcohol or to others or which is disruptive to the community will also be considered a violation of alcohol policy.

All students, regardless of age, are responsible for their actions while drinking alcoholic beverages, including being intoxicated while being in public. Any student may be cited by a University official for public intoxication. It is to the University official's discretion whether or not a student may be considered publicly intoxicated. Public intoxication includes, but is not limited to, endangering the safety of other students or the self.

All alcohol policy violations will result in disciplinary action including educational programming by Duquesne CARES.

The University strictly adheres to the federal and state laws, which prohibit the distribution or use of controlled substances. Students illegally possessing illicit drugs or paraphernalia, distributing or using a controlled substance will be subject to disciplinary action and possible criminal prosecution. In specific cases involving marijuana, the enforcement policy has been clarified to state that the detection of the odor of marijuana can constitute a violation.

DATE RAPE DRUGS

Date Rape occurs when someone is forced to have sexual contact with a person he or she knows, and the consequences can be physically and emotionally traumatic. Date Rape can occur without drugs, but is often associated with "date rape" drugs. The purpose of a date rape drug is to render the victim physically, or mentally incapable of preventing an assault.

It is important to remember that the number one date rape drug is alcohol, but those identified below are common drugs used in date rapes and you should be familiar with the names and risks associated with them.

Possession of any drug classified as a "date rape" drug is prohibited. Any student found to be in violation of this prohibition will be subject to disciplinary action, up to, and including expulsion.

Generally date rape drugs are liquid, colorless and odorless. They are powerful sedatives that can cause intense, long-lasting physical impairment, partial amnesia, and even death.

The most common date rape drugs – also called "club drugs" – are:

- Flunitrazepam (Rohypnol), also called roofies and Ecstasy (GHB): Are predominantly central nervous system depressants that can create a drugged or drunk feeling. They are colorless, tasteless, odorless, and can be slipped into a drink and unknowingly ingested. They leave the

body's system quickly making detection almost impossible. They are used by themselves or combined to render a victim submissive (www.drugfree.org/drug-guide/rohypnol).

- Ketamine, also called Special K: It is a dissociative anesthetic that distorts perceptions of sight and sound and produces feelings of detachment from the environment and self. Low-dose intoxication results in impaired attention, learning ability, and memory. At higher doses, Ketamine can cause dreamlike states and hallucinations; and at higher doses, delirium and amnesia (www.drugfree.org/drug-guide/ketamine).

- Alcohol: Most common rape drug available. It is a depressant that can cause you to lose your inhibition and control of yourself and your actions. Alcohol hinders one's ability to give sexual consent and is the most common drug associated with rape.

Protect yourself against "Date-Rape"

- Never accept a drink you did not see being opened or opened yourself
- Never let your drink out of your hand or your sight
- Go to parties, and leave parties with your friends
- If you believe you have been a date rape victim- seek help immediately by calling Campus Public Safety at 412.396.2677 (COPS), and asking for transport to the closest emergency room.

HEALTH EFFECTS

Any individual choosing to abuse alcohol and/or drugs needs to be made aware that there are a wide variety of health risks associated with this behavior. Chemical dependency or addiction to alcohol and/or other drugs is a chronic progressive illness that, if untreated, can be fatal.

Long term effects of alcohol abuse or alcoholism may include liver damage, especially cirrhosis (scarring of the liver); heart disease, including congestive heart failure; ulcers and gastritis; malnutrition; cancer of the mouth, esophagus or stomach; brain damage and possible psychosis; and fetal alcohol effect and fetal alcohol syndrome in infants of drinking mothers.

Use of illicit drugs may pose some of the following hazards:

- Cocaine results in changes in blood pressure, heart and breathing rates, severe weight loss and liver damage, and it may cause seizures, coma and possibly death.
- Marijuana can affect coordination, short-term memory, visual tracking and heart rate. Regular use can produce reproductive system changes, damage to the respiratory system (lungs) and the immune system.
- Depressants in large doses can cause altered perception, blurred speech and a staggering gait. Very large doses can cause respiratory depression, coma and possibly death. In combination with alcohol, another depressant, these effects can be intensified and this multiplies the risk.
- Hallucinogens, like phenylcyclidine (PCP), LSD, Ecstasy can produce a range of effects that include slowed time and body movement, worsened muscular coordination and dulled senses. Speech can be blocked and often incoherent. Violent episodes may result in self-inflicted injury. Increasing use may produce persistent memory problems and speech difficulties, depression, anxiety and violent behavior. Large doses may result in convulsions, coma, heart and lung failure and possible stroke.
- Narcotics (codeine, heroin, and a variety of prescription medications) will produce an initial feeling of euphoria followed by drowsiness, nausea and vomiting, constricted (shrinking) pupils, watery eyes and itching. Overdose may produce slow and shallow breathing, clammy skin,

convulsions, coma and possible death. Due to frequent use of needles with this class of drugs, infectious diseases, including AIDS are a major concern.

- Inhalants, volatile breathable substances, which are abused by sniffing or inhaling, may interfere adversely with breathing or produce irregular heartbeats that can lead to heart failure and death. Long-term use has resulted in bone marrow damage, drastic weight loss, impairment of vision and memory, and the ability to think clearly.

It is not necessary to become addicted to or dependent upon any of these drugs to experience a wide variety of personal and/or family problems. "Harmful involvement" with any of the drugs mentioned here may show up in a number of different ways. Use of alcohol and/or the other drugs may result in poor judgment; poor coordination; lessened concentration; slower reaction times; impaired eyesight; slips and falls; self-induced burns due to fire; injuries from improper use of hazardous materials, tools or shop machinery on the job or in class; and motor vehicle crashes. In addition, personal motivation and productivity may decline. Quality of work and cooperation with others may also be jeopardized.

The impact of alcohol abuse and illicit alcohol and other drug use is also seen in both family and social circles. Continued use and abuse often times may increase problems in existing dysfunctional family/social systems or may give rise to the development of dysfunctional family/social systems impacting on significant others, spouses, children, parents, and friends. Friendships and work relationships may suffer and personal relationships, including marriages, very often become strained to the point of separation or divorce. The incidence of alcohol and other drug use involved in car crashes, violent and petty crime, and domestic violence and sexual assault is well documented and is very high.

It is important to note that while we as individuals may not be personally affected by the behaviors and consequences noted above, each of us at one time during our lives will probably have to deal with a friend, family member, or co-worker who is struggling with his or her use/abuse of alcohol and/or other drugs. It is therefore important for all of us to know how we can access available resources in our community.

Respecting your body and avoiding addictions is one of the Expectations of a Duquesne University student. Duquesne University encourages individual members to reach their full potential as persons and citizens, unencumbered by destructive or counterproductive patterns of behavior.

For additional information on the impact of drug use and abuse, see http://www.drugabuse.gov/drugs-abuse/commonly-abused-drugs/health-effects

PREVENTION AND EDUCATION

Duquesne University offices, including DU CARES (412.396.5834), University Counseling and Well-Being Center (412.396.6204), and Health Service (412.396.1650) provide student counseling and specific group programs on alcohol and drug abuse and misuse issues. The University distributes literature informing students of the dangers of drug and alcohol abuse within and outside the campus community, and provides information on sanctions that may be imposed for violation of this policy.

Prevention programs are offered to all individuals whether or not they have chosen to use illicit drugs or alcohol. Recognizing that most students reach 21 years of age during their college experience, the University's educational program incorporates material on responsible decision-making that addresses alcohol and other lifestyle choices. Program efforts are directed toward creating a supportive campus

environment that reinforces non-use of illicit drugs and the responsible, legal use of alcohol. Ideally, these program efforts prevent individuals from ever abusing alcohol or other drugs.

Specific targeted programs are offered annually during Orientation and Alcohol Awareness Week to the general student population, and to specified identified "high risk" student populations. These additional programs include Greeks Advocating the Mature Management of Alcohol, athletes, freshmen students, and the general Greek population. The programs include, but are not limited to, education on risks of illegal and excessive use of alcohol and other drugs, issues surrounding hosting parties, and other issues of alcohol and drug use/misuse/abuse specific to the University setting.

An extensive offering of alternative, non-alcohol activities are scheduled for all students.

REVIEW OF SERVICES

A review of the alcohol and other drug programs implemented through DU CARES occurs on an annual basis. This is completed by a contracted outside evaluator, currently using funding via a grant from the Pennsylvania Liquor Control Board. The evaluation is reviewed and shared with the Coordinator of DU CARES, the Director of Residence Life and the Pennsylvania Liquor Control Board as part of their grant requirements. This evaluation reviews stated goals, programs, resources and outcomes that are reviewed and updated on a yearly basis. DU CARES, under the umbrella of the Office of Residence Life, gathers data using a variety of surveys and evaluation tools that are nationally recognized and recommended, such as the CORE Survey, E Check Up To Go, education class evaluations, and feedback from Faculty and Student groups who utilize CARES educational programs and workshops. The feedback and evaluation tools are used to review programs in place and to help identify and target programming as needed and wanted. The review is housed in the Office of DU CARES.

INFORMATION AND ASSISTANCE FOR ALCOHOL OR DRUG ABUSE

Alcoholics Anonymous	412.471.7472
Gateway Rehab	1. 800.472.1177
Greenbriar Rehab	1.800.637-HOPE
Narcotics Anonymous	412.391.5247
Onala Recovery	412.566.9220

POSSIBLE SANCTIONS

University Sanctions
University sanctions for violation of this policy range from attendance at a CARES class, CARES Individual Counseling, Assessment and Treatment Program, probation, Living Learning Center Suspension, University Suspension, or University Expulsion.

FEDERAL, STATE, AND LOCAL LAW

The applicable legal sanctions under federal, state, and/or local laws include, but are not limited to, a monetary fine, suspension of motor vehicle operating privileges, imprisonment, community service, counseling/treatment, or completion of a mandatory education program.

Local and State Alcohol and Drug Penalties

Violation	Imprisonment (1st offense)	Fine/Sanction (1st Offense)
Underage drinking or possession of alcohol	0 to 90 days	Suspension of driver's license and/or up to $500
Fake ID's used to obtain alcohol	0 to 90 days	Suspension of driver's license and/or up to $500
Marijuana possession 30 grams or less	30 days	$500
Marijuana possession over 30 grams	up to 1 year	$5,000
Manufacturing or selling marijuana and other controlled substances	1 to 10 years	$5,000 to undefined monetary fine

Commonly Cited City of Pittsburgh and Pennsylvania Law Violations

Public Intoxication: When an individual appears in any public place under the influence of alcohol or a controlled substance.

Providing Alcohol to Minors: When an individual purchases or serves alcohol to those under the age of 21.

Underage alcohol possession/consumption: When an individual, being less than 21 years of age, attempts to purchase, purchases, consumes, possesses, or knowingly and intentionally transports any liquor or malt or brewed beverages.

Open Container of Alcohol: No persons shall consume, carry or possess an open container of alcoholic beverages in the public right-of-way or on private property without the consent of the landowner or tenant.

Carrying a False ID Card: An individual, being under 21, possesses an identification card falsely identifying that person as being 21 years of age or older or obtains or attempts to obtain liquor or malt or brewed beverages by using the identification card of another or by using an identification card that has not been lawfully issued to or in the name of that person who possesses the card.

Possession of Marijuana: When an individual has possession of marijuana, the sentence is dependent on the amount of marijuana in possession.

Sale, Distribution and/or Cultivation of Marijuana: When an individual is accused of selling or manufacturing of marijuana, the potential sentence depends on the amount of marijuana in question.

Possession/use of a date rape drug: Any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than $30,000, or both; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than $60,000, or both (Federal Controlled Substance Act, http://www.fda.gov/RegulatoryInformation/Legislation/ucm148726.htm#cntlsbd).

THE HIGHER EDUCATION AND OPPORTUNITY ACT

PLEASE NOTE: The Higher Education Opportunity Act (HEOA) laws state that a student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance during the period beginning on the date of such conviction and ending after the interval specified in the following table:

If convicted of an offense involving the possession of a controlled substance, the ineligibility period is:

First offense ..... 1 year
Second offense ..... 2 years
Third offense ..... Indefinite

If convicted of an offense involving the sale of a controlled substance, the ineligibility period is:

First offense ..... 2 years
Second offense ..... Indefinite

A student whose eligibility has been suspended may resume eligibility before the end of the stated ineligibility period if: a) the student satisfactorily completes a drug rehabilitation program and passes two unannounced drug tests; or b) the conviction is reversed, set aside, or otherwise rendered nugatory.

Effective July 1, 2010, a student whose eligibility has been suspended due to a drug conviction may resume eligibility if the student successfully passes two unannounced drug tests conducted by a drug rehabilitation program.

Additional information, definitions, and specific requirements are available on the Department of Education's website www.ed.gov/policy/highered/leg/hea08/index.html.

POLICY DISTRIBUTION

Students should be aware of the rules and regulations outlined in the Duquesne University Code of Student Rights, Responsibilities and Conduct regarding alcohol and drugs. All matriculating students are notified annually of the address for the on-line Code through the distribution of bookmarks and through email at the beginning of each semester. Additionally, we will notify students of the need to review the Code of Student Rights and Responsibilities, and Conduct Code, including Alcohol and Other Drug Policies via email with their room assignment notification letters in the summer prior to starting school.

STUDENT POLICIES: FACILITIES USE POLICIES & PROCEDURES

I. INTRODUCTION AND PURPOSE

The following procedures maximize the positive use of campus facilities for the university and external communities and minimize unintended liability. All use of Duquesne University facilities must be related to the university's mission, have a Duquesne University sponsor, or meet necessary approval.

II. CATEGORIES OF PERMISSIBLE USE

The following provides descriptions of requests for use of university facilities which are permissible. Any uses outside of these categories require the written permission of a Vice President. Note, however, that any request requires compliance with specific procedural, scheduling and approval steps as further described in appendices.

1. University Sponsored Events
    a. University Events: These are events organized and sanctioned by the University, and are subject to the following requirements:
        1. The sponsoring University Department is exclusively responsible for the planning and execution of the event, including compliance with contracts, insurance and minors on campus policies.
        2. The event contact must be a full time faculty or staff member of a University Department.
        3. The event contact must be present for the entirety of the event.
        4. The sponsoring University Department is financially responsible for any costs] associated with the event and all costs are paid for through a university budget number.
    b. Student Events: These are events organized and sanctioned by the University, and are subject to the following requirements:
        1. The sponsoring University Student Organization must be in good standing with the Center for Student Involvement.
        2. The contact must be a member of the University Student Organization.
        3. The contact and the University Student Organization Advisor must be present at the entire event.
        4. The sponsoring University Student Organization is financially responsible for any costs associated with the event and will be paid for by the organization.
        5. The sponsoring University Student Organization is responsible for the planning and execution of the event.
        6. The sponsoring University Student Organization is responsible for the completion of all supplemental paperwork regarding approval from Public Safety, Dining Services and Duquesne Program Council.

2. Co-Sponsored University Events: These are events which are jointly planned and executed by any external organization and university department, student organization or office and are subject to the following requirements:
    a. The event benefits and supports the Mission of Duquesne University and has a direct affiliation to a department or school within the University.
    b. The university department co-sponsoring the event is actively involved with its planning, including compliance with contracts, insurance and minors on campus policies.

c. A representative from the co-sponsoring university department is present for the entirety of the event.
d. Duquesne University is prominently displayed on all event literature (external co-sponsor is not permitted to use university logos without explicit permission).
e. Duquesne University students receive free admission (if admission is charged).
f. The co-sponsoring university department has an opportunity to promote its programs through speaking or display of printed materials.

3. External Organizations: External organizations seeking to use university facilities are subject to strict policies and procedures and must contact the Conference Services department or Power Center Ballroom.

III. STUDENT EVENT RULES

- Space must be requested with sufficient time to process- No events maybe requested less than 24 hours (working hours) notice.
- If the space requested is not available, a comparable space will be assigned.
- No rooms will be assigned for study groups or classes.
- Organizations must be currently recognized and registered through the Center for Student Involvement in order to reserve a room.
- A confirmation will be sent within 2-4 days depending on the request. Confirmation is based on availability, priority, and the discretion of the Student Events Coordinator.
- There are times when overtime is needed for events. Charges will be assessed closer to the event date by Facilities Management. Please refer to the Student Events Coordinator for any questions.
- Supplemental paperwork may be required for the event. If additional approval is required for the event, notification will be forwarded.
- Groups are NOT permitted to use glitter, water or open flames for any event. Please consult the Center for Student Involvement for decoration plans.
- Set up for the event must be submitted no later than 1 WEEK before the event. Failure to do so will result in the default set up of choice.
- Classrooms are reserved through a third party. Please plan accordingly. Classroom space is only reserved by semester.
- Failure to comply with state, local and federal laws, University Codes and policies, Mission Statement and/or Center for Student Involvement guidelines will result in refusal of rooms, revoking of funds and/or suspension of organization status.
- IF A LARGE AND/OR OFF CAMPUS ATTENDANCE is anticipated, THE REQUIRED EVENT PLANNING APPROVAL FORM MUST BE COMPLETED.
- The Event Planning Approval Form must be completed no later than 3 weeks prior to the event. All signatures must be obtained before this form is submitted. Failure to complete this form in its entirety WILL result in the cancellation of the event. ALL signatures must be received before the 3 week deadline has expired. NO EXCEPTIONS WILL BE ACCEPTED.

Events may not be scheduled during times when the Union Information Center is closed. The Union Information Center is open the following times during the academic year:

Monday – Wednesday ..... 8:30 a.m. – Midnight
Thursday & Friday ..... 8:30 a.m. – 1:00 a.m.
Saturday ..... 10:00 a.m. – 1:00 a.m.
Sunday ..... 10:00 a.m. – Midnight

These hours change during breaks and summer.

IV. STUDENT EVENTS POLICY

All requests for student events with large attendances MUST be received at least three weeks prior to the proposed event date in order to be considered.

Duquesne University faculty or staff of the sponsoring department or faculty/staff advisor of sponsoring student organization **MUST be present at least one half hour before the event begins and remain until all participants at the event have vacated the event following its conclusion. The Event Planning Approval Form verifying intent to the do this must be signed by the Faculty/Staff member/advisor and submitted to the Center for Student Involvement at least three weeks prior to the event date or the reservation will be cancelled.**

If the faculty/staff member/advisor signs the Event Planning Approval Form and fails to be present at the event and does not provide a faculty/staff designee, refusal of room reservations, revoking of funds and/ or suspension of organization status will occur.

The above mentioned faculty/staff member/ advisor is responsible for ensuring that the following guidelines are implemented. If the group is found to knowingly falsify any information or guidelines stated below will have their status immediately revoked from the Center for Student Involvement and will be placed on immediate suspension.

If guests from outside the Duquesne campus community (students, faculty, staff, parents/families of students, alumni are considered to be part of the campus community) are anticipated, Public Safety officer(s) must be hired by the sponsoring department/student organization to monitor the event. If events are advertised or promoted in ANY way to outside guests (i.e. word of mouth, social media, etc.), the sponsoring department/organization must call Public Safety (412.396.6004) to arrange for Public Safety coverage of event at least three weeks prior to the event.

If guests from outside the Duquesne campus community are not anticipated, it is the responsibility of the sponsoring organization to check for proper Duquesne University identification. The Duquesne University faculty or staff member of the sponsoring department or Faculty/Staff advisor of the sponsoring student organization **MUST** identify himself/herself to the Public Safety Officers upon arrival and specify any special instructions for the officers. Metal Detectors may be required depending upon anticipated attendance. Public Safety will determine what events require metal detectors and, if metal detectors are required, will provide an officer(s) to attend the metal detector while it is in use. The sponsoring department/student organization will pay the required cost of the necessary Public Safety Officers.

All other policies are subject to change at the discretion of the Center for Student Involvement.

Failure to comply with state, local and federal laws, University Code and policies, Mission Statement and/or Center for Student Involvement guidelines will result in refusal of rooms, revoking of funds and/ or suspension of organization status.

V. POWER CENTER EVENT POLICY

1. University Sponsored Event: This event type may be requested 45 days prior to desired date for Thursday - Saturday events / 90 days prior to desired date for Sunday-Wednesday events.

2. Co-Sponsored University Event: This event type may be requested at any time

3. External / Non-University Event: This event type may be requested at any time

4. Non-Approved Events:

   - Events planned by student organizations (exceptions include co-sponsored events and external events; all student events should be coordinated through the Center for Student Involvement).
   - Events where the audience consists entirely of university students (all student organization events should be coordinated through Center for Student Involvement).
   - Classes of any type.
   - External / Non-University Events that do not meet the affiliation requirements
   - Wedding receptions where the bride, groom or a parent of either is not an alumni, current student or employee of the university.

STUDENT POLICIES: GIFT CARD POLICY

When student organizations receive gift cards as prize giveaways from local restaurants or bars for free parties, bar specials, or anything which may involve alcohol, the Center for Student Involvement must be informed immediately. Prizes which may be used to consume alcohol are not permitted since they involve considerable liability. The Center for Student Involvement will work with the student organization to determine if a substitution may be obtained from the establishment which donated the prize.

When student organizations give gift cards purchased with University funds as prizes, they must advise the Center for Student Involvement and have the gift card prize recipient complete and submit a Taxable Gift Card Authorization Form which is available from the Center for Student Involvement.

STUDENT POLICIES: GOOD SAMARITAN POLICY

Student health and safety are primary concerns of Duquesne University. A student and/or organizations may be reluctant to seek medical help because of potential disciplinary consequences for themselves or the person in need of assistance. Since these emergencies are potentially life threatening, the Good Samaritan Policy ensures the health and safety of all community members.

Students are expected to contact the Office of Public Safety 412-396-COPS (2677) when they believe that medical assistance is needed for an individual. The Department of Public Safety will assist the individuals by directing fire and ambulance emergency crews to the scene or by taking other protective measures. When off-campus, call 9-1-1.

Students and/or organizations that seek assistance from these sources, the individual assisted, and others involved will not be subject to University disciplinary action with respect to the alcohol or drug policy.

This policy does not preclude disciplinary action regarding other violations of University standards, such as causing or threatening physical harm, sexual violence, damage to property, harassment, hazing, etc. Students should also be aware that this University protocol does not prevent action by local and state authorities. In order for this policy to apply, the intoxicated student(s) must agree to timely completion of recommended alcohol/drug education activities, assessment, and/or treatment depending on the level of concern for student health and safety. Serious or repeated incidents will prompt a higher degree of medical concern. Failure to complete recommended follow-up will normally result in disciplinary action. Likewise, organizations involved in an incident must agree to take recommended steps to address concerns.

STUDENT POLICIES: HAZING

Duquesne University adheres to all state, local and federal laws and guidelines in all matters. Thus, the anti-hazing policy is consistent with the Commonwealth of Pennsylvania's prohibitions on hazing activities.

No organization, group, chapter, colony, student or alumnus shall conduct nor condone hazing activities. Hazing activities are defined as:

Any action or situation which recklessly or intentionally endangers the mental or physical health or safety of a student or which willfully destroys or removes public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization operating under the sanction of or recognized as an organization by an institution of higher education. The term shall include, but not be limited to, any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, liquor, drug or other substance, or any other forced physical activity which would subject the individual to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct which could result in extreme embarrassment or any other forced activity which could adversely affect the mental health or dignity of the individual, or any willful destruction or removal of public or private property. For purposes of this definition, any activity as described in this definition upon which the initiation or admission into or affiliation with or continued membership in an organization or acceptance by other members of the organization is directly or indirectly conditioned shall be presumed to be "forced" activity, the willingness of an individual to participate in such activity notwithstanding.

The express or implied consent of the victim will not be a defense. Apathy or acquiescence in the presence of hazing is not a neutral act; it is a violation of the Student Code.

STUDENT POLICIES: HEALTH INSURANCE POLICY – MANDATORY

Duquesne University is concerned about the health and well-being of our students and understands the importance of acquiring adequate health insurance. Therefore, the University has a Hard Waiver Policy for student health insurance. This means that all international students, all full-time undergraduate and graduate students are required to have medical insurance and provide verifiable proof of coverage.

All full time students who do not provide the required information will automatically be enrolled in the Student Health Insurance plan. One half of the premium will be billed to your Student Account in the fall; and the remaining balance will be billed in the spring. You can provide proof of coverage or register for the University's Student Health Insurance plans quickly and easily:

1. Log onto: https://www.gallagherkoster.com click on College and University Students, and select Duquesne University Domestic or Duquesne University International from the drop down menu.

2. Click on 'Student Waive/Enroll Forms'. You will be required to log in to submit a waiver or enrollment form. Your User ID and Password are…

   User ID – Duquesne University Email Address
   Password – Student's Banner number which appears on your Student Account on-line bill (Ex. D00000006)

You can call 1.877.344.9795 for information. You can also email questions to: info@gallagherkoster.com.

STUDENT POLICIES: IMMUNIZATION

Vaccine preventable diseases are a major health concern on college campuses. Since immunization is widely regarded as one of the world's most effective tools for protecting public health, Duquesne University has established a Pre-Entrance Health Immunization Policy for all incoming students (freshmen, transfer students and fellows). Documentation of the following immunizations is required prior to registration for classes:

1. Meningococcal Meningitis vaccine is required for students living on campus as mandated by Pennsylvania law (A waiver is available).

2. Measles, Mumps and Rubella (MMR) (two doses). The Schools of Health Sciences, Nursing and Pharmacy have specific immunization requirements, as a result of their clinical and internship program requirements, and these requirements will not be waived.

Although not required, the following vaccines are strongly recommended:

1. Varicella Vaccine (for those students not protected against chicken pox).

2. Hepatitis B Vaccine (three doses).

3. Tetanus, Diphtheria, Pertussis (DTP) - within 10 years of last injection.

4. Polio Vaccine

A Medical Health History form and a completed Immunization Record must be returned to Health Service prior to registration.

A student may be granted a medical exemption from immunization based upon written certification from a licensed physician, stating that the immunization may be detrimental to the health of the student and is not recommended by the physician. The written certification must contain the physician's signature and medical license number.

A religious exemption from immunization may be granted based upon a student's written and notarized statement setting forth her/his specific objection to the required vaccination based upon religious grounds. The University will evaluate each student's individual request for exemption on a case-by-case basis, and determine at its sole discretion whether or not a waiver should be granted.

If an outbreak of Measles, Mumps or Rubella occurs, any student who has not provided proof of immunization will be prohibited from living on campus or attending classes on campus even though they were granted an exemption, and will be excluded from living on campus or attending classes for fourteen days after the last case. There will be no reimbursement of tuition or fees if this situation should occur.

Students wishing to request an Immunization Exemption should submit a request, in writing, to the Executive Vice President for Student Life.

STUDENT POLICIES: INVOLUNTARY LEAVE OF ABSENCE

In extraordinary circumstances, the University may place a student on an involuntary leave of absence.

The University maintains a Student Health Service and a University Counseling Center to serve the physical and emotional needs of students. Students whose needs are beyond the resources of these offices will be referred to off-campus facilities and service providers when possible. However, a student who cannot adequately be helped by the available facilities, and/or refuses to accept and follow recommended emotional or medical treatment, and/or the student's behavior renders them unable to effectively function in the residential or University community may be required to leave the University following the procedures below:

1. When, in the opinion of a professional member of the University Counseling Center or Health Service, a student is unable to be adequately helped by either office or by other available facilities, and that the student's condition renders them unable to function in the University community without harming themselves or others and/or disrupting the educational mission of the institution, the staff member shall notify the Executive Vice President for Student Life or designee of the situation as soon as possible.

2. The Executive Vice President for Student Life, or designee, may require a mandatory assessment if they believe, based on the information available, that a student's condition renders him/her unable to function in the University community without harming themselves or others and/or disrupting the educational mission of the institution.

3. When the Executive Vice President for Student Life receives notification under paragraph (1), the Executive Vice President for Student Life or designee will seek professional opinion as appropriate, and confer with the student if possible. The student may be required to submit other medical and/or psychological documentation secured independently for consideration and may be accompanied by a support person (friend, relative, faculty member, etc.) to scheduled appointments with University personnel. Failure to appear for a mandatory assessment may result in an involuntary leave of absence without further process.

4. The Executive Vice President for Student Life will receive and consider the input from the appropriate University personnel. If the Executive Vice President for Student Life concurs with the opinion that the student should leave the University, the Executive Vice President for Student Life or designee may consult with the student's parent(s), guardian, spouse, or other close relative. If the student declines to withdraw from the University, the Executive Vice President for Student Life may authorize an involuntary leave of absence.

5. An involuntary leave of absence will normally be for a minimum of one full semester. Following that period, a student may apply for re-enrollment by completing the application for re-enrollment form which will include submission of a plan that addresses the condition that gave rise to the student's need for leave (i.e., need for ongoing psychological or medical care; ability to assume class participation). If the student intends to live on campus, the plan will also state how they will transition back into the campus community.

6. The student's plan will be reviewed by the University Support Team and a recommendation will be made to the Executive Vice President for Student Life who will decide if the student's request to re-enroll shall be granted or denied. The decision of the Executive Vice President for Student Life is final.

STUDENT POLICIES: POSTING

Posting or distribution of printed materials in or on University buildings shall be in accordance with the Mission of the University and regulations established for each building. For further information, contact the administrative offices for each building.

CERTIFICATE OF SERVICE

I certify that on October 23, 2018, the foregoing Joint Appendix was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Stanley J. Brown
Stanley J. Brown