

No. CA 23-00928

**IN THE SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FOURTH DEPARTMENT**

MARIA FERNANDA ASTIZ, PH.D.; STEVEN MADDOX,
PH.D.; MATTHEW MITCHELL, PH.D.; and KATHRYN
F. WILLIAMS, PH.D.,

Plaintiffs-Appellants,

-against-

CANISIUS COLLEGE,

Defendant-Respondent.

On Appeal from the Supreme Court, Erie County, Commercial Division
Hon. Emilio Colaiacovo
Index No: 816250/2020

***AMICUS CURIAE* BRIEF OF
THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

GLADSTEIN, REIF & MEGINNISS, LLP

Kent Y. Hirozawa

39 Broadway, Suite 2430

New York, NY 10006

(212) 228-7727

khirozawa@grmny.com

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Risa Lieberwitz

Aaron Nisenson

Edward Swidriski

555 New Jersey Avenue NW, Suite 600

Washington, D.C. 20001

(202) 737-5900

legal.dept@aaup.org

*Attorneys for Amicus Curiae American Association
of University Professors*

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INTEREST OF AMICUS CURIAE

The American Association of University Professors (“AAUP”) is a non-profit organization whose membership consists of over 40,000 faculty members, librarians, graduate students, and other academic professionals. The AAUP’s mission is to advance academic freedom and shared governance; to define fundamental professional values and standards for higher education; to promote the economic security of faculty, academic professionals, graduate students, post-doctoral fellows, and all those engaged in teaching and research in higher education; to organize the higher education community in pursuance of its shared goals; and to ensure higher education’s contribution to the common good.

Since its founding in 1915, the AAUP has played a central role in establishing and maintaining academic freedom and tenure as essential values in American higher education. *See generally* Walter P. Metzger, *The 1940 Statement of Principles on Academic Freedom and Tenure*, 53 LAW & CONTEMP. PROBS. 3 (1990); William A. Kaplin & Barbara A. Lee, THE LAW OF HIGHER EDUCATION 706–07 (5th ed. 2013) (hereinafter, “LAW OF HIGHER EDUCATION”). Throughout this time, the AAUP—both independently and in concert with other higher education organizations—has published numerous reports, statements, and policy documents, including the seminal *1940 Statement of Principles on Academic Freedom and Tenure*, AAUP

POLICY DOCUMENTS AND REPORTS 13–19 (11th ed. 2015) (hereinafter, “*1940 Statement*”).

AAUP statements are widely respected and followed by American colleges and universities, and courts—including the Supreme Court of the United States—have recognized them as authoritative expressions of foundational principles adhered to by the academic profession. *E.g.*, *Bd. of Regents v. Roth*, 408 U.S. 564, 579 n.17 (1972); *Tilton v. Richardson*, 403 U.S. 672, 681–82 (1971) (recognizing institutions’ subscription to the *1940 Statement* as evidence that they were “characterized by an atmosphere of academic freedom rather than religious indoctrination”); *Gray v. Bd. of Higher Educ.*, 692 F.2d 901, 907 (2d Cir. 1982) (observing that “AAUP policy statements have assisted the courts in the past in resolving a wide range of educational controversies” and collecting supporting caselaw); *Adamian v. Jacobsen*, 523 F.2d 929, 934–35 (9th Cir. 1975) (relying on AAUP advisory letter to further interpret university policy on extramural speech that was “adopted almost verbatim” from the *1940 Statement*); *McAdams v. Marquette University*, 914 N.W.2d 708, 730–33 (Wis. 2018) (relying on the *1940 Statement* and subsequent AAUP-authored explanatory documents to construe the scope of “academic freedom” guaranteed by a university’s faculty handbook).

In addition, the AAUP frequently submits amicus curiae briefs to federal and state courts in cases that implicate AAUP policies and that raise issues important to

faculty members and the broader higher education community. *E.g.*, *Wortis v. Trustees of Tufts College*, No. SJC-13472 (Mass. 2023); *DeWeese-Boyd v. Gordon College*, 163 N.E.3d 1000 (Mass. 2021); *Pernell v. Lamb*, No. 22-13992 (11th Cir. 2023); *McAdams*, 914 N.W.2d at 708; *NLRB v. Yeshiva University*, 444 U.S. 672 (1980); *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967); *Demers v. Austin*, 746 F.3d 402 (9th Cir. 2014).¹

The AAUP has a particularly strong interest in participating as amicus in the present case due to the ramifications that this Court’s ruling could have for the future of higher education in the state of New York and across the United States. As AAUP statements demonstrate, the academic profession has long understood a guarantee of tenure to mean that a college cannot terminate a tenured faculty member’s appointment except in accordance with a narrow set of pre-established circumstances. The existence of truly extraordinary “financial exigencies” is one of the few situations that may allow a college to terminate a tenured faculty appointment, but for that exception to apply, a college must meet an exacting substantive definition of “financial exigency” and must comply with crucial procedural requirements. The AAUP’s brief aims to assist this Court by explaining how Canisius College failed to satisfy the most basic aspects of these substantive

¹ A list and summary of other amicus briefs recently filed by the AAUP is available online at <https://www.aaup.org/our-work/legal-program/amicus-briefs/>.

and procedural requirements, and how a decision that fails to hold the College accountable for these violations will undermine tenure, academic freedom, and institutions of higher education in general.

SUMMARY OF THE ARGUMENT

I. When Plaintiffs earned tenure at Canisius College, the College became bound as a matter of contract law to not terminating Plaintiffs' service except under certain narrow circumstances recognized by the longstanding custom and practice of the academic community. AAUP statements provide authoritative guidance as to the contours of that custom and practice. As courts routinely recognize, the AAUP is a leading authority on the meaning of tenure and related principles vital to the academic profession. The Canisius College Faculty Handbook—which at its outset explicitly identifies its binding contractual status—incorporates crucial language concerning the meaning of tenure that is taken directly from the AAUP's *1940 Statement of Principles on Academic Freedom and Tenure*. Since 1940, the AAUP has issued additional statements further explaining and developing important substantive and procedural aspects of tenure consistent with the *1940 Statement*.

II. As AAUP statements explain, a tenured faculty appointment may be terminated “under extraordinary circumstances because of a demonstrably bona fide financial exigency.” Substantively, this requires “a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole” and

that “cannot be alleviated by less drastic means” than the termination of faculty appointments. Procedurally, faculty terminations due to financial exigency require compliance with processes that safeguard basic due process rights and that maintain respect for the principle of shared governance by ensuring meaningful participation by the faculty. At a bare minimum, such processes must feature meaningful involvement by the faculty in assessing whether the claimed financial exigency actually exists and whether it necessitates faculty terminations, as well as faculty participation in questions concerning the implementation of any truly necessary terminations. Close adherence to these substantive and procedural requirements is essential to the preservation of tenure, which in turn safeguards academic freedom and thereby ensures that colleges are able to fulfill their purpose of furthering the common good. Leaving decisions regarding the termination of tenured faculty appointments due to “financial exigency” to the unfettered discretion of college administrators would render tenure an empty promise and would have disastrous consequences for higher education.

III. Canisius College failed to meet the minimum standards that govern the termination of tenured faculty positions due to “financial exigency.” Substantively, the College has never adequately demonstrated that its purported financial difficulties met the exacting requirements necessary to justify Plaintiffs’ termination. In addition, the College failed to respect basic procedural requirements before

terminating Plaintiffs, including by failing to properly declare and demonstrate the existence of a bona fide financial exigency. This Court should reverse the order granting the College's motion for summary judgment and dismissing the complaint.

ARGUMENT

I. AAUP statements provide authoritative guidance concerning Canisius College's contractual obligations to Plaintiffs.

Plaintiffs earned tenure at Canisius College. As a result, the College promised to comply with various obligations that have binding contractual status, including those contained in the Canisius College Faculty Handbook.² As the Faculty Handbook's opening line states, "[t]he *Faculty Handbook* is a part of the contract of full-time faculty of the College." A115.³ Among the promises made by the College to Plaintiffs are the two following contractual guarantees concerning tenure:

- First, the Faculty Handbook states that "[a]fter the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except . . . under extraordinary circumstances because of financial exigencies." A140.

² It is undisputed that the provisions of the Canisius College Faculty Handbook relevant to this case are a binding contract.

³ "A" refers to the Record on Appeal filed by Appellants.

- Second, the Faculty Handbook states that “[t]ermination of a continuous appointment because of financial exigency should be demonstrably bona fide.” A141.

An issue central to the resolution of this appeal is whether Canisius College breached these contractual provisions when it terminated Plaintiffs. AAUP-authored documents and standards provide authoritative guidance in answering that question for two reasons.

First, the College did not pluck the language of these contractual provisions out of thin air. On the contrary, it deliberately copied both of them, verbatim, from the *1940 Statement of Principles on Academic Freedom and Tenure*, a seminal AAUP document. *1940 Statement* at 15 (containing the text that Canisius College copied into the first provision); *id.* at 16 (containing the text that Canisius College copied into the second provision). Because the College took this language directly from the *1940 Statement* and incorporated it into the Faculty Handbook, AAUP statements explaining and interpreting the *1940 Statement* are highly relevant to construing the College’s contractual obligations toward Plaintiffs. See Ralph Brown, Jr. and Matthew Finkin, *The Usefulness of AAUP Policy Statements*, 64 AAUP BULLETIN No. 1, at 6 (1978) (AAUP documents “serve as an aid to the interpretation of institutional regulations or policies that derive from AAUP sources”). Courts have recognized the AAUP’s own understanding of the *1940 Statement* and the principles

expressed therein—including tenure and academic freedom—as authoritative. *See Mayberry v. Dees*, 663 F.2d 502, 513 (4th Cir. 1981) (noting that the AAUP was a framer of “the 1940 Statement of Principles on Academic Freedom and Tenure, the fundamental document on the subject”); *Adamian*, 523 F.2d at 935 (“That the University has adopted the [1940] Statement of Principles virtually word for word suggests that it also accepts the narrowing interpretation placed on it by the Association.”); *McAdams*, 914 N.W.2d at 730, 733.

Second, AAUP statements express the prevailing custom and usage of the academic community and are therefore useful in discerning the meaning of the College’s contractual guarantees of tenure, including the circumstances under which extraordinary financial exigencies may permit the termination of tenured faculty appointments. *See* Brown and Finkin, *The Usefulness of AAUP Policy Statements*, at 6 (AAUP documents “express academic custom generally”); Steven Poskanzer, *HIGHER EDUCATION AND THE LAW* 20–21 (2002) (noting that “general custom and usage within the broader academic community [are looked to] to flesh out the terms of the institution-faculty contract”); *THE LAW OF HIGHER EDUCATION*, at 599 (noting that it is proper for a court to “look beyond the policies of the institution to the manner in which faculty employment terms are shaped in higher education generally” and that courts may therefore refer to “academic custom and usage” in resolving contractual disputes). Indeed, courts have found AAUP statements and

policies useful in resolving disputes over the termination of academic appointments and programs due to purported financial exigencies. *E.g.*, *Bignall v. North Idaho College*, 538 F.2d 243, 249 (9th Cir. 1976) (court adopted AAUP definition of tenure in a financial exigency situation); *Mabey v. Reagan*, 537 F.2d 1036, 1043 (9th Cir. 1976) (court found useful AAUP's definition of financial exigency in Regulation 4(c)(1) of the *Recommended Institutional Regulations*); *Browzin v. Catholic University of America*, 527 F.2d 843 (D.C. Cir. 1975) (court used AAUP policy as a guide in resolving operational questions in elimination of academic program); *Levitt v. Board of Trustees of Nebraska State Colleges*, 376 F. Supp. 945, 950 (D. Neb. 1974) (public college's response to reduced legislative appropriation conformed to AAUP policy).

The relevance of AAUP statements as a guide to academic custom and usage derives from the principle of contract law that “[c]ontracts are written, and are to be read, by reference to the norms of conduct and expectations founded upon them,” and from the fact that “[t]his is especially true of contracts in and among a community of scholars, which is what a university is.” *Greene v. Howard University*, 412 F.2d 1125, 1135 (D.C. Cir. 1969). The courts of this state have long employed “custom and usage” as a guide to contract interpretation concerning points on which a contract is silent or concerning terms particular to a given trade or industry. *E.g.*, *Hinton v. Locke*, 5 Hill 437 (1843) (“[W]hen there is nothing in the agreement to

exclude the inference, the parties are always presumed to contract in reference to the usage or custom which prevails in the particular trade or business to which the contract relates; and the usage is admissible for the purpose of ascertaining with greater certainty what was intended by the parties.”); *Beazley Ins. Co., Inc. v. ACE Am. Ins. Co.*, 880 F.3d 64, 69–70 (2d Cir. 2018) (applying New York law and explaining that, where a contract is silent on the meaning of an undefined term, the “courts ask whether . . . an established custom or usage provides a definition”); *Last Time Beverage Corp. v. F&V Distribution Co.*, 98 A.D.3d 947, 951 N.Y.S.2d 77 (N.Y. App. Div. 2d Dep’t 2012) (due to contractual silence, expert witness testimony established custom and practice in the industry); *Landmark Ventures, Inc. v. H5 Technologies, Inc.*, 152 A.D.3d 657, 658, 58 N.Y.S.3d 591, 593 (N.Y. App. Div. 2d Dep’t 2017) (“[T]echnical words . . . are to be interpreted as usually understood by the persons in the profession or business to which they relate.” (internal quotation marks and citations omitted)).

In the present case, any questions concerning the meaning of the “financial exigency” provisions of the *1940 Statement* that Canisius College imported into its contracts with Plaintiffs are well suited to consideration in light of academic custom and usage, as revealed by AAUP-authored documents. The *1940 Statement* was jointly formulated by the AAUP and the Association of American Colleges and Universities, and it has since been endorsed by more than 250 scholarly and

educational organizations and has been incorporated into hundreds of university and college faculty handbooks. See AAUP, *Endorsers of the 1940 Statement*, <https://www.aaup.org/endorsers-1940-statement>. Adherence to the *1940 Statement* has been recognized as one of the defining standards of an institution's inclusion in the broader higher education community. See LAW OF HIGHER EDUCATION, at 704. Courts, too, routinely look to the *1940 Statement* for guidance in understanding and applying tenure, academic freedom and other principles, including when they are faced with questions of contract interpretation. As one court has explained, the *1940 Statement* “represents widely shared norms within the academic community, having achieved acceptance by organizations which represent teachers as well as organizations which represent college administrators and governing boards,” and thus “the propriety of . . . considering [it] in interpreting [a] contract . . . could hardly be questioned.” *Browzin*, 527 F.2d at 847 n.8; accord *Adamian*, 523 F.2d at 934–35; *McAdams*, 914 N.W.2d at 730–33.

So too with AAUP statements and documents that derive from the *1940 Statement*, which by providing further elaboration as to the meaning of the *1940 Statement*, are relevant evidence of academic custom and usage. These derivative documents include the *Recommended Institutional Regulations on Academic Freedom and Tenure*, <https://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure> (hereinafter, “*RIRs*”) (noting that the

RIRs set forth “rules that derive from the chief provisions and interpretations of the *1940 Statement*”).⁴ One of the AAUP’s principal functions, often undertaken in collaboration with other higher education organizations, is the development of recommended policy standards. To that end, the *RIRs* address various subjects of concern to the academic community, including the termination of faculty appointments due to financial exigency. The *RIRs*—and other documents such as the AAUP report *Financial Exigency, Academic Governance, and Related Matters*, <https://www.aaup.org/report/financial-exigency-academic-governance-and-related-matters>, which further develops aspects of the *RIRs*—are valuable evidence of prevailing academic custom and usage. Indeed, countless public and private colleges and universities have used these AAUP policy recommendations as models for their own institutional procedures, with such policies appearing in university internal operating rules, faculty handbooks, by-laws, contracts, and collective bargaining agreements.

In sum, AAUP documents—particularly the *1940 Statement* and the *RIRs*—provide highly pertinent guidance that merits this Court’s consideration.

⁴ The *RIRs* were first formulated in 1957 and have been periodically revised to reflect the development of AAUP standards and practices.

II. As AAUP statements explain, a college’s termination of tenured faculty appointments due to financial exigency must comply with exacting substantive and procedural standards, strict adherence to which is necessary so as to preserve academic freedom and the integrity of higher education.

The *1940 Statement*’s allowance for the possibility that a college might be forced to terminate a tenured faculty appointment “under extraordinary circumstances because of financial exigencies,” *1940 Statement* at 15, has been given further explanation in subsequently issued AAUP statements and documents,⁵ including the AAUP’s *Recommended Institutional Regulations*. Regulation 4(c) of the *RIRs* sets out standards for such terminations, which include substantive and procedural components.

Substantively, that AAUP regulation specifies that the “extraordinary circumstances” that constitute “a demonstrably bona fide financial exigency” require

⁵ In 1925, the AAUP joined in formulating the *American Council on Education Conference Statement on Academic Freedom and Tenure*, which provided in relevant part that:

Termination of permanent or long-term appointments because of financial exigency should be sought *only as a last resort, after every effort has been made to meet the need in other ways and to find for the teacher other employment in the institution*. Situations which make retrenchment of this sort necessary should preclude expansions of the staff at other points at the same time, except in extraordinary circumstances.

BULLETIN OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS 11, 101 (1925) (emphasis added). This early document’s emphasis on the extraordinary nature of such terminations further demonstrates longstanding academic custom and practice.

“a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means.” *RIRs* 4(c)(1). Further explanation of this definition is provided by the AAUP report *The Role of the Faculty in Conditions of Financial Exigency*, AAUP POLICY DOCUMENTS AND REPORTS 292–308 (11th ed. 2015) (hereinafter, “*Conditions of Financial Exigency*”), which states that “[f]inancial exigency can legitimately be declared only when fundamental compromise of the institution’s academic integrity will result from prolonged and drastic reductions in funds available to the institution, and only when the determination of the institution’s financial health is guided by generally accepted accounting principles.” *Id.* at 303.

In a crisis involving genuine financial exigency, colleges and universities must adhere to certain minimum procedural requirements. Specifically:

[T]here should be an elected faculty governance body, or a body designated by a collective bargaining agreement, that participates in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of appointments have been pursued

RIRs 4(c)(1) (specifying that “feasible alternatives” that should be considered “include[e] expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration.”). The regulations go on to outline other core

procedural requirements if there is a determination that a condition of financial exigency exists, including that “[j]udgments determining where within the overall academic program termination of appointments may occur” should “be the responsibility of the faculty or of an appropriate faculty body,” and that the faculty or faculty body should also “exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated.” *Id.* In addition, the regulations specify that a faculty member targeted for termination due to financial exigency must be provided with certain procedural safeguards, including notice and “the right to a full hearing before a faculty committee.” *Id.*

These minimum procedural standards follow from the *1940 Statement*, which requires that any financial exigency forming the grounds for the termination of a tenured faculty member be “demonstrably bona fide.” They also flow from the principle of shared governance, the foremost articulation of which is found in the *1966 Statement on Government of Colleges and Universities*, AAUP POLICY DOCUMENTS AND REPORTS 117 (11th ed. 2015) (hereinafter, “*1966 Statement*”). That statement—jointly formulated by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges—calls for shared responsibility among the different components of institutional government (i.e., trustees, presidents, and faculty) and specifies areas of primary responsibility for each, with the weight of a component’s voice determined by the extent of its

responsibility for and expertise on a particular issue. The *1966 Statement* stipulates that “the faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process.” *Id.* at 120. Because such decisions directly concern “faculty status” and implicate “matter[s] of educational policy,” the AAUP has stressed that the faculty should be given “an *initial and decisive* role . . . in any deliberations over . . . release of tenured faculty members.” *Conditions of Financial Exigency* at 296 (emphasis in original).

Strict adherence by colleges and universities to these minimum requirements—substantive and procedural alike—is essential to the preservation of tenure. “Every college and university experiences some form of financial hardship at one time or another.” AAUP, *Financial Exigency, Academic Governance, and Related Matters*, available at <https://www.aaup.org/report/financial-exigency-academic-governance-and-related-matters>. Without a demanding substantive standard for assessing financial exigency, tenured faculty would be put at continual risk of being dismissed due to the perennial financial challenges that modern institutions of higher education face. Similarly, strict compliance with minimal procedural standards—the aim of which is to see that “faculty members [are] involved in consultation and deliberation at every stage of the process, beginning with a determination that a state of financial exigency exists”—is necessary “to

ensure that [the] definition of ‘financial exigency’ does not become an excuse for program elimination and the termination of tenured faculty positions when less drastic responses to institutional crisis are available.” *Conditions of Financial Exigency* at 304. These minimum standards therefore preclude any contention that a college has unilateral discretion to terminate tenured faculty members based on purported financial exigencies.

Protecting tenure is important because, as the Canisius College Faculty Handbook explains (again quoting the *1940 Statement*), tenure is “a means to certain ends,” namely, to ensuring academic freedom (the “freedom of teaching and research”) and “a sufficient degree of economic security to make the profession attractive to men and women of ability.” A140; *1940 Statement* at 14. Limitations on the dismissal of tenured faculty due to financial exigencies protect academic freedom by guarding against the possibility that a less-than-exigent financial reversal might be used as a pretext for removing controversial professors. In the absence of these restrictions, a college would also be free to eliminate tenured faculty positions even when exigent financial difficulties did not actually require such a drastic measure—a course of action that would erode the economic security that tenure is designed to promote and that would undermine academic freedom by making faculty more susceptible to financial pressures that can distort teaching and research. Without the minimum standards that the AAUP has derived from the *1940*

Statement, tenure would quickly become nothing more than an empty promise. The ultimate casualty would be the ability of colleges and universities to fulfill their mission as institutions dedicated to the attainment of the common good. *1940 Statement* at 14 (“Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.”).

The AAUP anticipates that the College may argue that it possessed unfettered discretion to dispense with these minimum requirements based on its own, unilateral judgment that sufficient financial difficulties existed to justify such a course of action. This Court should reject that argument. Permitting the College to violate minimum standards of the profession, at will and in its sole discretion, would not only contradict AAUP policies; it would undermine the most basic notion of a contractual obligation, given that the customs and practices of the profession are embodied in the contractual guarantees to which the College freely bound itself. From a broader perspective, the effects of allowing a college to renege on such obligations would ultimately lead to the debasement of institutional membership in the higher education community. Colleges and universities would be free to hold themselves out as members-in-good-standing of the academic community, enjoying the many benefits that derive from representing oneself to be an institution bound to fundamental standards of academic freedom and tenure, when in fact this would be

a mere pretense that they could shed when they detected an advantage in doing so. Colleges must not be given license to “sail under false colors,” and all that preventing that result requires is holding the College in this case to its promise. *See* AAUP, *1915 Declaration of Principles on Academic Freedom and Academic Tenure*, AAUP POLICY DOCUMENTS AND REPORTS 3, 5 (11th ed. 2015).

III. Canisius College’s termination of Plaintiffs violated the minimum substantive and procedural standards that govern the termination of tenured appointments due to financial exigency.

Canisius College’s termination of Plaintiffs, purportedly due to the College’s financial troubles, did not come close to satisfying the minimum substantive or procedural standards outlined in Part II.

Substantively, the record in this case does not show that whatever financial difficulties the College may have been experiencing actually met the exacting standard set forth in the *1940 Statement* and derivative AAUP policy documents. On the contrary, the record shows that the College never declared the existence of financial exigency, that the College’s President publicly denied that those circumstances existed, that the College’s own faculty budget working group stated there was no such exigency, and that a key College administrator—the Vice President for Academic Affairs—did not even know how “financial exigency” was defined when the College decided to terminate faculty members due to financial exigencies. A969. To the extent the lower court concluded that the College was in

fact experiencing financial exigency, its reasoning was not based on either a discernable standard or facts specific to Canisius College. A21 (suggesting that Canisius College may have been facing “financial exigency” because “usually most colleges are a house of cards anyway[], and I think that the COVID-19 pandemic exposed those”). At a minimum, the College has failed to demonstrate that there are no triable fact issues on this question, which makes the grant of summary judgment improper.

Procedurally, it is undisputed that the College failed to respect several basic requirements outlined in Part II. Those procedures require meaningful faculty involvement in, among other things, (1) “the decision that a condition of financial exigency exists or is imminent,” and (2) the decision “that all feasible alternatives to termination of appointments have been pursued.” *RIRs* 4(c)(1). But Canisius College provided no opportunity for meaningful faculty participation in assessing whether the claimed financial exigency actually existed, let alone in determining whether it necessitated the termination of faculty positions.

It is true that the College did not expressly incorporate language from the *RIRs* into the Faculty Handbook, but that should have no adverse bearing on Plaintiffs’ breach of contract claim. As explained above, the *RIRs* are based on, and are consistent with, the *1940 Statement*, and the provisions of the *RIRs* relied upon here merely expand upon language that the College chose to include in the Faculty

Handbook from the *1940 Statement*. Furthermore, regardless of whether AAUP documents are directly binding on the College, they remain highly relevant evidence of academic custom and usage. In any event, resolution of this appeal does not turn on the application of highly specific AAUP standards because Canisius College failed to adhere to even the most basic, minimum standards. If the College is not held to those minimum requirements in this case, then tenure is at risk of being rendered meaningless throughout this state's colleges and universities, and perhaps beyond. In order to preserve tenure, academic freedom, economic security, and the common good that results from institutions of higher education, the decision below should be reversed.

CONCLUSION

For the reasons stated above, the AAUP urges this Court to reverse the order granting the College's motion for summary judgment and dismissing the complaint.

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Respectfully submitted,

GLADSTEIN REIF & MEGINNISS LLP

By: s/ Kent Y. Hirozawa

39 Broadway, Suite 2430
New York, New York 10006
(212) 228-7727
khirozawa@grmny.com

Risa Lieberwitz
Aaron Nisenson
Edward Swidriski
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
555 New Jersey Avenue NW, Suite 600
Washington, D.C. 20001
Phone: 202-737-5900
Email: legal.dept@aaup.org

Attorneys for *Amicus Curiae*

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