IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STEVEN SALAITA,	)	
	)	Case No. 15 C 924
Plaintiff,	)	
	)	Hon. Harry D. Leinenweber,
v.	)	District Judge
	)	
CHRISTOPHER KENNEDY, *et al*.,	)	
	)	JURY TRIAL DEMANDED
Defendants.	)	

PLAINTIFF'S MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT

Plaintiff STEVEN SALAITA, by his attorneys LOEVY & LOEVY and the CENTER FOR CONSTITUTIONAL RIGHTS, respectfully requests that the Court grant Plaintiff leave to file the proposed First Amended Complaint attached to this motion as Exhibit A, which adds new factual allegations in support of a claim for spoliation of evidence.[1] In support, Plaintiff states as follows:

INTRODUCTION

In the three weeks since this Court dismissed Plaintiffôs state-law spoliation claim with prejudice, significant new facts have been disclosed by the Defendants that support a new claim for spoliation of evidence. Specifically, newly disclosed documentary evidence reveals that Defendant Wise and other University officials used their personal email accounts to send and receive communications about Professor Salaita, including emails about his termination and about this litigation itselfð and that they did so in order to avoid revealing material facts relevant to this litigation. By using personal email accounts to transact University business, and at least

[1] The proposed First Amended Complaint attached to this motion shows in redline Plaintiffôs proposed amendment.

for Defendant Wise, by adopting a practice of subsequently *deleting* emails sent from private accounts, Defendant Wise and other employees of the University admitted an intention to circumvent disclosure and retention requirements.

As a result of this conduct, important evidence central to Plaintiffôs claims in this case almost certainly was destroyed, all while Defendants were on notice of this civil litigation. Emails that have been deleted about the decision to terminate Professor Salaita would be important proof in Plaintiffôs case. Accordingly, Plaintiff requests that this Court reconsider its decision dismissing Plaintiffôs spoliation claim with prejudice and grant Plaintiff leave to file a First Amended Complaint.

DISCUSSION

I. Rule 15's Liberal Standards Regarding Amendments Apply Here

This Courtôs decision to dismiss Plaintiffôs spoliation claim with prejudice was an interlocutory order. Courts in this district are authorized to reconsider interlocutory orders where there has been a controlling or significant change in the facts since the submission of the issue to the court. *See Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990); *see also Caine v. Burge*, 897 F. Supp. 2d 714, 716-17 (N.D. Ill. 2012); *Ramada Franchise Systems, Inc. v. Royal Vale Hospitality of Cincinnati, Inc.*, 2004 WL 2966948, at *3 (N.D. Ill. Nov. 24, 2004) (Filip, J.). Plaintiffôs argument that the Court should reconsider its dismissal of the spoliation claim rests on newly discovered evidence that Plaintiff could not have presented to the Court earlier. *See Caisse Nationale De Credit Agricole v. CBI Industries, Inc.*, 90 F.3d 1264, 1270 (reconsideration is appropriate when the moving party shows that evidence was unknown to him prior to the Courtôs decision and could not have been discovered by reasonable diligence).

Where a court is asked, based on newly discovered evidence, to grant leave to amend a complaint and to reconsider a prior decision dismissing claims with prejudice, the liberal standard in Rule 15 governs the courtôs analysis. *Cf. Gonzalez-Koeneke v. West*, 791 F.3d 801, 807-08 (7th Cir. 2015) (discussing this principle in the context of a dismissal followed by entry of judgment). Rule 15 requires courts to ñfreely give leave [to amend] when justice so requires.ò *Foman v. Davis*, 371 U.S. 178, 182 (1962). Indeed, ñgiving leave to amend freely is ópecially advisable when such permission is sought after . . . dismissal . . . . Unless it is *certain* from the face of the complaint that any amendment would be futile or otherwise unwarranted, the district court should grant leave to amend after granting a motion to dismiss.ôò *Runnion v. Girl Scouts of Greater Chicago and Northwest Indiana*, 786 F.3d 510, 519 (7th Cir. 2015) (quoting *Barry Aviation Inc. v. Land O'Lakes Municipal Airport Commission*, 377 F.3d 682, 687 (7th Cir. 2004)). This rule ñreflects a policy that cases should generally be decided on the merits and not on the basis of technicalities.ò *McCarthy v. PaineWebber, Inc.*, 127 F.R.D. 130, 132 (N.D. Ill. 1989); *see also Stern v. U.S. Gypsum, Inc.*, 547 F.2d 1329, 1334 (7th Cir. 1977). ñIn the absence of any apparent or declared reasonð such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.ð the leave sought should, as the rules require, be freely given.ò *Foman*, 371 U.S. at 182. These standards are satisfied easily here.

II. Plaintiff Should Be Granted Leave to Amend to Add A New Spoliation Claim

Plaintiff should be granted leave to a new add spoliation claim to his complaint. This Court dismissed the spoliation claim in the initial complaint with prejudice because Plaintiff had failed to plausibly allege that Defendant Wise had a duty to Plaintiff to preserve a memo she had

received from a donor regarding Professor Salaitaôs appointment and also because the complaint failed to explain what claims he was unable to prove due to the destruction of the memo. *See* Doc. No. 59 at 42-44. New evidence since discovered in this case, however, provides new grounds for bringing spoliation claims.

The Court issued its order on motions to dismiss on August 6, 2015. Doc. 59. The next day, the Defendants produced to Plaintiff hundreds of pages of emails relating to this case that had not been disclosed previously. Most of these emails were sent and received from private email addresses, rather than from the University email addresses that the Defendants were expected to use when conducting the official business of the University. In one of these emails about Professor Salaita, Defendant Wise writes:

> [Another University Administrator] has warned me and others *not to use email since we are now in litigation phase*. We are doing virtually nothing over our Illinois email addresses. I am even being careful with this email address and *deleting after sending*.

Exhibit B at 1 (emphasis added). This email alone supports the new spoliation claim in Plaintiffôs proposed First Amended Complaint: it is sent by a Defendant, it acknowledges this civil lawsuit, it sets out the plan to use personal email addresses rather than University email addresses, it suggests that others involved in the decision to terminate Professor Salaita were doing the same, and it states unambiguously that Defendant Wise was engaging in a practice of deleting emails about Professor Salaita after sending them.[2]

This is without question new evidenceð it was not released by the Defendants until after the Court issued its decision resolving their motion to dismiss, and it could not have been discovered by Plaintiff earlier because it was in the sole possession of Defendants. Moreover,

[2] The deliberate deletion of documents central to this case, for the very purpose of preventing their discovery, is also likely to warrant sanctions including a possible adverse inference instruction at trial. To be clear, the appropriate sanction, which will depend on the scope and content of evidence destroyed and the potentially broader efforts of the Defendants to destroy or hide communications, is not the subject of this motion.

Defendants had a duty to preserve their own communications about Professor Salaita. At latest, that duty arose once Defendants were on notice of this litigationð which Defendant Wise acknowledged she was when she sent her email suggesting a way to subvert this recognized duty. Indeed, the duty to preserve evidence relating to Professor Salaitaôs firing likely arose much earlier than that; in fact, the University had consulted counsel on this case before even firing Professor Salaita, and they were no doubt instructed that their communications would be discoverable in a lawsuit about Professor Salaitaôs firing. *See generally Lekkas v. Mitsubishi Motors Corp.*, 2002 WL 31163722, at *3 (N.D. Ill. Sep. 26, 2002) (collecting cases).

Communications between Defendants and their colleagues at the University about Professor Salaita are axiomatically relevant to the claims in the lawsuit, whether those communications are stored in University email accounts or in personal email accounts. The new evidence discussed above shows an effort to use personal email addresses to avoid the Universityôs obligation to preserve communications about official business and it further demonstrates an unambiguous plan to delete emails that Defendant Wise acknowledged might be relevant to this litigation. If Plaintiff is deprived of his chance to prove his claim because the Defendants have destroyed evidenceð a contention that is plausible based on the documents provided so far, but one that requires additional discovery in order to be proved conclusivelyð then Plaintiff should have the chance to pursue claims based on that misconduct.

Based on the newly discovered evidence, Plaintiffôs First Amended complaint adds allegations that plausibly support all of the elements of a state-law spoliation claim. In particular, it permits the eminently reasonable inference that evidence being rerouted through private email addresses' and being deleted as a matter of practice by Defendant Wise' is evidence potentially material to Plaintiffs claims; after all, the very motive to withhold such

evidence is their potential to damage the Defendantsô litigation position. *See* Exhibit A ¶¶ 142-149. The amended complaint therefore asserts precisely the same claims as those found in Plaintiffôs initial complaint, with the addition of newly-revealed facts regarding Plaintiffôs spoliation claim.[3] The proposed amendment will therefore require limited, if any, additional briefing on motions to dismiss. The Courtôs previous rulingð with the exception of its ruling on Plaintiffôs spoliation claimð will apply with equal force to Plaintiffôs First Amended Complaint.

Amendment is justified as well given that discovery in this case is just beginning in earnest. Plaintiff has served a first round of written discovery on Defendants, and he is still receiving responses. Depositions have not yet taken place. Most importantly, the Court has not yet established a deadline for fact discovery.

In addition, the new allegations involving emails about Professor Salaita that were sent, received, or deleted by the Defendants and their colleagues will not require any additional discovery. The emails in question are already discoverable evidence relating to those claims that the Court declined to dismiss earlier this month.

Finally, Plaintiffôs proposed amended complaint will not cause any unfair prejudice to the Defendants. Instead, it will ensure that this case is resolved on the merits, based on all of the evidence. If through the course of discovery Plaintiff can demonstrate that the Defendants have used personal email to conceal their actions and have destroyed important communications relevant to the claims in the case, then Plaintiff should be permitted to advance a claim at trial for spoliation of evidence. The newly discovered evidence discussed above certainly provides a plausible basis for these claims at this early stage of the case.

[3] The First Amended Complaint also makes two other minor edits: (1) Paragraph 141 corrects a typographical error; and (2) Paragraphs 1 and 10-13 are amended to reflect that four Defendants are now former employees of the University.

WHEREFORE, Plaintiff respectfully requests that the Court reconsider its ruling dismissing Plaintiffôs spoliation claim with prejudice and grant Plaintiff leave to file the proposed First Amended Complaint attached to this motion as Exhibit A.

RESPECTFULLY SUBMITTED,

/s/ Steven Art
One of Plaintiff's Attorneys

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CERTIFICATE OF SERVICE

I, Anand Swaminathan, an attorney, certify that on August 25, 2015, I filed the foregoing Motion for Leave to File a First Amended Complaint using the Courtôs CM/ECF system, which effected service on all counsel of record.

/s/ Anand Swaminathan

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

STEVEN SALAITA, Plaintiff, v. CHRISTOPHER KENNEDY, former Chairman of the Board of Trustees of the University of Illinois; RICARDO ESTRADA, Trustee of the University of Illinois; PATRICK J. FITZGERALD, Trustee of the University of Illinois; KAREN HASARA, Trustee of the University of Illinois; PATRICIA BROWN HOLMES, Trustee of the University of Illinois; TIMOTHY KORITZ, Trustee of the University of Illinois; EDWARD L. MCMILLAN, Trustee of the University of Illinois; PAM STROBEL, former Trustee of the University of Illinois; ROBERT EASTER, former President of the University of Illinois; CHRISTOPHE PIERRE, Vice President of the University of Illinois; PHYLLIS WISE, former Chancellor of the University of Illinois; THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS; and JOHN DOE UNKNOWN DONORS TO THE UNIVERSITY OF ILLINOIS, Defendants.	Case No. 15 Civ. 924 JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

NOW COMES Plaintiff, STEVEN SALAITA, by his attorneys LOEVY & LOEVY and the CENTER FOR CONSTITUTIONAL RIGHTS, and complaining of Defendants CHRISTOPHER KENNEDY; RICARDO ESTRADA; PATRICK J. FITZGERALD; KAREN HASARA; PATRICIA BROWN HOLMES; TIMOTHY KORITZ; EDWARD L. MCMILLAN; PAM STROBEL; ROBERT EASTER; CHRISTOPHE PIERRE; PHYLLIS WISE; THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS; and UNKNOWN DONORS TO THE UNIVERSITY OF ILLINOIS, states as follows:

Introduction

1. Professor Steven Salaita, an American academic with an expertise in Native American and Indigenous Studies, exercised his First Amendment right as a citizen to speak publicly on political and humanitarian issues that have been debated fiercely in this country and around the world. For voicing his views, the administrators of the University of Illinoisð through defendants former Chancellor Wise, former President Easter, Vice President Pierre, and members of the Board of Trustees (collectively hereinafter ñUniversity Administrationò or ñthe Administrationò)ð suddenly and summarily dismissed him from a tenured faculty position.

2. These officials did so after duly authorized University personnel recruited Professor Salaita and fully vetted his scholarship and prior teaching evaluations; after he formally accepted the Universityôs offer of a tenured faculty position in its American Indian Studies Program; and after it induced him to rely on its contractual promise to resign from his tenured faculty position at another university. It did so despite Professor Salaitaôs stellar academic credentials and without notice or due process. No oneð not even the University Administrationð disputes the fact that it acted based on Professor Salaitaôs speech.

3. The speech at issue consists of messages critical of Israeli policy that Professor Salaita posted to his personal Twitter account in July 2014, after the state of Israel launched ñOperation Protective Edge,ò an aerial bombardment and ground campaign in the Gaza Strip. Professor Salaita saw the news images of Palestinian children killed and felt compelled to speak out. He did so by posting Twitter messages critical of the Israeli government and its political leaders, and highlighting the impact of its policies. In the United States, Professor Salaitaôs criticisms of Israeli state policy are infrequently heard from American politicians or presented in the mainstream national media. The University Administration, facing pressure from wealthy University donors, fired Professor Salaita for his political speech challenging the prevailing norm.

4. Through its actions, the University Administration not only violated Professor Salaitaôs constitutional right to free speech, they also trampled on long-cherished principles of academic freedom and shared faculty-administration governance of the University. For these reasons, the University has faced near-universal condemnation from within the academic community. For example, the Universityôs Senate Committee on Academic Freedom and Tenure concluded that Salaitaôs termination violated principles of academic freedom and violated Professor Salaitaôs due process rights; sixteen academic departments within the University have voted ñno-confidenceò in the Administration; more than 5,000 academics from around the country have pledged to boycott the University, resulting in the cancellation of more than three dozen scheduled talks and conferences at the University and jeopardizing job searches across the University; and a number of the most important nationwide academic organizations in the country have condemned the University Administration for its improper treatment of Professor Salaita, including:

- American Association of University Professors

- Modern Language Association
- American Anthropological Association
- American Historical Association
- American Philosophical Association
- American Sociological Association
- American Studies Association
- Society of American Law Teachers

5. Professor Salaita has suffered severe economic, emotional, and reputational damage as a result of the wrongful conduct of the University, the above-named University officials, and the donors to the University who demanded that the University break its contract with Professor Salaita. Professor Salaitaôs prominent scholarship and excellent teaching credentials had allowed him to obtain a lifetime-tenured faculty position at a major American universityð the pinnacle achievement for an academic. Having relied on the University appointing him to its faculty with tenure, he surrendered his prior tenured position. He has also been denied the opportunity to teach, is jobless and without tenure, and his academic career is in shambles. Moreover, without a university affiliation, Professor Salaita suffers irreparable harm since, among other things, his ability to publish articles in academic journals and to present his scholarship to his colleagues is severely diminished. The scholarly activities of which he has been deprived are the lifeblood of his profession, and crucial to the trajectory of his once flourishing academic career.

6. Plaintiff Steven Salaita brings this action under 42 U.S.C. § 1983 and § 1985, and state law. He seeks equitable and monetary relief for violations of his constitutional rights, including free speech and due process, and for breach of contract, promissory estoppel, tortious

interference with contractual and business relations, intentional infliction of emotional distress and spoliation.

The Parties

7. Plaintiff STEVEN SALAITA is a resident of the state of Virginia.

8. Defendant THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS (the ñBOARD OF TRUSTEESò or ñBOARDò) is an Illinois corporation, commonly referred to as the University of Illinois. The Board of Trustees has a role in the academic hiring process. At all times relevant to the actions described in this Complaint, the BOARD OF TRUSTEES was acting under color of law.

9. For the 2013 fiscal year, the University of Illinois (through the Board) received approximately 12% of the money needed to fund its operations from the State of Illinois. Larger funding sources to the University included student tuition and fees, and federal grants and contracts. Since 2009, the University has received more funding from student tuition and fees than from the State of Illinois; and since 2010, the University has received more funding from the federal government than from the State of Illinois. The Board of Trustees is not protected by state sovereign immunity under the Eleventh Amendment.

10. Defendants CHRISTOPHER KENNEDY, RICARDO ESTRADA, PATRICK FITZGERALD, KAREN HASARA, PATRICIA BROWN HOLMES, TIMOTHY KORITZ, EDWARD McMILLAN, and PAM STROBEL are or were members of the Board of Trustees of the University of Illinois (collectively, the ñTrustee Defendantsò) at the time the unlawful actions complained of herein took place, and are all residents of Illinois. They each voted for, facilitated and approved Professor Salaitaôs firing.

11. Defendant ROBERT EASTER ~~is~~ was the President of the University of Illinois at the time the unlawful actions complained of herein took place, and a resident of Illinois. He facilitated, recommended and approved Professor Salaitaôs firing.

12. Defendant CHRISTOPHE PIERRE is the Vice President for Academic Affairs of the University of Illinois and a resident of Illinois. He facilitated, recommended and approved Professor Salaitaôs firing.

13. Defendant PHYLLIS WISE ~~is~~ was the Chancellor of the University of Illinois at Urbana-Champaign at the time the unlawful actions complained of herein took place and a resident of Illinois. She facilitated, recommended and approved Professor Salaitaôs firing.

14. Each of the individual Defendants listed above, all Board of Trustee members or senior officials at the University of Illinois, is sued in his or her official capacity for equitable and injunctive relief, and monetary damages because the University is not entitled to sovereign immunity. Each of the individual Defendants above is also sued in his or her individual capacity. And each acted under color of state law and in the scope of his or her employment while engaging in the actions alleged in this complaint.

15. Defendants JOHN DOE DONORS TO THE UNIVERSITY OF ILLINOIS are unknown contributors to the University who threatened future donations to pressure the University to terminate Professor Salaita. They each communicated with University officials regarding Steven Salaitaôs employment and demanded that the University breach its contractual obligations and promises to Professor Salaita or else they would withhold financial contributions to the University.

Jurisdiction and Venue

16. This Court has jurisdiction over this action under 28 U.S.C § 1331 because Counts I, II and III of this action arise under federal law. The Court has supplemental jurisdiction

over Plaintiffôs state law claims under 28 U.S.C. § 1367. This Court also has jurisdiction under 28 U.S.C. § 1332: Professor Salaita is a citizen of Virginia, all of the named Defendants are citizens of Illinois, and the amount in controversy exceeds $75,000.

17. Venue is proper under 28 U.S.C § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district. The Board of Trusteesô meeting to discuss Professor Salaitaôs tweets and to support a decision to terminate Professor Salaitaôs appointment occurred in Chicago, on July 24, 2014. All of the Trustee Defendants, with the exception of Trustee Defendant Estrada, were present at that Chicago meeting; Defendants Wise, Easter and Pierre were also in attendance. The University also has a Chicago campus, and nearly all of the Trustee Defendants work and reside in this district. Moreover, as set forth below, Steven Miller, a wealthy University donor, resides and works in Chicago, and exchanged correspondence with Defendant Wise on July 23 and July 24 about Professor Salaita. Chancellor Wise and Miller later met in Chicago on the morning of August 1 to discuss Professor Salaitaôs appointment. That same day, Chancellor Wise prepared a letter informing Salaita that he would not be appointed.

General Allegations

Professor Salaita's Qualifications

18. Professor Salaita is a nationally recognized scholar on the effects of colonization on indigenous people. He earned his undergraduate degree in political science and his Masterôs degree in English from Radford University in Virginia. He then earned a Ph.D. at the University of Oklahoma in English with a concentration in Native American Studies and Theory and Modernity in 2003. He worked as an Assistant Professor at the University of Wisconsin-Whitewater, teaching American and ethnic American literature, from 2003 to 2006. In 2006, he was hired by Virginia

Techôs English Department. He earned a lifetime tenured position three years later. He was, at the age of 33, a fully-tenured professor of English and scholar in Native American Studies.

19. Professor Salaita has been an extremely prolific academic, writing and publishing widely and frequently. He has written six books; been published in top refereed journals; written dozens of other journal articles, book chapters, and book reviews; and given dozens more conference presentations and invited lectures. Based on his scholarship, Professor Salaita received the Myers Center Outstanding Book Award in 2007, was a finalist for the Hiett Prize in the Humanities in 2008, and received the RAWI Distinguished Service Award in 2010.

Professor Salaita Is Recruited by the University Of Illinois

20. In late 2012, the American Indian Studies Program at the University of Illinois at Urbana-Champaign began the rigorous search process to hire a new full-time faculty member. The Programôs acting director, Professor Jodi Byrd, assisted by an academic search committee, cast a wide net, advertising the position across the country.

21. This broad search resulted in dozens of applications, including one from Professor Steven Salaita. Professor Salaitaôs submission included a cover letter, curriculum vitae, and names of references. This initial material was later supplemented with an academic writing sample and a packet of evaluations from Professor Salaitaôs former students and his peers.

22. Professor Salaitaôs student evaluations from Virginia Tech were stellar. They unequivocally demonstrate his commitment, skill and fairness as a teacher. Overall, he received the highest ratingð ñExcellentòð from his students over 90% of the time or more in almost every semester; he never received a rating below ñGood.ò In the category of ñconcern and respectò for students, where students reflect on a teacherôs fairness, receptivity to their concerns, and respect of

differing viewpoints, Professor Salaita received the following ratings in each of six different courses:

a) Course 1 (30 students): 28 Excellent; 2 Good.

b) Course 2 (30 students): 30 Excellent.

c) Course 3 (10 students): 10 Excellent.

d) Course 4 (29 students): 28 Excellent, 1 Good.

e) Course 5 (28 students): 28 Excellent.

f) Course 6 (28 students): 25 Excellent, 2 Good, 1 No Response.

23. The search committee also consulted with experts in the field of Native American Studies from outside the University to obtain their evaluations of Professor Salaita as a scholar and teacher.

24. Professor Salaitaôs scholarly and teaching accomplishments met the needs of the Program, and earned him an invitation to visit the University for an on-campus interview. He traveled to Champaign in the winter of 2013 to meet the search committee, Program faculty, graduate students, faculty from other departments who were potential scholarly collaborators for Professor Salaita, and some University administrators. He also gave a ñjob talkò to faculty and studentsð the traditional forum through which faculty can assess a candidateôs intellect, creativity, and temperament.

Offer and Acceptance

25. After interviewing and hosting similar visits from at least two other candidates, the search committee made its decision. On September 27, 2013, Brian Ross, then the interim dean of the College of Liberal Arts and Sciences, wrote to Professor Salaita to offer him a tenured position in the American Indian Studies Program at the University. One week later, on October 3,

2013, Dean Ross sent a revised offer letter that reflected the appropriate salary, and to which Professor Salaita responded. Dean Rossôs offer letter stated that ñ[u]pon the recommendation of Professor Jodi Byrd, Acting Director of American Indian Studies, I am pleased to offer you a faculty position in that department at the rank of Associate Professor at an academic year (nine-month) salary of $85,000 paid over twelve months, effective January 01, 2014. This appointment will carry indefinite tenure.ò Dean Rossôs letter also conveyed that ñthis recommendation for appointmentò was subject to approval by the Board of Trustees.

26. The letter also stressed that the University ñsubscribe[s] to the principles of academic freedom and tenure laid down by the American Association of University Professors (AAUP),ò and enclosed a copy of the AAUPôs *1940 Statement of Principles on Academic Freedom and Tenure*.

27. Dean Ross also sent Professor Salaita a document entitled, ñGeneral Terms of Employment for Academic Staff Members,ò which included language stating that Professor Salaita ñwill receive a formal Notification of Appointment from the Board once the hiring unit has received back from the candidate all required documents, so the appointment can be processed.ò This document explained that such documents required by the Board for formal processing of Professor Salaitaôs appointment consisted of routine employment eligibility information and tax information. Dean Rossôs letter went on to inform Professor Salaita that ñ[w]hen you arrive on campus, you will be asked to present proof of your citizenship,ò further suggesting that there were no other steps remaining in the hiring. At the bottom of the letter was a space for Professor Salaitaôs signature, below the statement ñI accept the above offer of October 03, 2013.ò Dean Ross asked Prof. Salaita to return a signed photocopy of the letter ñ[i]f you choose to accept our invitationò to join American Indian Studies.

28. On October 3, Professor Byrd likewise wrote to Professor Salaita, saying that she was ñthrilled to send you this letter to supplement the offer letter you received from interim Dean Brian Ross.ò Professor Byrd went on to explain some of the resources that Professor Salaita would have available to him when he came to campus the following fall. She also explained that the Program ñrecognize[s] that you are a scholar in the height of your productivity,ò and for that reason, the Program would arrange for Professor Salaita to have some time away from teaching in the near future to devote to his research. In addition, Professor Byrd ñformally commit[ted] to working diligently to find [Professor Salaitaôs wife] Diana a career path at Illinois that will meet her needs.ò

29. Professor Salaita discussed the offer with Professor Byrd and confirmed that he would be allowed to postpone his start date from the January 2014 timeframe in Dean Rossôs offer letter to August 2014, so he could complete his teaching commitments at Virginia Tech. Professor Salaita then signed the statement of acceptance, dated it ñ10/9/13,ò and returned the signed offer-acceptance letter to Dean Ross.

30. On October 9, Dean Ross sent a letter to Professor Salaita confirming that the University had received Professor Salaitaôs acceptance of its offer, and stating, ñI look forward to your arrival on campus.ò The Program made Professor Salaitaôs selection public sometime in late October or early November of 2013.

31. In addition to going through a rigorous process, Professor Salaitaôs appointment had also been approved by Chancellor Wise and the Provost of the University.

Professor Salaita Resigns From Virginia Tech and Prepares to Move to the University of Illinois

32. After accepting the Universityôs offer, Professor Salaita began working with Program faculty to prepare for his arrival. Salaita was scheduled to teach two courses in the Fall

2014 semester, Introduction to American Indian Studies and Indigenous Thinkers. He had been assigned an office, ordered course books and a new computer, and was coordinating with administrative staff to finalize his office furniture and obtain University identification. Students were able to enroll in his courses. Between the time he accepted the offer and August 2, 2014, he was in regular contact with Program faculty about his upcoming arrival on campus.

33. Professor Salaita made a second visit to the campus with his wife and young son in March 2014 as a guest of the American Indian Studies Program. On that visit the Program hosted a dinner for him where he met again with most of the department faculty.

34. In May 2014, Professor Salaita formally notified Virginia Tech that he would be leaving, effective in August. Professor Salaitaôs wife also resigned from her full-time job at Virginia Tech, and they arranged for a tenant to move into their Blacksburg residence after their departure.

35. With the Universityôs permission and blessing, and as is common in academia, Professor Salaita began to identify himself professionally with the University of Illinois during the summer of 2014. He presented papers at three conferences during the summer of 2014, and at all three, he was introduced and credentialed as an associate professor in the American Indian Studies Program at the University of Illinois.

36. The University signaled repeatedly that it likewise already considered him a member of the faculty. In the late spring Chancellor Wise sent Professor Salaita an invitation to a fall reception for new faculty, addressed to him as a member of the American Indian Studies Program. In July 2014, University officials informed Professor Salaita that he was welcome to begin using his University of Illinois email account.

Professor Salaita's Reliance on the University's Actions

37. The Universityôs post-acceptance conduct, discussed above, further confirmed Professor Salaitaôs understanding that he was already a member of the Universityôs faculty.

38. Based on the communications and conduct above, as well as standard academic hiring practices, including practices at the University of Illinois, Professor Salaita reasonably believed that approval of the Board of Trustees was a mere formality and that his position with the University of Illinois was certain so long as he remained legally eligible to work.

39. The Universityôs hiring practices are consistent with standard practices in academic hiring. Under those practices, a tenured professor recruited by a new university is expected to resign from an existing tenured position on the promise that the new universityôs trustees will ultimately confirm the tenured appointment. Academics (especially those who challenge conventional views) would be required to risk losing tenureship entirely if a new universityôs chancellor or board decided to overrule the faculty hiring committeeôs decision. The Universityôs own Committee on Academic Freedom and Tenure, in its report criticizing the administrationôs actions in dismissing Salaita, recited as follows: ñ[O]ffers made by high administrative officers, a president or a dean, are customarily regarded as binding and [] any enervation of that reliability would throw the process by which colleges and universities engage new faculty members into complete chaos to the detriment of both institutions and faculty members.ò (Internal quotations omitted.)

40. Under the norms governing University hiring, it is therefore virtually unheard of for a universityôs board to overrule a faculty hiring decision after the university has obtained the recruited faculty memberôs acceptance of an offer of a tenured position. On information and belief, it had never happened before at the University of Illinois.

41. Professor Salaita further believed, consistent with the AAUPôs *1940 Statement of Principles on Academic Freedom and Tenure* and the Universityôs ñGeneral Terms of Employment for Academic Staff Members,ò which the University referenced and sent to him as part of his offer, that he was entitled to the protections of the First Amendment, academic freedom principles and the Universityôs Statutes.

The University's Espoused Commitment to Free Speech and Academic Freedom

42. Like many universities across the country, the University of Illinois holds itself out as committed to principles of academic freedom. The University of Illinois Statutes (the ñStatutesò), which govern the operation of the University, state that:

> It is the policy of the University to maintain and encourage full freedom within the law of inquiry, discourse, teaching, research, and publication and to protect any member of the academic staff against influences, from within or without the University, which would restrict the memberôs exercise of these freedoms in the memberôs area of scholarly interest.

Article X, § 2.a. of the Statutes (emphasis added).

43. Academic freedom does not stop at the boundaries of the campus. The Statutes further provide that ñAs a citizen, a faculty member may exercise the same freedoms as other citizens *without institutional censorship or discipline*.ò Article X, § 2.b. of the Statutes.

44. So strong is the Universityôs espoused commitment to academic freedom and the free speech rights of its faculty that, where it determines that a faculty memberôs exercise of those rights is objectionable or reflects poorly on the University, the Statutes do not authorize, or even contemplate, dismissing a faculty member for such speech. The Statutes state that, at most, the University may distance itself from, or voice its disapproval of, the faculty memberôs comments. Article X, § 2.c. of the Statutes.

45. Article X, § 2 of the Statutes echoes the language of the American Association of University Professorsô (ñAAUPò) *1940 Statement of Principles on Academic Freedom and Tenure*. Like many universities, the University of Illinois explicitly avows that it adheres to those principles. In fact, a copy of the *1940 Statement* is given to newly-hired facultyð including Professor Salaita himselfð at the time they accept a tenured position with the University. As the title of the Statement suggests, academic freedom is promoted chiefly through the institution of tenureð indefinite appointment to the academic faculty, subject to removal only for adequate cause unrelated to the content, manner or viewpoint of the faculty memberôs speech and ideas, and only if pursuant to due process.

46. The United States Supreme Court has underscored that protection of academic freedom is of constitutional significance, as it is vital to the American universitiesôunique commitment to fostering free thought and advancing knowledge: ñOur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.ò *Keyishian v. Board of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967) (internal citations omitted).

47. Because tenure is a serious commitment on the part of a University to a scholarð one that a university reserves for scholars it truly believes will contribute to the Universityôs academic mission and enhance its scholarly prestigeð the process for selecting tenured faculty at the University of Illinois is rigorous.

48. Under the Statutes, ñ[r]ecommendation to positions on the academic staff shall ordinarily originate with the department or . . . with the officers in charge of the work concerned.ò Article IX, § 3.d. of the Statutes. This provision reflects a second value of the University that is embedded in numerous provisions of the Statutes and indeed is required by the Universityôs accreditors: shared governance. The AAUP, in its 1966 Statement on Government of Colleges and Universities, places special emphasis on responsibilities of a governing board of a multi-campus university for ñprotecting the autonomy of individual campuses or institutions . . . and for implementing policies of shared governance.ò

49. Shared governanceð as between faculty and administrationð ensures that new faculty are identified and recruited by those members of the University community best equipped to assess a candidateôs academic credentials and scholarly potential. It also protects the integrity of the academic units of the University by insulating the hiring decisions of those units from external pressures, including the influence of the politically or financially powerful.

50. Academic departments, which naturally have an interest in maintaining the reputation of their academic programs, subject prospective faculty members to careful screening, including interviews, job talks, campus visits, review of scholarly writing, review of former student and peer evaluations, and consultation with experts in the field outside the department.

51. The faculty hiring process is thus almost entirely the province of the faculty departments and dean. This delegation of all but the ministerial role of finalizing faculty appointments is codified in the Statutes and communicated to faculty recruits.

52. Once the department faculty have made a decision to appoint a scholar to a tenured position, the Statutes provide that the recommendation is then ñpresented to the dean of the college for transmission with the deanôs recommendation to the chancellor/vice president,ò Article

IX, § 3.d. of the Statutes, who in turn presents the recommendation to the Board of Trustees. ñAll appointments . . . *shall* be made by the Board of Trustees on the recommendation of the chancellor/vice president concerned and the president.ò Article IX, § 3.a of the Statutes (emphasis added).

53. Consistent with the delegation of the faculty hiring process to the academic departments, the Chancellorôs recommendation and the Boardôs approval are, and have been, a mere formality at the University of Illinois. This delegation of substantive hiring authority by the Board to its academic faculty makes sense given that few, if any, of the members of the Board are academics themselves, and as such they are not competent to assesses the scholarly or teaching qualifications of individuals recommended for faculty appointments nor do they possesses the requisite expertise to evaluate field and departmental priorities. Indeed, so deferential is the Board to the academic judgment of University faculty that in the ordinary course, the Board will not vote to approve an appointment until *after* the new faculty member has arrived on campus and begun teaching. And all new academic hiresð sometimes well over a hundred of themð are approved *en bloc*, in a single vote. Ordinarily, these new faculty members will not even be mentioned by name at the Board meeting, and very little information about them is needed or provided. The Universityôs Committee on Academic Freedom and Tenure, in discussing the Universityôs appointment process, stated as follows: ñUntil the September 2014 board meeting, the language of the board item for such appointments indicated that ó[t]he following new appointments to the faculty at the rank of assistant professor and above, and certain administrative positions, have been approved since the previous meeting of the Board of Trustees and are now presented for your Confirmation.ôò

54. This is because the Boardôs action operates as a ratification of the informed decisions of the faculty. This voting procedure reflects the fact that the Board does not possess the competence to evaluate the academic credentials of the candidates that it is called upon to approve for hiring. The Boardôs role in ratifying faculty hiring decisions has never been viewed as an opportunity to second-guess or overturn the recommendations of the faculty involved in the hiring decision, as the values of academic freedom and shared governance do not permit such a process.

55. This process is so well established at UIUC that newly-recruited faculty such as Professor Salaita receive ñGeneral Terms of Employmentò with the Universityôs offer letter stating that ñ[n]ew academic staff members *will receive* a formal Notification of Appointment from the Board once the hiring unit has received back from the candidate all required documents, so the appointment can be *processed*ò (emphasis added). The documentation referred to is nothing more than the sort of routine employment information necessary to confirm an individualôs employment eligibility and to set up their tax withholdings and payments, such as a W-4, I-9, and direct deposit form.

56. Ultimately, the Universityôs Committee on Academic Freedom and Tenure concluded it was likely that ñnone of those involved in the appointment process seriously considered that Board approval might be withheld.ò

57. Just as the selection of faculty for tenured positions is rigorous, so too is the process by which a tenured faculty member may be dismissed. ñDue cause for dismissal shall be deemed to exist only if *(1)* a faculty member has been grossly neglectful of or grossly inefficient in the performance of the faculty memberôs university duties and functions; or *(2)* with all due regard for the freedoms and protections provided for in Article X, Section 2, of these Statutes, a faculty memberôs performance of university duties and functions or extramural conduct is found to

demonstrate clearly and convincingly that the faculty member can no longer be relied upon to perform those university duties and functions in a manner consonant with professional standards of competence and responsibility; or *(3)* a faculty member has while employed by the University illegally advocated the overthrow of our constitutional form of government by force or violence.ò Article X, § 1.d. of the Statutes.

58. Further, no tenured faculty member may be dismissed without, at a minimum, consultation by the President with the Faculty Advisory Committee, receiving a statement of the charges against the faculty member, and a hearing before the Committee on Academic Freedom and Tenure, at which the faculty member may be represented by counsel and may call witnesses in his or her defense. After the Committee on Academic Freedom and Tenure makes findings, conclusions, and a recommendation, the faculty member may object to them and may request a hearing before the Universityôs Board of Trustees.

59. As with the Universityôs statement on academic freedom, these provisions for termination with cause also reflect the standards set out by the AAUP in its 1940 Statement. Interpreting that statement, the AAUP has stated that it regards the failure by a board of trustees to complete the appointment of a professor offered a tenured faculty position as a summary dismissalð *i.e.*, an action that violates procedural protections contemplated by the AAUP and the Universityôs own standards. *See* August 29, 2014 letter from AAUP to Chancellor Phyllis Wise, attached hereto as Exhibit A.

Professor Salaita's Protected Speech

60. Professor Salaita has a personal Twitter account, which he used to share thoughts and ideas with his ñfollowers,ò *i.e.*, other Twitter users who voluntarily sign up to receive his tweets (often family and friends). Twitter is a forum designed to facilitate instantaneous

commentary and reactions to current events; in fact, Twitter describes its mission as ñto give everyone the power to create and share ideas and information instantly, without barriers.ò Exchanges are informal and, with a 140-character limit, tweets are intended to be pithy; they are inherently not designed to capture nuance and subtly. As with many Twitter users, Professor Salaitaôs tweets span subjects as broad as his intellectual curiosity. Sometimes he uses Twitter to share humor. But more often, he uses it to share unique ideas and to provoke thought. This sometimes consists of sharing his own viewpoints, and at other times consists of ñre-tweetingò (forwarding to others) interesting writings of others.

61. In recent years, Professor Salaita has used his Twitter account as an outlet for his thoughts and reactions to events in the Middle East. As an American citizen and as a person of Arab descent, Professor Salaita has long been concerned about American foreign policy in the Middle East and the issues surrounding the conflict between Israel and Palestine.

62. Many of his tweets about Israel and Palestine are intended to challenge prevailing views of the issue and to bring texture to an increasingly politicized and polarized debate. And although Professor Salaita frequently disagrees with American and Israeli state policy in the region, his tweets take aim at state policy, not at any religious or ethnic group. Neither his views nor his tweets are antisemitic. Indeed, Professor Salaita has used his Twitter account to expressly oppose antisemitism. For example, he has tweeted that he is fundamentally opposed to antisemitism, calling it a horror. And when the well-known rapper Macklemore wore a costume that evoked age-old Jewish stereotypes, Salaita took to his Twitter account to criticize the rapper for invoking an image used to dehumanize Jewish people for many centuries.

July 2014 Hostilities in Gaza

63. In early July 2014, the state of Israel launched a military campaign in Gaza. Over more than six weeks, three Israeli civilians and 65 Israeli soldiers were killed, while the Israeli air and ground campaign took 2100 Palestinian lives. According to the United Nations, approximately 1500 of the Palestinians killed were civilians, including more than 500 children. Like many others, Professor Salaita was dismayed, particularly at the killing of children.

64. Professor Salaita felt an obligation to speak out, and did so using his Twitter account. He usually sent the tweets from home in the evening after putting his son to bed. His habit was to read or watch accounts of what was happening in Gaza from sources such as The New York Times, The Guardian, Al Jazeera English, and a variety of social media, and tweet his reactions.

65. He was disturbed by what he felt was widespread apathy and equivocation at the killing of children. Commensurately, his tweets were deeply critical of Israeli state policy and Israeli government leadership. He blamed Israeli Prime Minister Benjamin Netanyahu for the deaths of Palestinian children; and he criticized the Israeli policy of expanding settlements in territories captured during the 1967 War in contravention of international law. His tweets were provocative, often strongly-worded, and meant to challenge prevailing views and to shake people out of their moral slumber.

66. Strong language aside, none of his tweets targeted criticism at Judaism or Jewish people. Indeed, his tweets make clear that his criticisms are directed at the policies and actions of the Israeli government, and are not grounded in any antipathy toward Jewish people or their religious beliefs. He explained, for example, that he refused to conceptualize the dispute between Israel and Palestine as a religious or ethnic conflict, stating further that he agreed with many Jewish people and disagreed with many Arabs.

67. In one tweet, he explained the motivation for his speech, saying that there is no justification for the killing of children. He made clear that his view was universal, and reflected a belief that Jewish and Arab children are equal in the eyes of God.

The University's Initial Reaction to Professor Salaita's Protected Speech

68. Around July 26, at the height of the Israeli campaign in Gaza, Robert Warrior, who is Director of the American Indian Studies Program, reluctantly contacted Professor Salaita to relay a message from the Chancellor. Warrior told Salaita that according to Chancellor Wise, the University was aware of his tweets and would be monitoring his social media to ensure that he did not use University equipment to engage in that type of discourse. This admonition confirmed that Professor Salaita was already considered an employee of the University.

69. Indeed, just a few days before, on July 22, the Urbana News-Gazette had quoted a university spokesperson as saying, in response to questions about Professor Salaitaôs tweets, that ñfaculty have a wide range of scholarly and political views, and we recognize the freedom-of-speech rights of all of our employees.ò The university spokesperson also wrote, ñProfessor Salaita will begin his employment with the university on Aug. 16, 2014. He will be an associate professor and will teach American Indian Studies courses.ò

70. Professor Salaita continued to prepare for his move to Illinois, arranging for movers to pack up his home in Blacksburg, Virginia. As late as July 25, 2014, Professor Salaita was reassured that the University would cover the full cost of the move.

71. Then, on August 2, 2014, just two weeks before his August 16th start date, and without any forewarning, Professor Salaita received an email enclosing a letter from Chancellor Wise and Vice President Christophe Pierre, dated August 1, informing him that ñyour appointment will not be recommended for submission to the Board of Trustees in September.ò Wise and Pierre

offered no explanation at all for this decision, nor did they offer Professor Salaita notice of the reasons for his dismissal or an opportunity to be heard. The refusal to recommend him to the Board of Trustees for appointment was in direct contravention of the Universityôs contractual promise to do so in Dean Rossôs October 3 letter.

72. Professor Salaita was shocked. He tried immediately to contact Robert Warrior to clarify exactly what the Chancellorôs letter meant. Professor Warrior stated that he had only just found out about the letter that same day. He expressed sympathy and concern for Professor Salaita and his family, and also told Professor Salaita that he was committed to seeing the appointment through.

73. The impact of the University Administrationôs actions on Professor Salaita and his family was immediate. Without a job in Illinoisð and without the promised funds to pay moversð Professor Salaita instead had to recruit family members to help him and his wife pack their home in a single day and move into his parentsôhome so that the tenant could move in. The Salaitas lost the earnest money that they had put down on a condominium in Illinois, as well as a deposit they had made with the Universityôs premier day care center. The Salaitas no longer had any income.

74. Ashamed to admit he had been fired, Professor Salaita initially told very few people about his termination.

75. Then, on August 6, the online publication *Inside Higher Ed* revealed that the University Administration had terminated Professor Salaitaôs appointment. In the wake of that initial disclosure, other news outlets caught on to the story and began investigating, in several instances seeking documents from the University under the Freedom of Information Act. A disturbing narrative slowly emerged.

The Decision to Terminate Professor Salaita

76. Professor Salaitaôs tweets had reached a few media outlets supportive of Israeli policy. Beginning on July 21, 2014, these outlets began reprinting a handful of the most strongly worded tweets expressing criticism of Israeli policy and actions. The cherry-picked tweets that were published were taken in isolation and used to paint Professor Salaita as an antisemite and an advocate of violence. Professor Salaita is neither of these things. Not included were tweets in which Professor Salaita denounced antisemitism, advocated non-violence, or affirmed the equality of Jews and Arabs.

77. Based on these few tweets, and the distorted picture of Professor Salaita that they were used to paint, several students, alumni, and donors wrote to Chancellor Wise. In their letters and emails, obtained under the Illinois Freedom of Information Act, they made clear that they disagreed with Professorôs Salaitaôs views critical of Israeli policy.

78. Several of the writers openly stated that they would withdraw financial support from the University if it did not terminate Professor Salaitaôs appointment. One writer who described himself as a ñmultiple 6 figure donorò stated that his and his wifeôs ñsupport is ending as we vehemently disagreeò with Professor Salaita. Another writer informed the Chancellor that she and her husband would cease contributing to the University and would ñlet our fellow alumni know why we are doing so. We will encourage others to join us in this protest, as perhaps financial consequences will sway youé .ò Yet another donor, who noted that his name was on plaques on campus buildings based on his generous financial support, wrote to the Chancellor to say that he was reconsidering whether to continue donating to the University based on his strong disagreement with Professor Salaitaôs views regarding Israel.

79. On July 23, 2014, just one day after a University spokesperson had affirmed the Universityôs commitment to Salaitaôs appointment, the Chancellor received an email from Steven Miller, the owner of a Chicago-based venture capital firm and a donor to the University. Miller is on the Universityôs Business Council and the board of the Hillel Foundation, and has an Endowed Professorship in Business at the University of Illinois in his name. Miller asked to meet with Wise to ñshare his thoughts about the Universityôs hiring of Professor Salaita.ò The Chancellor responded by telling Mr. Miller that she had ñjust recently learned about Steven Salaitaôs background, beyond his academic history,ò and then rearranged her schedule to meet with Miller in Chicago on August 1.

80. Also on July 23, 2014, Chancellor Wise met with an unknown donor, who gave her a two-page memo about Professor Salaita and urged the University Administration to terminate his appointment. That night, Chancellor Wise sent an email to several Universityôs officials focused on fundraising to recount her meeting with the donor: ñHe gave me a two-pager filled with information on Professor Salaita and said how we handle the situation will be very telling.ò

81. In contravention of the Illinois State Records Act, Chancellor Wise subsequently destroyed the two-page memo, notwithstanding that the document was presented to the Chancellor as part of an effort to influence the Chancellorôs decision regarding her official duties.

82. On July 24th, the Board of Trustees held a meeting in Chicago. In an executive session, they discussed Professor Salaitaôs tweets. Just before the meeting, the Board was provided with a handful of news stories about the tweets, but was given no other background material about Professor Salaita, his many other tweets, his scholarship or his teaching.

83. As the Board began to discuss the matter, one of the student trustees used the internet to find the tweets that had been the subject of online news stories, and read them to the

Board. The Board decided at the meeting that it would support a decision to terminate Professor Salaitaôs appointment. There was no consultation with the Dean of the College of Liberal Arts and Sciences, nor anyone in the American Indian Studies Program or involved on the search committee that hired him, nor was any effort made to evaluate Professor Salaitaôs statements on the Middle East, much less his academic scholarship, teaching credentials, or teaching evaluations. And certainly no one asked Professor Salaita for an explanation. The entire executive session lasted just ten minutes.

84. Professor Salaita had no idea this meeting had taken place, and had no notion that his job was in jeopardy. After all, two days *after* this meeting, Professor Salaita obtained confirmation that his moving expenses would be covered.

85. On August 1, in the morning, Chancellor Wise and Steven Miller were finally able to meet in person in Chicago. On information and belief, Mr. Miller informed the Chancellor that he would reduce or withhold his monetary contributions to the University if Professor Salaita was allowed to teach there. The Chancellorôs letter of termination to Professor Salaita was dated the same day.

The Negative Reaction and the University's Pretextual Reasoning

86. As news of Professor Salaitaôs firing spread, sixteen departments within the University voted ñno confidenceò in the Universityôs Administration. Robert Warrior and other faculty in the American Indian Studies Program expressed their strong support for Professor Salaita and urged the University to change course and reinstate him. Thousands of scholars from around the world announced their intention to boycott the University of Illinois on the grounds that it had violated cherished principles of academic freedom, free speech, and shared governance.

87. On August 22, amid growing criticism of the University Administration, Chancellor Wise published an open letter to faculty in which she attempted to explain the firing of Professor Salaita. She admitted that the Administrationôs decision was based on Professor Salaitaôs tweets expressing his political opinions, but denied that the Administration had acted on the basis of Professor Salaitaôs viewpoints in those tweets. Instead, she claimed that the Administrationôs actions were taken because Professor Salaitaôs speech lacked ñcivility.ò

88. The Board published a letter of support for the Chancellor the same day, also acknowledging that the University Administrationôs actions were taken based on Professor Salaitaôs political speech, claiming that Professor Salaitaôs Twitter messages were ñnot an acceptable form of civil argumentò and raising questions about his teaching ability. The Administrationôs claim of civilityð based as it was on a handful of tweetsð is concretely belied by the best and readily available evidence of his classroom and campus demeanor: his exceptional teaching evaluations from Virginia Tech specifically praise his temperament and openness to differing viewpoints at the highest levels of the teaching scale.

89. Not only did the Board and the Chancellor admit that the Administration acted based on Professor Salaitaôs political speech, their statements justifying their decision are plain pretext. On information and belief, the University has never fired, let alone punished, a faculty member for ñuncivilò speech outside of the classroom and campus, and not addressed to its students or faculty.

90. Neither the Chancellor nor the Board made any reference to the pressure from donors to terminate Professor Salaitaôs appointment that had been taking place.

91. With regard to the charge of antisemitism, a simple review of Professor Salaitaôs other tweets would have revealed that Professor Salaita is a vocal opponent of antisemitism. The

University Administration made no effort to learn about these other, readily-available tweets, or Professor Salaitaôs views more generally.

92. The Administrationôs other claimð that Professor Salaitaôs tweets rendered him ñuncivilò and unfit to teach the Universityôs studentsð was merely a defamatory means of justifying the decision to fire him for views the University officials did not like. Academics regularly engage in discussions that are provocative, and even sometimes unpleasant; indeed, universities have long been recognized as the place to challenge orthodoxy and push intellectual boundaries. And the hiring committeeôs dossier showed that Professor Salaita had a stellar teaching record and that he had never been criticized for treating a student or colleague in the classroom or on campus unfairly, or with anything but utmost respect. Indeed, the University Administration provided no indication that it had investigated Professor Salaitaôs teaching record or scholarship before deciding to fire him. Moreover, Professor Salaitaôs tweets were sent from his personal Twitter account, from his home in Virginia, during a period in which he was not teaching any students. Professor Salaita has never mentioned his Twitter account to his students, let alone encouraged them to sign up to follow him.

93. Finally, no one in the University Administration ever spoke to Professor Salaita to hear his side of the story. And the University Administration failed to consult the President of the Faculty Advisory Committee or conduct a hearing before the Committee on Academic Freedom and Tenure, as is required under the Statutes before a tenured faculty member can be dismissed.

94. On September 11, 2014, after the school year had already begun, the Board of Trustees finally met to vote on the appointments of new faculty. This was the meeting in which the formality of completing Professor Salaitaôs appointment was supposed to occur. Indeed, the Board approved more than 120 tenured or tenure-track faculty members, almost all of whom had already

begun working and teaching at the University on August 16, 2014. Not a single one of these appointees was mentioned by name during the meeting, and they were all voted on and approved at once.

95. Solely because of his protected speech, Professor Salaita was treated differently. In contravention of the promises and commitments made to Professor Salaita to induce him to leave his previous tenured position for one at the University of Illinois, Chancellor Wise informed the Board that she was not recommending Professor Salaita for approval. To a chorus of ñShame, shame, shameò from the large crowd, the Board voted down Professor Salaitaôs appointment. The vote was highly orchestrated, and a foregone conclusion, carried out solely to create the impression that the Administration had fulfilled its commitment. It had not. The Chancellor had already told Professor Salaita in her August 1 termination letter that she would not recommend him to the Board and that the Board would likely not approve him. Upon information and belief, her reversal of course, in which she put Professor Salaitaôs name up for a vote with a formal statement *not* recommending his appointment, has never before been done at the University.

96. Trustee James Montgomery cast the lone dissenting vote. In the 1950s, Trustee Montgomery advocated and supported unpopular African-American causes while a student at the University, and faced condemnation for doing so. He analogized Salaitaôs speech to his own experience challenging prevailing views, describing himself as ñalmost as vocal as Dr. Salaita when I carried my picket signs along the streets of this campus.ò

97. A few days after the meeting, Board Chairman Christopher Kennedy admitted in an interview with a newspaper that the decision to deny Professor Salaita his appointment to the faculty was based on Professor Salaitaôs tweets critical of Israeli policy. Kennedy made clear that he and the other Board members disagreed with Professor Salaitaôs strongly-worded criticisms of

Israelôs military campaign in Gaza' so much so that they chose to characterize them as antisemitic' and that they refused to complete his appointment on that basis.

98. Defendant Kennedy twice stated to news publications that he believed the comments of Professor Salaitaôs that he reviewed were ñanti-semiticò and ñblatantly anti-semiticòð statements that were unfounded and contrary to available evidence that Kennedy chose not to review. This carelessly-leveled charge defamed Professor Salaita personally and professionally, and falsely caricatured Professor Salaita in contradiction to his nuanced and deeply researched and respected academic scholarship.

99. Professor Salaitaôs tweets were not antisemitic, nor is he an antisemite. Had Chancellor Wise and the Board of Trustees consulted the Universityôs own expert faculty, for example Professor Michael Rothberg, the Head of its own English Department and Director of the Universityôs Initiative in Holocaust, Genocide and Memory Studies, they might not have committed such blatant viewpoint discrimination or defamed Professor Salaita. Professor Rothberg wrote a thoughtful letter asking the Chancellor to complete Professor Salaitaôs appointment. He wrote:

> While I continue to believe that political speechð no matter how controversial or extreme it might be consideredð is protected by the First Amendment and the core values of Academic Freedom, I have also observed many interpretations of Professor Salaitaôs protected speech about the Israeli bombing of Gaza that I consider misguided and that deserve to be refuted. I strongly believe that neither Professor Salaita himself nor the tweets that are at issue are antisemitic. I say this as someone personally and professionally sensitive to expressions of antisemitism. Indeed, Professor Salaita has stated repeatedly in numerous tweets and writings that have not been cited by his detractors that he opposes antisemitism and racism of all kinds. I find these writings to be sincere and observe that nobody has brought a single piece of evidence to bear that would contradict Professor Salaitaôs explicit personal opposition to antisemitism. The tweets that have been reproduced again and again in reports on this case are not expressions of antisemitism but criticism of how charges of antisemitism are used to excuse otherwise inexcusable actions.

100. In explaining his vote against Professor Salaita at the September 11 meeting, Defendant Fitzgerald said he would have the same reservations about someone who posted homophobic or racist remarks. Not only were Professor Salaitaôs statements not antisemitic, but the Universityôs record does not jibe with Fitzgeraldôs stated position. In 2012, University of Illinois professor emeritus Robert Weissberg garnered headlines when he was fired by the National Review Online for making racist comments in a speech at a gathering of white supremacists, a meeting he had evidently been attending regularly for several years. Despite a public outcry, the University took absolutely no action at allð not censure or condemnation, let alone termination. Moreover, in 2010, the University initially fired adjunct religion professor Kenneth Howell for making homophobic statements in an email to students, but then re-hired Professor Howell and allowed him to continue teaching.

101. Professor Salaita, in obvious contrast, remains without a job, without health insurance, in his parentsôhome, with his academic career in tatters. At the precise moment when he is ñin the height of his productivity,ò he has been left without an institutional association that would allow him to conduct research and publish his scholarship. At the same time, the American Indian Studies Program has been left understaffed, and was forced to scramble to rearrange its fall course offerings. All this despite the fact that sixteen departments have voted no-confidence in the Universityôs leadership after the decision to rescind Professor Salaitaôs appointment, and that Professor Warrior and the faculty of the American Indian Studies Program still support Professor Salaita and want him to join their ranks.

Count I - 42 U.S.C. § 1983
First Amendment
Against the Trustee Defendants and Defendants Easter, Pierre, and Wise

102. Plaintiff repeats and realleges all of the paragraphs in this complaint as if fully set forth herein.

103. In sending ñtweetsò regarding Israel and Palestine, from his personal Twitter account from his home in Virginia in the summer of 2014, Plaintiff acted in his capacity as a citizen, and not pursuant to any official university duties. His tweets never impeded his performance of his duties as a faculty member, or the regular operation of the University. The subject matter of the ñtweetsòð Israel and Palestineð is a matter of public concern, and Professor Salaitaôs comments about that conflict were made in an effort to contribute to the public debate. Such conduct is protected by the First Amendment of the United States Constitution.

104. Plaintiffôs protected speech, and the viewpoint he expressed in those tweets, though greatly distorted and misconstrued by Defendants, was a motivating factor in Defendantsô decision not to recommend Professor Salaitaôs appointment and the rejection of Professor Salaitaôs appointment to the Universityôs faculty.

105. The Universityôs retaliatory actions in response to Plaintiffôs protected speech have had a chilling effect that acts as a deterrent to free speech.

106. The termination of Professor Salaitaôs position with the University of Illinois directly resulted in substantial and irreparable harm to Professor Salaita, including the loss of a tenured position at the University, lost income, out of pocket expenses and severe emotional distress.

Count II - 42 U.S.C. § 1983
Procedural Due Process
Against the Trustee Defendants and Defendants Easter, Pierre, and Wise

107. Plaintiff repeats and realleges all of the paragraphs in this complaint as if fully set forth herein.

108. By virtue of the partiesô contractual agreement, Professor Salaitaôs reliance on the Universityôs promises, and the Universityôs representations and actions, Plaintiff possessed a property interest in his appointment to and membership in the Universityôs tenured faculty.

109. Plaintiff also suffered a deprivation of his liberty interest as a result of the false and defamatory statements members of the University Administration made about Professor Salaita, in conjunction with the Administrationôs denial of his appointment to the Universityôs faculty. The false and defamatory statementsð including but not limited to public statements erroneously claiming that Plaintiff is antisemitic or bigoted, attacking his scholarship and credentials, and asserting that he is unfit to teachð caused Professor Salaita to suffer substantial harm and stigma to his professional, intellectual and business reputation.

110. Despite Plaintiffôs property and liberty interest in his appointment to the Universityôs tenured faculty and his employment with the University, he was not provided with and pre-termination procedures whatsoever, including notice of the charges, an explanation of the evidence against him, an opportunity to tell his side of the story, or to be heard by an impartial decision maker. Nor was he provided any post-termination procedures.

111. Based on the manner in which Plaintiffôs appointment and employment were terminated, he was denied any hearing or opportunity to challenge that action either before or after it was taken. The University thereby deprived Professor Salaita of a property interest and a liberty interest in violation of his rights under the Fourteenth Amendment to the Constitution of the United States.

112. As a direct and proximate result of the Universityôs denial of pre-termination or post-termination procedures, Professor Salaita suffered substantial and irreparable harm, including

lost income, the loss of a tenured position at the University, out of pocket expenses and severe emotional distress.

Count III - 42 U.S.C. § 1983 and 42 U.S.C. § 1985
Conspiracy
Against all Defendants

113. Plaintiff repeats and realleges all of the paragraphs in this complaint as if fully set forth herein.

114. All of the Defendants and other co-conspirators, known and not yet known to Plaintiff, reached an agreement amongst themselves to deny Professor Salaitaôs appointment to the Universityôs faculty, all in violation of Plaintiffs constitutional rights, as described above.

115. In this manner, the Defendants, acting in concert with other known and unknown co-conspirators, conspired to accomplish an unlawful purpose by an unlawful means.

116. In furtherance of the conspiracy, each of the co-conspirators committed overt acts and was an otherwise willful participant in joint activity.

117. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiff's constitutional rights.

118. As a direct and proximate result of the illicit agreement referenced above, Plaintiff's rights were violated and he suffered substantial and irreparable harm, including lost income, the loss of a tenured position at the University, out of pocket expenses, and severe emotional distress.

Count IV – State Law
Promissory Estoppel
Against the Board of Trustees

119. Plaintiff repeats and realleges all of the paragraphs in this complaint as if fully set forth herein.

120. As described more fully above, Defendants made an unambiguous promise of employment with indefinite tenure to Professor Salaita. Defendants also made a promise of employment subject to approval consistent with an obligation of good faith and fair dealing, which, in context, included (but was not limited to) complying with (a) the First Amendment of the United States Constitution, (b) general principles of academic freedom and the AAUPôs *1940 Statement of Principles on Academic Freedom and Tenure* provided to Plaintiff with his offer, and (c) the Universityôs own rules and regulations including the University of Illinois Statutes.

121. Professor Salaita relied on these promises when, among other instances of reliance, he resigned his tenured faculty position at Virginia Tech, his wife resigned her position, he leased his residence in Blacksburg to a tenant, pulled their young son out of his school, and made a deposit on a new residence in Illinois. Professor Salaita would not have taken any of these actions in the absence of Defendantsô promise of employment in a tenured faculty position.

122. Professor Salaitaôs actions were of a definite and substantial character, and were both foreseeable and reasonably expected by Defendants.

123. Professor Salaita relied on these promises to his detriment, suffering damages as a result of this breach, in an amount to be proved at trial, including the loss of his income, his wifeôs income, the loss of the earnest money deposit on a residence, moving expenses and other out of pocket costs.

Count V – State Law
Breach of Contract
Against the Board of Trustees

124. Plaintiff repeats and realleges all of the paragraphs in this complaint as if fully set forth herein.

125. As described more fully above, Professor Salaita formed a contract with Defendants by accepting their offer of employment in October 2013. Pursuant to the contract, the University agreed to recommend Professor Salaita to the Board of Trustees for appointment to the tenured faculty, and agreed that the appointment would be completed so long as Professor Salaita could meet ministerial requirements such as maintaining legal authorization to work in the United States.

126. As described more fully above, Defendantsô contractual obligations also included an obligation of good faith and fair dealing in performing the contract, which, in context, included (but was not limited to) complying with (a) the First Amendment of the United States Constitution, (b) general principles of academic freedom and the AAUPôs *1940 Statement of Principles on Academic Freedom and Tenure* provided to Plaintiff with his offer, and (c) the Universityôs own rules and regulations including the University of Illinois Statutes.

127. Professor Salaita substantially performed all of the contractual obligations that were required of him up to the time of breach.

128. Defendants breached the contract by informing Professor Salaita that his nomination would not be recommended to the Board, by failing to recommend him to the Board for appointment, by voting against his appointment on impermissible and unlawful grounds, and terminating his employment.

129. Moreover, in the performance of their contractual obligations to Salaita, Defendants also violated their obligations of good faith and fair dealing as to the terms and conditions of that contract.

130. Professor Salaita suffered damages as a result of this breach, in an amount to be proved at trial, including the loss of his income, his wifeôs income, the loss of the earnest money deposit on a residence, moving expenses and other out of pocket costs.

Counts VI and VII – State Law
Tortious Interference with Contractual and Business Relations
Against John Doe Donor Defendants

131. Plaintiff repeats and realleges all of the paragraphs in this complaint as if fully set forth herein.

132. As described more fully above, John Doe Donor Defendants had knowledge of the Universityôs contract with Professor Salaita and their commitment to complete his appointment to the Universityôs faculty.

133. John Doe Donor Defendants wrongfully, intentionally, and without just cause, demanded that the University terminate Professor Saliataôs employment and refuse to complete his appointment to the Universityôs faculty, or else risk losing their financial contributions to the University. By doing so, they induced Chancellor Wise and others not yet known to Professor Salaita, as agents of the University, to breach their contract, violate Professor Salaitaôs constitutional rights, and destroy his job and business prospects.

134. Professor Salaita suffered damages as a result of this breach, in an amount to be proved at trial, including the loss of his income, his wifeôs income, the loss of the earnest money deposit on a residence, moving expenses and other out of pocket costs.

Count VIII – State Law
Intentional Infliction of Emotional Distress
Against all Defendants

135. Plaintiff repeats and realleges all of the paragraphs in this complaint as if fully set forth herein.

136. In the manner described more fully above, by inducing Professor Salaita to resign from his tenured faculty position at Virginia Tech and then abruptly terminating his position with the University of Illinois days before his arrival on campus to begin teaching, the Board, the Trustee Defendants and Defendants Easter, Pierre and Wise engaged in extreme and outrageous conduct.

137. In the manner described more fully above, by interfering in Professor Salaitaôs appointment to the Universityôs faculty, demanding that the University terminate his position, and issuing an ultimatum that the University must deny his appointment or else lose their financial support, all despite having knowledge of the Universityôs contract and commitment to appoint Professor Salaita to the faculty, the John Doe Donor Defendants engaged in extreme and outrageous conduct.

138. Defendantsô actions set forth above were rooted in an abuse of power or authority.

139. Defendantsô actions set forth above were undertaken with intent or knowledge that there was a high probability that the conduct would inflict severe emotional distress and with reckless disregard of that probability.

140. Defendantsô actions set forth above were undertaken with malice, willfulness, and reckless indifference to the rights of others.

141. As a direct and proximate result of this misconduct, Professor Salaita suffered injuries, including severe emotional distress and great ~~conscious~~ pain and suffering ~~prior to his death~~.

Count IX – State Law
Spoliation of Evidence
Against Defendant Wise

142. Plaintiff repeats and realleges all of the paragraphs in this complaint as if fully set forth herein.

143. Pleading in the alternative, ~~A~~and as described above, Defendant Wise participated in the intentional destruction and spoliation of evidence central to this lawsuit, including but not limited to the two-page document about Professor Salaita given to her by an unknown donor. Defendant Wise and other University officials also communicated about University business, including Professor Salaitaôs dismissal, using personal email accounts with the express purpose of circumventing disclosure and retention obligations.

144. More specifically, as early as March 2014, Defendant Wise stated that since ñwe are not in the litigation phase,ò she was using her personal email account to communicate regarding University business, and that she was sending her communications to the personal email accounts of other University officials. By using her personal email account and not releasing those emails, Defendant Wise evaded her obligations under the Illinois Freedom of Information Act, as well as document retention policies and practices applicable to University email accounts and servers.

145. In addition, Defendant Wise intentionally deleted communications sent and received from her personal email account concerning the decision to deny Professor Salaitaôs appointment. For example, in a September 18, 2014 email regarding Salaita sent from Defendant Wiseôs personal email account to the personal email address of another University employee, Wise indicated that she understood that they were ñin litigation phase,ò and then stated that therefore she and other senior University officials were using personal email accounts instead of University email addresses, and that even with regard to communications about Salaita from her personal email account she was ñdeleting after sending.ò Other senior University officials engaged in this

practice of using personal email accounts instead of University email addresses in order to obscure, conceal and destroy their communications about University business include Campus Legal Counsel Scott Rice, Provost Ilesanmi Adesida, and Associate Chancellor for Public Affairs Robin Kaler.

146. Defendant Wise and the University had a duty under 5 ILCS 160/1 *et seq.* to preserve evidence related to the denial of Professor Salaitaôs appointment to the Universityôs faculty. Defendant Wise and the University also had a duty to preserve evidence related to the denial of Professor Salaitaôs appointment to the Universityôs faculty under the Illinois Freedom of Information Act, 5 ILCS 140/1, which states that ñit is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees,ò and that ñproviding records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end.ò Further, in 2012, the Universityôs ethics office instructed all University employees that all ñUniversity-related communications are subject to (the Freedom of Information Act), regardless of whether they are generated on private equipment or in personal accounts.ò

~~144.~~147. In addition, Defendant Wise and the University were on notice of the potential for litigation since at least August 2014 when lawyers for Professor Salaita were in communication with Defendant Wise and the Universityôs retained outside counsel, which created a duty to Salaita to preserve evidence.

~~145.~~148. Defendant Wiseôs destruction of ~~the memo and any other~~ this evidence interfered with Professor Salaitaôs ability to prove his claims, thereby causing him further damages. The spoliated documents concern communications central to proving Professor Salaitaôs claim that the

motivation for his dismissal was the viewpoint and content of his speech, and that concerns about disruption played no role in Defendantsô decision. Indeed, Defendant Wise was at the center of the decision-making regarding Professor Salaitaôs dismissal, and communicated about Professor Salaitaôs firing with all of the other Defendants, other high-level University officials, and outside donors.

~~146.~~149. Prior to destroying this and other relevant evidence, Defendant Wise knew of the existence of a potential cause of action against her and the University, and intended in destroying this evidence to interfere with Plaintiffôs ability to prove his lawsuit. The misconduct described in this Count was undertaken intentionally with malice and reckless indifference to the rights of others.

* * *

~~147.~~150. Because the Trustee Defendants and Defendants Easter, Pierre and Wise acted within the scope of their employment, the Board of Trustees and the State of Illinois are therefore liable as their employer for any resulting damages and award of attorneysô fees.

WHEREFORE, Plaintiff Steven Salaita respectfully requests that the Court enter judgment in his favor and against all Defendants, for preliminary and permanent injunctive and equitable relief including but not limited to reinstatement by completing his appointment to the tenured faculty; and for monetary relief including compensatory damages, punitive damages, and attorneysô fees and costs, and for any other relief that this Court deems just and proper.

Respectfully submitted,

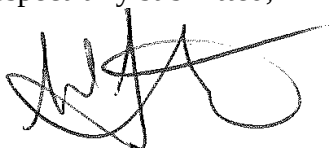

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EXHIBIT B

Message

From: Phyllis Wise [redacted]
Sent: 9/18/2014 4:18:53 PM
To: Michael LeRoy [redacted]
CC: [redacted]
Subject: Re: Myers v. Hasara

Indeed, Michael, it should not be you who reaches out to the students. Mitch should do that if he wants to.

Robin has warned me and others not to use email since we are now in litigation phase. We are doing virtually nothing over our Illinois email addresses. I am even being careful with this email address and deleting after sending.

Phyllis

Sent from my iPad

On Sep 18, 2014, at 2:43 PM, Michael LeRoy [redacted] wrote:
Phyllis,

These are splendid ideas; and I will reach out to Mitch (with whom I already have corresponded).

Following on this idea, I think that having Mitch mobilize that base would be more effective than an e-mail to students from me.

Robin, could you reach out, please, to Lynn and Chris, or alternatively, send me contact information?

Phyllis, whatever time this takes, we have to make this investment, on the merits but also as a matter of principle to preserve the supremacy of BOT governance; and the tide has shifted decisively on our side. We can be influenced by protest, but not governed by it.

There is a conversation taking place between the support team and Roy Campbell that is summarized by this note:

From: Leroy, Michael H
Sent: Thursday, September 18, 2014 3:26 PM
To:
Cc:
Subject:

Thanks so much, ____.

I hope we can get further clarification.

If a motion to vote can be entertained without being an agenda item, it would seem to defeat the notice provision in the bylaws.

In more practical terms, I would contact more people if I knew a vote was a real possibility; but if a vote cannot be scheduled without being an agenda item, I would take a more laid-back approach to the meeting.

Thanks in advance.

Michael

PS: The possibility that an **ambush vote** *could* occur really offends my democratic sensibilities, especially given the extreme gravity of the putative vote, and its possible late-timing in a marathon meeting.

Michael H. LeRoy

Michael H. LeRoy
Professor
School of Labor & Employment Relations & College of Law
University of Illinois at Urbana-Champaign
(217) 244-4092
&
Lecturer in Law, University of Chicago Law School

On Thu, Sep 18, 2014 at 3:25 PM, Phyllis Wise [redacted] wrote:
Michael,

Thanks so much for letting us know. The Student Senate President, Mitch Dickey, may want to know about this, so that his colleagues are ready. I also met with Chris Isenhower, the chair of the Student Alumni Ambassadors (I will be meeting with the group of student leaders that he meets with regularly on Tuesday evening). Lynn Cheney is the Alumni Association staff member who supports the students. Both Chris and Lynn may want to know. In addition, Robin, I hope Renee Romano knows.

Thanks so much for your continuing efforts. This is taking so much of your precious time!
Phyllis

Sent from my iPad

On Sep 18, 2014, at 1:19 PM, Michael LeRoy <[redacted]> wrote:
Dear Phyllis and Robin,

I was planning on not contacting either of you today, or the next day, and so forth; but please be aware of

https://www.facebook.com/events/791869584202990/

I contacted every student senator on August 29 via e-mail to explain, in two sentences, why I strongly support our Chancellor.

In light of the new FB post, I will reach out again with a low-key, short message to encourage their attendance (without referencing the protest).

I, or a member of our faculty support team, will contact [redacted]

In this instance, we will refer to the protest; but we will also ask [redacted] to organize a well-behaved and orderly support group of students.

I am waiting for several hours to give time to my team to reply and share their thoughts.

If either one of you would like to add or modify this tentative plan, please let me know.

From my very limited vantage point, things seem to be significantly quieting down among faculty members, and from the support side of the equation, I don't think we should do anything that is provocative or otherwise stirs the pot.

On the other hand, I don't think our support team should be complacent.

Michael

On Wed, Sep 17, 2014 at 1:03 PM, Phyllis Wise [redacted]m> wrote:
Michael,

Thank you for making me aware of this.

Phyllis

Sent from my iPad

On Sep 17, 2014, at 9:24 AM, Michael LeRoy <[redacted] wrote:
I ran across a case in which Karen Hasara was sued in her capacity a mayor of Springfield by an employee who alleged a violation of First Amendment rights.

I mentioned this to Robin simply to suggest that Ms. Hasara might be a useful, personal resource for Phyllis-- as much from a coaching (and calming) perspective as anything else.
I passed the case along to Scott Rice; but I consider [redacted]

The Seventh Circuit Court of Appeals ruled for the terminated employee, ***but*** this is misleading: the ruling was whether the health officials critical statements were "public" in nature (as opposed to a private grievance about her work).
The point is that Mayor Hasara did not lose the case-- she only lost an issue in this ruling-- only that the case was ordered to trial (or was settled).
My database has 80+ faculty cases with a First Amendment issue (and growing), and the trend on this issue (not others) is quite favorable-- but there are adverse precedents, too.

Personally, I am optimistic on this issue due to statistical indicators of court behavior.
Anyway, in case you want to read the Hasara case, here it is.
i am meeting with Scott this afternoon.

No reply is necessary.
Be positive, always.

I am looking forward to the medical school concept moving forward, a far more important matter.

Michael

Meyers v. Hasara,226 F.3d 821 (7th Cir. 200)

James P. Baker (argued), Springfield, IL, for Plaintiff–Appellant.
Robert M. Rogers, City of Springfield, Bradley B. Wilson (argued), Corporation Counsel, Springfield, IL, for Defendants–Appellees.
Before WOOD, Jr., KANNE and DIANE P. WOOD, Circuit Judges.
KANNE, Circuit Judge.
At the behest of its mayor, the City of Springfield suspended health inspector Cynthia Myers for comments she made regarding an open-air produce market that allegedly had been operating in violation of city and state law. Myers considered the punishment a violation of her constitutional rights and sued the mayor and health department director under 42 U.S.C. § 1983. T

he district court granted the defendants summary judgment on the merits and also ruled that the defendants were entitled to qualified immunity because the law regarding discipline of public employees for exercising their First Amendment rights was not clearly established at the time of Myers' suspension. However, because the district court resolved factual disputes in favor of the defendants, we hold that summary judgment was not warranted in this case.

Furthermore, the standards concerning a public employer's authority to punish an employee for exercising rights guaranteed under the First Amendment were well established at the time of the events in question, and therefore qualified immunity was not justified. We reverse the grant of summary judgment and remand for trial.
i. History

Cynthia Myers worked as a supervisor and health inspector in Springfield's health inspection program. In that role, she oversaw the food inspection program, supervised five inspectors and performed routine health inspections of

restaurants, markets and stores for compliance with city and state health codes. Myers' boss was Steve Hall, the head of the Public Health Department Environmental Division, who reported to defendant Gail Danner, the acting head of the Public Health Department. Danner reported to Keith Haynes, the director of community services, who reported directly to defendant Karen Hasara, the Springfield mayor.

Although several steps removed from the pinnacle of Springfield power, Myers had some supervisory duties in her job and was called on to participate in making division decisions and formulating policies. The Springfield health department, in addition to enforcing its own ordinances, had entered into an agreement with the state to enforce the state's health laws. Furthermore, the city's health ordinances were required to be no less stringent than the state's.

In 1995, a business called Parsons' Produce operated an open-air market in the parking lot of a local department store. Parsons' sold fruit and vegetables under an agricultural commodity permit, which permitted the sale of fresh produce, but not packaged food products. The restriction on selling packaged foods stems from the increased risk of infestation and contamination in an open-air market and the recognition that the consumer typically knows to inspect and wash fresh food, but may not do the same with packaged products.

Myers inspected Parsons' Produce in 1995 and found that it was selling packaged food products in an open-air market in violation of state and local laws. Of the six businesses operating under an agricultural commodity permit in the city, only Parsons' sold packaged foods. Myers filed her report with Danner and Hall, who visited Parsons' and confirmed Myers' finding. Hall voiced concerns to Danner and Haynes about Parsons', which led to a meeting with the state health department, which then formally notified Haynes that Parsons' was in violation of state health laws. The city's legal department notified Haynes that Parsons' was in violation of city and state health laws, and that the city ordinance could not be amended to allow Parsons' to continue to operate as it was without losing state funding for the program. At the same time, Hall sent Haynes a memorandum encouraging the enforcement action against Parsons'. Hasara took office in 1995 and was informed of the situation with Parsons'. Several other meetings took place over the course of 1995, but no action was taken against Parsons' to stop it from selling packaged food products. Parsons' closed for the season in the fall of 1995.

In 1996, Parsons' reopened and expanded into a second location at a local mall. Myers again inspected its facility. Myers found that Parsons' continued to sell packaged food products without the proper license, and reported this finding to Danner. Knowing that it was operating in violation of the permit, Myers refused to act on its application for a new agricultural commodity permit. Hall supported Myers' position and refused to approve the permit application. Danner, however, acting on the directions of her superiors, approved the permit and informed Myers that she did not need to take any further action regarding Parsons'. The defendants claim that they gave Myers a clear directive to have no further involvement with Parsons', but Myers disputes this factual contention.

Hasara, Danner and Haynes met with state health officials in May 1996 and discussed the Parsons' permit situation. Hasara believed Parsons' was not violating the law and voiced support for Parsons'. State health officials disagreed, but allowed that it was a local matter and said the state health department would not interfere. Hasara instructed Danner and Haynes to allow Parsons' to operate as it had before. Myers had no other involvement with the permit issue, but responded to two complaints—one in May, the other in July—regarding Parsons'. Parsons' complained to Haynes that Myers was harassing it. Haynes investigated, but found no evidence to support the complaint.

Later in May, the local newspaper published an article concerning Parsons' and the health inspections, reporting that the market continued to operate in violation of city and state health codes. On May 30, while inspecting a restaurant at the mall where Parsons' operated one of its markets, Myers and another health inspector met with an assistant manager of the mall. Myers asked the manager whether he had seen the newspaper article, to which he responded that he had. In response to the manager's questions, Myers said that Parsons' was in violation of its permit and the city had decided to take no action against it. The mall manager was concerned about the mall's potential liability for health dangers caused by one of its tenants, and Myers indicated that she thought landlords could be held liable for the actions of their tenants.

Jeff Parsons, the owner of Parsons' Produce, soon found out about Myers' conversation with the mall manager, and complained to the mayor's office. Hasara wanted to fire Myers for expressing views contradictory to the city's policy on the issue, but Danner, Haynes and the city personnel director felt that termination was unwarranted. Hall also objected to disciplinary action against Myers. Instead, Myers was charged with failing to obey a reasonable directive and a hearing was held on the charge, at which Danner presided. On June 21, 1996, Myers was suspended for five days. No other action was taken against her.

Myers filed a two-count complaint against Hasara and Danner, alleging deprivations of her First and Fourteenth Amendment rights. After discovery, the defendants moved for summary judgment on the grounds that Myers' comments to the mall manager did not involve a matter of public concern, the city's interest in effective health inspection administration outweighed Myers' First Amendment rights and, in any event, Danner and Hasara were entitled to qualified immunity. The district court, applying the test for public-employee speech established in *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968), agreed on all three grounds and granted the defendants summary judgment. This appeal followed.

II. Analysis

1 2 3 We review *de novo* a grant of summary judgment, *see Weicherding v. Riegel*, 160 F.3d 1139, 1142 (7th Cir.1998), as well as a district court's decision that a defendant is entitled to qualified immunity. *See Forman v. Richmond Police Dep't*, 104 F.3d 950, 956–57 (7th Cir.1997). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In determining whether a genuine issue of material fact exists, we construe all facts in the light most favorable to the non-moving party and draw all reasonable and justifiable inferences in favor of that party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

A. Pickering *Balancing*

4 In her complaint, Myers alleged that she had a protected First Amendment right to make the comments she did to the mall manager regarding Parsons' permit situation and the city's policy of not enforcing the relevant ordinance. The Supreme Court has long held that a public employee maintains a First Amendment right to speak out on matters of public concern even though she works for the government. *See Pickering*, 391 U.S. at 568, 88 S.Ct. 1731; *see also Connick v. Myers*, 461 U.S. 138, 142, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983). A public employee can be punished for exercising that right only if the facts of the case, as reasonably known to the employer, indicate that the employer's interest in promoting efficiency of public services outweighs the employee's interest in free speech. *See Waters v. Churchill*, 511 U.S. 661, 668, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994); *Pickering*, 391 U.S. at 568, 88 S.Ct. 1731. Courts after *Pickering* have engaged in a two-part analysis to determine whether the "interests of the [employee], as a citizen, in commenting upon matters of public concern" outweighed the "interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Id.*

1. Matters of Public Concern

5 6 In *Hulbert v. Wilhelm*, 120 F.3d 648, 653 (7th Cir.1997), we re-stated the *Pickering* analysis as a three-part inquiry, although still addressing the core concern identified in *Pickering*. We held that the first part of *Pickering* sought to determine (1) whether the speech would be protected if uttered by a private citizen and (2) whether the speech was more than an unprotected "personal employee grievance." *Hulbert*, 120 F.3d at 653. If so, then we would consider the speech to meet the test for speech by a citizen on a matter of public concern. *See id.* A number of factors are relevant to this analysis including the content, form and context of the remarks, *see Connick*, 461 U.S. at 147–48, 103 S.Ct. 1684, and whether the remarks can fairly be characterized as relating to issues of "political, social, or other concern to the community." *Id.* at 146, 103 S.Ct. 1684.

The district court held that the subject of Myers' comments was not a matter of public concern. We disagree. It is important to good government that public employees be free to expose misdeeds and illegality in their departments.

Protecting such employees from unhappy government officials lies at the heart of the *Pickering* cases, and at the core of the First Amendment. For example, in *Marshall v. Porter County Plan Commission*, 32 F.3d 1215, 1218 (7th Cir.1994), the plaintiff, an employee in the building inspector's office, told the county planning commission that required inspections were not being done and provided a list showing that half of the required inspections had not been performed. The commission took no action, but later fired her in part because of her complaints regarding the building inspections. We held that the activities about which the plaintiff complained "were the type that result in the misuse of public funds and trust. These were not employment disputes or criticisms of the way that only [plaintiff's] job was affected." *Id.* at 1219–20. As a matter of law, we found these comments to be about matters of public concern. *Id.* at 1220.

Myers' comments to the mall manager are analogous. The city had a duty to enforce both its own and the state's food-inspection laws. There is no doubt that the inspection laws were valid and routinely enforced and that Parsons' practice of carrying packaged food products violated its permit. For whatever reason, the mayor and department head had decided not to enforce the law against Parsons' despite the city's duty to do so. Food-inspection rules, even ones that do not threaten cataclysmic harm, serve to protect the public health from risks of contamination. Like the plaintiff in *Marshall*, Myers found it objectionable that her department would refuse to enforce the law. The content of her comments to the mall manager involved a matter of public concern.

7 Following *Hulbert*, we find that Myers' criticism of the city for turning a blind eye to a known permit violation and potential health risk would have been protected if uttered by a private citizen and was more than a personal employee grievance. In fact, it bore no relation to the *827 gripes about office policies, scheduling and personnel decisions like those at issue in *Connick,* where the Court held that such employee grievances were not matters of public concern. 461 U.S. at 148, 103 S.Ct. 1684. The district court, examining the "content" of Myers' remarks, found that because she focused on Parsons' licensing problem, she was concerned not with a public health hazard but with her own dispute with her supervisors. *Myers v. Hasara*, 51 F.Supp.2d 919, 926–27 (C.D.Ill.1999). We disagree. Whistleblowing does not need to be limited to systemic charges of corruption to qualify as a matter of public concern. A specific violation of a law that creates a risk to public health, safety or good governance likewise is a matter of public concern. Myers knew of one such violation and reported it to an obviously concerned party who she knew would take action on it. The fact that "her exact language is directed specifically at Parsons'," *Myers*, 51 F.Supp.2d at 927, made sense considering that she perceived it to be a public health risk.

8 Furthermore, a "personal aspect contained within the motive of the speaker does not necessarily remove the speech from the scope of public concern." *Marshall*, 32 F.3d at 1219. Myers' disgust or frustration about the city's decision to ignore a health-code violation does not mean that her complaint was not a public concern. While the speaker's motivation is relevant to the *Pickering* analysis, it is not necessarily dispositive, *see Gregorich v. Lund*, 54 F.3d 410, 415 (7th Cir.1995); *Colburn v. Trustees of Indiana Univ.*, 973 F.2d 581, 587 (7th Cir.1992), and does not transform Myers' remarks into matters of private concern in this case. We disagree with the district court that she spoke "more as a disgruntled employee" or that her remarks in some way were a personnel grievance. We hold that the speech for which Myers was disciplined related to a matter of public concern, precluding summary judgment for the defendants on this issue.

2. The City's Interest

9 The district court found that the city's interest in "promoting efficient and effective public service outweighed Plaintiff's right to express herself." *Myers*, 51 F.Supp.2d at 928. However, in doing so, the district court resolved disputed issues of material fact in the defendant's favor, thereby rendering summary judgment improper. To answer the second part of the *Pickering* test, we have identified seven factors to consider. *See Kokkinis v. Ivkovich*, 185 F.3d 840, 845 (7th Cir.1999); *Wright v. Illinois Dep't of Children & Fam. Servs.*, 40 F.3d 1492, 1502 (7th Cir.1994). Among those relevant to the summary judgment in this case are whether the speech created disharmony in the workplace and whether the employment relationship requires personal loyalty and confidence. *See id.* Both of these factors were influenced by the question of whether Myers had been given a clear directive not to discuss the issue further.

The district court disregarded this question rather than resolve it in Myers' favor. In the district court's opinion, the issue was irrelevant because Hasara reasonably believed that Myers had been given the order. We disagree. Myers was suspended for violating a superior's order, an offense that undoubtedly raises a legitimate governmental interest. However, the parties dispute whether Myers was given this order. If she was not, then her remarks to the mall manager were not in violation of a clear directive, and the governmental interest in having employees follow orders and accurately portray the agency's policies was not implicated. Therefore, this issue goes to the heart of Myers' complaint and should have been resolved in her favor for purposes of summary judgment.

10 The district court further found that Myers' actions created disharmony because city officials disagreed about how or whether she should be punished. *Myers,* 51 F.Supp.2d at 928. This analysis treats the "disharmony" factor in a *Pickering* claim in a way that could prevent plaintiffs from ever prevailing. The disharmony that undermines the government interest in efficient and effective service stems from the content of the speech itself, such as by undermining public confidence in the agency or contradicting the agency's public message. We would imagine that in most *Pickering* claims, government officials debated the proper punishment for the speaker. This cannot be the source of the relevant disruption or disharmony since it would weigh against every plaintiff. Just as disharmony was present when the superiors discussed Myers' punishment, it would have been absent had they not sought to punish her.

11 Another factor to consider in balancing the government's interest is whether the time, place or manner of the employee's speech disrupted the government's provision of services. *See Coady v. Steil,* 187 F.3d 727, 731 (7th Cir.1999); *Wright,* 40 F.3d at 1502. This analysis questions whether the employee could have aired her concerns at a better time or in a better way and created unnecessary confusion or turmoil by expressing herself in the way she did. *Cf. Khuans v. School Dist.* 110, 123 F.3d 1010, 1017 (7th Cir.1997) (holding that teacher's complaints disrupted daily routine of school); *Breuer v. Hart,* 909 F.2d 1035, 1040 (7th Cir.1990) (explaining that complaint was filed in an appropriate manner, even though it legitimately addressed a matter of public concern).

The district court applied this factor in the defendants' favor because it found that Myers expressed her concerns to a limited audience that could not change city policy but could render economic harm to Parsons'. However, the fact that she spoke to a limited audience was not particularly disruptive to the government. In fact, her actions seemed discreet, in that she could have chosen far more disruptive forums, such as writing a letter to the local newspaper or appearing at a city council meeting. By Myers' action, the mall management and Parsons' may have complained to the city about the permit problem, but this seems a very limited form of disruption. Also, the district court noted that the mall manager believed Myers' comments were motivated by frustration with the city. This latter conclusion merely speaks to Myers' intent and is irrelevant to whether Myers chose the appropriate time, place and manner for her remarks. Assuming that Myers chose this forum, rather than had it chosen for her by the mall manager, it seems to be the least disruptive forum she could have picked. In addition, there were several factual questions regarding the conversation Myers had with the mall manager that the district court resolved against Myers, rather than in her favor as required on a summary judgment motion.

B. Qualified Immunity

12 Finally, the district court found that Hasara and Danner were entitled to qualified immunity. A government official is entitled to immunity from suit when performing discretionary functions unless the district court determines that (1) the plaintiff alleged a constitutional injury, and (2) the legal standards applicable to the injury were clearly established at the time. *See Harlow v. Fitzgerald,* 457 U.S. 800, 815, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982); *Rakovich v. Wade,* 850 F.2d 1180, 1210 (7th Cir.1988). The district court held that Myers failed to allege a constitutional injury and dismissed the suit on the basis of qualified immunity. Because we reverse the grant of summary judgment on the ground that Myers successfully raised a question of material fact regarding her First Amendment claim, we likewise reverse the court's finding that she failed to meet the burden of pleading a constitutional injury.

13 The district court further found that Hasara suspended Myers because she "had disobeyed a directive in violation of civil service rule 48(e)." In the district court's view, the constitutional standards regarding a government employer's right to discipline an employee for engaging in protected speech in disregard of a supervisor's direct order were not

clearly established in 1996. However, several cases in this Circuit prior to 1996 discussed in detail the balancing of interests between a government employer's right to require obedience, confidentiality and silence against an employee's First Amendment right to speak on matters of public concern. *See, e.g.,* *Conner v. Reinhard*, 847 F.2d 384, 390–91 (7th Cir.1988); *O'Brien v. Town of Caledonia*, 748 F.2d 403, 406–07 (7th Cir.1984); *Hanneman v. Breier*, 528 F.2d 750, 754 (7th Cir.1976). For instance, *O'Brien* involved police department regulations that prohibited all public criticism of the department and required police officers to keep all department business confidential. 748 F.2d at 405. We held that *Pickering* demanded the department weigh the police officer's individual right to speak on matters of public concern against the department's valid right to enforce the challenged rules before disciplining an officer for violating those rules. *Id.* at 406–07. Other cases have similarly required *Pickering* analysis even though the stated reason for an employee's discipline was insubordination rather than the content of the employee's speech. *See generally* *Dishnow v. School Dist. of Rib Lake*, 77 F.3d 194 (7th Cir.1996); *Warzon v. Drew*, 60 F.3d 1234 (7th Cir.1995). It was, therefore, clear in June 1996 that government employees had a First Amendment right to speak on matters of public concern that must be weighed against the employer's right to punish insubordination. Hasara and Danner cannot claim not to have known that disciplining Myers under these circumstances would not implicate her right to free speech.

iII. Conclusion

We hold that as a matter of law, Myers' comments regarding the city's decision not to enforce its health-code permit regulations focused on matters of public concern, and that because questions of material fact remain, summary judgment was inappropriate. This decision does not decide the merits of the factual issues one way or the other, but leaves factual determinations to a jury or a bench trial. Finally, Hasara and Danner were not entitled to qualified immunity. We therefore reverse the district court's grant of summary judgment and remand the case for further proceedings.