denied Erskine's motions for summary judgment and directed verdict, which were based on the ground that the handbook did not create a contract. If the trial judge had granted Erskine's motion for summary judgment or directed verdict in this case, it is blatantly obvious that this Court would have been required to reverse. *See Conner v. City of Forest Acres*, 348 S.C. 454, 463, 560 S.E.2d 606, 610 (2002) ("Because an employee handbook may create a contract, the issue of the existence of an employment contract is proper for a jury when its existence is questioned and the evidence is either conflicting or admits of more than one inference.").

The majority concedes that tenure is a promise and claims the promises inherent in the granting of tenure make the Faculty Manual—as applied only to tenured faculty—a contract as a matter of law. While I appreciate the majority's effort to acknowledge the importance of tenure in academia, the fact that a college decides to include a tenure policy in its handbook does not necessarily transform it into a contract. *See Packer v. Trs. of Indiana Univ. Sch. of Med.*, 800 F.3d 843, 852-53 (7th Cir. 2015) (affirming district court's holding that tenure policies in university's academic handbook did not create an enforceable contract); *Wilson v. Clark Atlanta Univ. Inc.*, 794 S.E.2d 422, 433 (Ga. Ct. App. 2016) (refusing to hold faculty handbook containing tenure policy constituted a contract). *But see Gray v. Loyola Univ. of Chicago*, 652 N.E.2d 1306, 1309 (Ill. Ct. App. 1995) (holding college's tenure obligations were not extinguished after merger with another university because faculty manual setting out terms and conditions of tenure created a contract). *See also* Ralph D. Mawdsley, *Litigation Involving Higher Education Employee and Student Handbooks*, 109 Ed. L. Rep. 1031, 1034-35 (1996) ("Whether employee handbooks are part of employee contracts will vary among states. Some states include handbooks as part of employment contracts. Other states require that a handbook be expressly included by reference into a contract before terms in the handbook are enforceable. On the other hand, other states require inclusion of handbook terms into an employment contract, even without express reference, where university practice treated the terms as applicable to employees. Still other states require that handbooks meet contract requirements of offer, acceptance, and consideration before they are enforceable."). *Compare Greene v. Howard Univ.*, 412 F.2d 1128, 1132 (D.C. Cir. 1969) (holding the university's handbook was impliedly incorporated as part of the employment agreement), *with Black v. W. Carolina Univ.*, 426 S.E.2d 733, 736 (N.C. Ct. App. 1993) (holding provisions of university's handbook were not part of professor's employment contract because they were not expressly incorporated into it). While it may be sound public policy to interpret a college handbook's tenure provisions as creating a contract with tenured faculty, and

I would be inclined to do so in the proper case, I disagree with the majority's proclamation here—under the guise of a matter of law—where the very existence of the contract was consistently and vigorously disputed and was thus a matter for the jury to determine.

Moreover, the issue of whether the Faculty Manual constituted a contract was the most contested issue in this case, and the trial court was required to submit it to the jury, especially where, as here, the handbook contained a disclaimer that it did not constitute a contract of employment. *See Hessenthaler v. Tri-Cty. Sister Help, Inc.*, 365 S.C. 101, 108, 616 S.E.2d 694, 697 (2005) ("In most instances, judgment as a matter of law is inappropriate when a handbook contains both a disclaimer and promises."); *Horton v. Darby Elec. Co., Inc.*, 360 S.C. 58, 67, 599 S.E.2d 456, 460 (2004) ("An employee manual that contains promissory language and a disclaimer is 'inherently ambiguous,' and a jury should interpret whether the manual creates or alters an existing contractual relationship." (quoting *Fleming v. Borden*, 316 S.C. 452, 463, 450 S.E.2d 589, 596 (1994)); *see also* 19 Williston on Contracts § 54:10 (4th ed. 2016) ("[T]he determination [of] whether the manual establishes a contractual commitment depends on the intention of the parties, and since this is an inference of fact, the determination of the parties' intent is within the province of the jury. Relevant evidence of the intent of the parties for purposes of determining whether an employment manual created an implied employment contract usually includes the language of the manual itself, the employer's course of conduct, and pertinent oral representations."). *But see Bishop v. City of Columbia*, 401 S.C. 651, 658-59, 738 S.E.2d 255, 259 (Ct. App. 2013) ("An employee handbook forms a contract when: (1) the handbook provisions and procedures in question apply to the employee; (2) the handbook sets out procedures binding on the employer; and (3) the handbook *does not* contain a conspicuous and appropriate disclaimer." (emphasis added)). It is not the role of this Court to decide to whom a conspicuous disclaimer applies, as the majority erroneously attempts to do, because when a contract's existence is questioned and the evidence is conflicting, it becomes a question of fact for the jury.

The trial court thus properly submitted to the jury the issue of whether a contract existed as well as the terms of that contract. However, the jury was not asked, by way of special interrogatories, to specify the terms of the contract. Instead, the trial court complied with the parties' request that the jury—if it found that a contract existed—answer two questions, to wit, whether Erskine or Crenshaw breached that contract. From its verdict, we know the jury determined Erskine

breached its contract with Crenshaw and that Crenshaw did not breach it. That verdict, if supported by the evidence, should be upheld. I believe the majority grievously errs in invading the province of the jury, declaring what it believes the terms of the contract to be, and then holding as a matter of law that Erskine did not breach its contract with Crenshaw. It also errs in its conclusion that Crenshaw, by not appealing his termination to the Board, failed to follow the terms of the contract. The jury found that Crenshaw complied with the provisions of the contract, and it is neither the role of an appellate court to overrule the jury's factual findings regarding the terms of a contract nor its decision concerning a party's compliance therewith. *See Small*, 292 S.C. at 486, 357 S.E.2d at 455 (holding where the jury determined that the employee handbook altered the employee's at-will employment status, "courts will exercise the greatest self-restraint in interfering with the constitutionally mandated process of jury decision").

This jury determined that Crenshaw, as a tenured[17] faculty member, had enforceable rights and obligations as set forth in the Faculty Manual. That faculty handbooks can guarantee such due process and procedural rights is well established. *See Beilis v. Albany Med. Coll. of Union Univ.*, 525 N.Y.S.2d 932, 933 (N.Y. App. Div. 1988) ("It is well settled that a private educational institution is bound by its own published guidelines or rules."); Ralph D. Mawdsley, *Employment Issues in Private and Public Schools*, 51 Ed. L. Rep. 1107, 1116 (West 1989) ("[O]nce an educational institution prepares a handbook, employees have every right and expectation that it will be followed. A faculty member can expect that an institution

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[17] The Faculty Manual defines "academic tenure" as providing for "continuous appointment of a faculty member to a designated teaching position." The majority expends considerable energy explaining the concept of tenure and states that tenure means something different with respect to faculty employed in private institutions of higher learning than those employed by public colleges and universities. In doing so, the majority focuses on the role of constitutional due process in the context of a private institution and creates a dispute where none exists, as this issue was never raised by Erskine in this case, nor did Crenshaw allege any such claim. Regardless, the majority's reliance on this public-private distinction is irrelevant because the Faculty Manual here specifically guaranteed enforceable due process rights to its tenured faculty. *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("Appellate courts recognize . . . whatever doesn't make any difference, doesn't matter.").

will adhere to the procedural rights in the faculty handbook . . . ."). Even if I agreed with the majority's claim that Crenshaw possessed less due process rights because he was employed by a private institution, specific language in Erskine's Faculty Manual unequivocally grants him those rights. In the section governing termination, the Faculty Manual provides that, "the College will insure [sic] that both individual rights and its own institutional integrity are preserved through procedures that guarantee due process." Additionally, the handbook explicitly provides tenured faculty "the right of due process concerning their employment status" when contrasting their rights to those of non-tenured faculty. While the majority concedes that the College references due process in its Faculty Manual, it completely ignores the legal ramifications of this incorporation in its stunning conclusion that Crenshaw "has no due process rights he may enforce against Erskine."[18] *See* William W. Van Alstyne, *Tenure: A Summary, Explanation and "Defense,"* 57 AAUP Bull. 328, 328 (1971) ("In a practical sense, tenure is translatable principally as a statement of formal assurance that thereafter the individual's professional security and academic

[18] The majority's repudiation of the College's obligation to provide due process to tenured faculty is unsupported, as *Jansen v. Emory University*, 440 F.Supp. 1060, 1062 (N.D. Ga. 1977) and *Centre College v. Trzop*, 127 S.W.3d 562, 567 (Ky. 2003) concerned the due process rights that a private college owes to its students, not its tenured faculty. *See Jansen*, 440 F.Supp. at 1062 (noting the university's bulletin provided attendance at Emory was a privilege and not a right). Moreover, neither of these cases rejected "the idea of contractual due process," as the majority boldly claims. Rather, the court's holdings in both *Jansen* and *Tzrop* centered on a specific clause of the contract providing the procedure for a student's dismissal. *See Jansen*, 440 F.Supp. at 1062 ("At any time the president or dean may terminate the enrollment or impose such measures as may be considered appropriate for improper conduct or for lack of sufficient progress."); *Tzrop*, 127 S.W.3d at 568 ("Although students are ordinarily disciplined through the judicial process involving the Student Judiciary or the executive committees of the Intrafraternity Council or the Panhellenic Association, the college administration may invoke sanctions including dismissal from the College in unusual circumstances."). The *Tzrop* decision further stemmed from the court's finding that the College "never guaranteed the right to due process" in its contract. 127 S.W.3d at 568. In contrast, nothing in the Faculty Manual allows Erskine College to circumvent the termination procedures guaranteeing due process for tenured faculty outlined in the handbook. As previously noted, the majority's reliance on *Jansen* and *Tzrop* is further misplaced because the applicability of constitutional due process is not at issue in this case.

freedom will not be placed in question without the observance of full academic due process. This accompanying complement of academic due process merely establishes that a fairly rigorous procedure will be observed whenever formal complaint is made that dismissal is justified on some stated ground of professional irresponsibility . . . ."); *id*. at 329 ("The more fundamental reason for the requirement of due process here as elsewhere is the desire to do justice and to avoid errors in the making of critical judgments."); *see also* Mark L. Adams, *The Quest for Tenure: Job Security and Academic Freedom*, 56 Cath. U. L. Rev. 67, 80 (2006) ("The nexus between academic freedom and the job security provided by tenure is the requirement that due process be provided prior to termination for cause, which preserves the foundational principle, guiding beliefs, and distinguishing characteristics of a liberal arts education at an academic institution: unfettered objective inquiry supported and challenged by reasoned analysis and discussion."). The jury properly found that by including these provisions in the Faculty Manual, Erskine guaranteed Crenshaw enforceable due process rights. To hold otherwise would render these provisions meaningless in contravention of the well-settled principles of contract law. 11 Williston on Contracts § 32:11 (4th. ed. 2012) ("Interpretations which give a contract meaning are preferred to those which render it meaningless."); 17A C.J.S. *Contracts* § 417 (2020) ("[A] court is bound to construe contracts so as to give effect to all provisions, whenever possible, and there is a presumption that the parties have not used words needlessly. A construction rendering a provision, term, or part meaningless . . . should be avoided."). I therefore reject the majority's assertion that Crenshaw has "no right of legal recovery" in this case and that the significance of tenure to Crenshaw's enforceable rights has been "overstated."

In its finding that the Board of Trustees is the only body with the power to terminate a tenured faculty member, the majority again intrudes upon the role of the jury by determining the terms of the parties' contract. It then contends that since President Norman did not have that power, any obligations Erskine College had under the contract did not arise because Crenshaw failed to request a hearing before the Hearing Committee. This entire discussion emanates solely from the majority's own interpretation of the handbook, something which I assert was an issue for the jury, not for this Court. Moreover, this conclusion, to which the majority attaches so much significance, was a point never argued or even mentioned by the College.[19]

[19] At the risk of being repetitive, many of the grounds on which the majority bases its decision as a matter of law were never raised during this lengthy litigation, and

While I deeply disagree with the majority arrogating to itself the power to determine the terms of the contract between the parties, I must also note that the majority is simply wrong in its conclusion on the power to terminate. Crenshaw was indeed terminated by President Norman, and when that event occurred, Crenshaw possessed a right to bring suit against the College for breach of contract based upon his alleged wrongful termination. *Hessenthaler v. Tri-Cty. Sister Help, Inc.*, 365 S.C. 101, 108, 616 S.E.2d 694, 697 (2005) ("[W]hen an employee's at-will status has been altered by the terms of an employee handbook, an employee, when fired, may bring a cause of action for wrongful discharge based on breach of contract."). I acknowledge that the termination procedures outlined in the Faculty Manual include an appeals process through which the decision of the Hearing Committee may be reviewed by the Board; however, nowhere is it stated that a tenured professor who fails to avail himself of that appeals process loses his due process right to file suit for breach of contract. Even though the majority elevates this provision to a mandatory requirement, which if not fulfilled, entirely vitiates Crenshaw's due process right to sue as well as his tenure rights generally, it cites no authority for this startling pronouncement, which I feel sure will come as quite a shock to tenured faculty throughout this state. The majority cites not one case from across the country where another court has found such a term controlling in the academic setting and states

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under settled principles, are not preserved. *See* JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 382 (3d ed. 2016) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.") (quoting *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984)); *see also* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (noting when a party fails to raise an issue in the lower court or otherwise preserve it for appellate review, such contentions will not be considered on appeal); *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.").

only that, "This way of looking at the point is akin to a person failing to exhaust administrative remedies."[20]

Contrary to the majority, courts across the country have recognized the value of tenure and the protection it affords to individual faculty with the clear and unmistakable understanding that such rights are "not easily forfeited." *McConnell v. Howard Univ.*, 818 F.2d 58, 68 n.11 (D.C. Cir. 1987). *See, e.g.*, R. Chait & A. Ford, Beyond Traditional Tenure 219–20 (1982); *see also White v. Bd. of Educ. of Lincoln Cty.*, 184 S.E. 264, 268 (W.Va. 1936) ("A teacher may not be lightly shorn of the privileges for which he fairly contracted."). The *McConnell* court further acknowledged that tenure rights are "*substantive* right[s] to continued employment that would exist with or without internal *procedures* for termination cases." *McConnell*, 818 F.2d at 68 n.11 (emphasis in original). Indeed, a college's internal procedures provide "an additional right of a tenured faculty member; one that serves the interests of *both* professors and universities by 'secur[ing] and maintain[ing] [an] environment essential to their own effectiveness.'" *Id.* (alterations and emphasis in original) (citing Commission on Academic Tenure in Higher Education, *Faculty Tenure* 33 (1973)).[21] In *McConnell*, the court found judicial review of the

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[20] The principle of exhaustion of remedies has no application here. *See Stinney v. Sumter Sch. Dist. 17*, 391 S.C. 547, 550 n.1, 707 S.E.2d 397, 398 n.1 (2011) ("The doctrine of exhaustion of administrative remedies only applies when a litigant invokes the original jurisdiction of the circuit court to adjudicate a claim based upon a statutory violation for which the legislature has provided an administrative remedy.").

[21] Despite Judge Buckley's statement in his concurrence that the academic principles in footnote 11 are "informational only," the D.C. Circuit's decision was clearly premised on the notion that tenure rights are substantive rights to continued employment regardless of a college's internal procedures. *McConnell v. Howard Univ.*, 818 F.2d 58, 67 (D.C. Cir. 1987) ("[A]ccording to the trial court, [the University's] decision to fire a tenured faculty member is largely unreviewable, with judicial scrutiny limited to a modest inquiry as to whether the [University's] decision was 'arbitrary,' 'irrational' or infected by improper motivation. Such a reading of the contract renders tenure a virtual nullity. Faculty members like Dr. McConnell would have no real *substantive* right to continued employment, but only certain *procedural* rights that must be followed before their appointment may be terminated. We find

university's termination decision was not limited, for to limit review of such a decision would allow "one of the parties to the contract to determine whether the contract had been breached" and "would make a sham of the parties' contractual tenure arrangement." *Id*. at 68. *See also Roberts v. Columbia Coll. Chicago*, 821 F.3d 855, 862-63 (7th Cir. 2016) (holding a provision in the private college's handbook outlining internal review procedures did not prevent terminated professors from bringing their claims to court and noting "tenure would be an illusory benefit" if a terminated professor were prevented from filing suit to challenge the merits of the college's termination decision). The court further held, "[i]t would make no sense for a court blindly to defer to a university's interpretation of a tenure contract to which it is an interested party." *McConnell*, 818 F.2d at 69. *See also McAdams v. Marquette Univ.*, 914 N.W.2d 708, 718 (Wisc. 2018) (refusing to defer to the university's determination that it did not breach its contract with a tenured professor when it suspended him). Yet this is precisely what the majority does here.[22] The majority's actions in interpreting the provisions of the Faculty Manual and concluding as a matter of law that Crenshaw forfeited his right to challenge the College's termination decision not only constitute a misappropriation of the authority normally accorded to juries to determine the terms of a contract, but also deprive tenured faculty members of their due process rights. The majority has—as a matter of law—rendered Crenshaw's tenure an illusory benefit.[23] He has become merely an at-will employee who may be terminated at the whim of his employer.

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this to be an astonishing concept, and one not compelled by a literal reading of the Faculty Handbook." (emphasis in original)).

[22] Following Norman's termination letter to Crenshaw on September 7, 2011, the faculty executive committee met confidentially with President Norman and Dean Christie and decided that "the College followed the procedures for dismissal as outlined in the College Faculty Manual, and that Dr. Crenshaw's procedural rights have not been violated." The majority blindly adopts the College's interpretation of these events.

[23] The majority completely disregards the significance of tenure such that the protections provided in the College's Faculty Manual are meaningless, not only negating its intended purpose but perhaps depriving all tenured faculty employed by Erskine of this coveted benefit. Moreover, the College's continued insistence that the Faculty Manual did not create a contract between the parties—thereby rendering

Having expressed my deep dismay at the majority's decision to transform the issues of the existence of a contract and the delineation of its terms into a matter of law, I now turn to some of the voluminous evidence in this record that supports the jury's verdict.[24] First and foremost, the jury may well have found that the initial grievance against Crenshaw was without merit and should have been summarily dismissed by President Norman. As was clearly established at trial, William Crenshaw was a popular and beloved English professor at Erskine for decades, having been named Professor of the Year by the students and faculty on two occasions. Significantly, he garnered that award during the same year—2010—that the events which gave rise to the initial grievance against him by members of the athletic department transpired. He also served with distinction on numerous faculty committees at the College, including, ironically, the faculty grievance committee at the same time he was the subject of a grievance lodged by members of the athletic department. Crenshaw was an active member, not only of the college community, but of the Due West community. He, along with his wife, served as a volunteer paramedic for eighteen years. It was through this work as a paramedic that he quickly recognized a potentially serious medical condition in one of his students during his 8:00 a.m. class on September 24, 2010. His summoning of an ambulance for her, without going through the athletic department, ostensibly violated "athletic

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professors with tenure the same as those without it—should cause Erskine's tenured faculty significant concern about the security of their employment.

[24] I reject the majority's contention that I have engaged in wild speculation in reviewing whether there is any evidence to support the jury's decision. To the contrary, I believe I have faithfully followed the principles which accompany review of a trial court's grant of JNOV. *See, e.g.*, *Wilson v. Clark Atlanta Univ., Inc.*, 794 S.E.2d 422, 436-38 (Ga. Ct. App. 2016) (reviewing the record for evidence from which a jury could conclude the university breached its contract with professors and affirming the trial court's denial of JNOV). The majority's analysis assumes there was no dispute as to whether the Faculty Manual constituted a contract between Crenshaw and Erskine College and instead views the interpretation of the handbook's provisions—and any alleged breach thereof—as a question of law for the Court. My analysis does not focus on contract principles because that is not our role where the contract's very existence—and therefore its terms—were contested and became questions of fact for the jury. Using this proper lens, the analysis should be whether there is any evidence in this record which supports the jury's verdict. My "wild speculation" is merely the recounting of that ample evidence.

department protocol," although that protocol was never produced to Crenshaw despite his numerous requests. Regardless of this purported protocol, the evidence presented could well have prompted the jury to conclude that Crenshaw acted in the best interest of the student, who was diagnosed with a minor brain injury or concussion after her arrival at the hospital that day. If indeed the initial grievance against Crenshaw was unwarranted, the jury could have found that the entire process from that point on was mishandled by Erskine and that the grievance was unfounded and should have been dismissed at its inception. This point cannot be overstated, as it was the origin of this entire matter resulting in Crenshaw's termination. The jury may well have decided that Crenshaw's conduct which precipitated the grievance simply did not rise to the level of "adequate cause" required for termination, and Erskine's decision to let the grievance go forward to Crenshaw's ultimate termination constituted a breach of contract.

Moreover, the jury could have determined that Erskine did not properly follow the procedures outlined in the Faculty Manual and thereby breached its contract with Crenshaw. First, the College forwarded the grievance to the faculty grievance committee to resolve the matter without providing its members with any direction on how the committee was to accomplish its task, thus preventing the committee from formulating a workable mediation plan. In so doing, the jury likely took into account that Norman had assumed the presidency of Erskine in 2010 at a young age, and that by the time of trial, he had already left that position.[25] The jury could have found that this failure constituted a breach by Erskine of the provision in the handbook, which provides that the faculty grievance committee has the duty "to act as a mediator in cases where misunderstanding or unjust criticism may adversely affect either the professional reputation of a faculty member or the academic standing of the institution." It is abundantly apparent from his actions in this case that Norman lacked the experience and institutional knowledge as to how to handle faculty grievances, but his failure to provide the faculty grievance committee with any direction was inexcusable, and the jury may have found his conduct in mishandling the process breached Crenshaw's contract with the College.

[25] Dr. David Norman assumed the mantle of the presidency at Erskine College at the age of 34, and he resigned within three years of doing so, ostensibly, according to testimony presented at trial, after having strained or broken relationships in the Erskine community and finding himself unable to bring peace to the College.

The jury may have also found the College's attempt to handle the grievance through an unprecedented special faculty committee constituted a breach of contract. Following several failed attempts at mediation,[26] Norman appointed a special faculty committee to "determine the extent of [Crenshaw's] culpability" regarding a number of charges that Norman alleged,[27] and he instructed the committee to make this determination based on a five-part scale: (a) Commendable behavior, (b) Compliant behavior, (c) Mishandled the situation, (d) Grossly mishandled the situation, or (e) Handled the situation in a way that severely limits Erskine's ability to carry out its mission. Other than these instructions, Norman again did not provide the committee with any procedures to conduct its inquiry. The jury may have determined that this failing constituted a breach of Erskine's contract with Crenshaw.

At the special committee hearing, Crenshaw and members of the committee disagreed about the procedures and the nature of the committee's task, and they received no guidance from Norman. Crenshaw was reluctant to respond to questions posed to him by the committee without the presence of legal counsel, and he continued to request that he be provided with the actual charges and the evidence

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[26] After the faculty grievance committee could not resolve the matter, Dean Christie offered Crenshaw and the athletic department complainants an opportunity to mediate the misunderstanding between them. Crenshaw agreed, but the complainants refused, so no mediation occurred. The jury could have found that the complainants' lack of good faith in refusing to engage in mediation should have resulted in Norman's dismissal of the complaint.

[27] Norman appointed a special committee and requested its help "in adjudicating this matter." He cites Erskine's *Employee Resource Handbook* as his authority to create the committee, stating "The President retains the right to appoint a committee from time-to-time to hear grievances and appeals." This handbook is different from the Faculty Manual at issue in this case and was not provided to us in the record on appeal. In his letter to the special committee, Norman outlined the possible offenses Crenshaw committed as follows: (1) Handling of an emergency situation involving an injured student athlete displaying abnormal behavior in the classroom; (2) Treatment of emergency personnel including student's emergency contact; (3) Professionalism and collegiality towards other faculty at the point of crisis; (4) Professionalism and collegiality in the aftermath of the crisis; and (5) Respect for the grievance committee and evidence of respect for faculty governance and the policies and procedures of Erskine College and Seminary.

against him—quintessential due process rights. The jury could have determined the grievance procedures outlined in the Faculty Manual were not followed, and Norman's failure to provide both the initial grievance committee and the special adhoc committee with specific procedures to resolve the matter, as well as the failure to provide Crenshaw with the actual charges and the evidence against him, constituted a breach of Erskine's contract with Crenshaw. Instead, the instructions Norman did provide the committee—to essentially adjudicate the issue by grading Crenshaw's culpability on a five-part scale—are not contained anywhere in the Faculty Manual and had not previously been used at Erskine to resolve a grievance matter. Accordingly, the jury could have found Norman's use of a special committee in this manner denied Crenshaw the due process afforded under the Faculty Manual and breached Crenshaw's contract with the College.

The timing of this entire affair is also significant and could have been a basis for the jury to find Erskine breached its contract with Crenshaw. The incident involving the student requiring medical attention happened in September, and the faculty grievance committee and the special committee appointed by Norman met later that same year. Eight months then elapsed with no action being pursued by the College, and Crenshaw was assigned to teach classes for the 2011 fall semester. At that point, Crenshaw may well have believed that the matter was behind him. However, on the very first day that Crenshaw began classes with his new freshman students, he was unexpectedly confronted by Norman, who asked to meet with him immediately following his first class that morning.

At this meeting, rather than engage in a conversation with Crenshaw, Norman read aloud a letter he had written which stated his intention to terminate Crenshaw's employment and the grounds for his dismissal. In pertinent part, Norman read:

> Your considerable lack of civility and collegiality combined with your toxic levels of personal arrogance, defensiveness and demonstrated disdain for the policies and procedures put in place to define and defend our academic community has demonstrated itself in "personal conduct which substantially impairs your fulfillment of institutional responsibilities" . . . . [T]hey are grounds for your dismissal.

While Crenshaw's response to this unanticipated and oddly-timed recitation was somewhat less than cordial, the conduct of Norman and Crenshaw on this fateful day

vis-à-vis the contract was an issue for the jury to determine. First and foremost, the reasons given by Norman as grounds for this dismissal bear no resemblance to the original grievance filed against Crenshaw, which likely did not escape the jury's notice. Inexplicably, Norman provided Crenshaw with only one option to avoid termination, which was to make blanket apologies to the grievance complainants, the faculty at large, and the Erskine College community. Taken aback by this unorthodox request, Crenshaw asked what he needed to apologize for, and Norman replied that he had offended his colleagues and had a strained relationship with them.[28] However, Norman also acknowledged that he could be wrong, that Crenshaw had not offended the faculty, and that he would know for sure based upon the faculty's response to his apology. Given this evidence, the jury could have found Norman's delayed confrontation with Crenshaw, as well as the morphing of the original grievance into a personal attack by Norman, did not satisfy the requirement for preliminary proceedings in the Faculty Manual, and the manner in which Norman sought to resolve the matter was not only unprofessional, but also constituted a breach of Erskine's contract with Crenshaw.

Prior to the end of the meeting, Norman informed Crenshaw that he was suspended from teaching for the semester. Under the terms of the Faculty Manual, a tenured professor may be suspended from teaching during termination proceedings "only if immediate harm to himself or others is threatened by his continuance." The jury may well have concluded that Erskine breached this term of the contract through Norman's actions on that day. In a similar case, the Wisconsin Supreme Court found Marquette University—also a private religious institution—breached its contract with a tenured professor when it suspended him because of a blog post criticizing an encounter between an instructor and a student. *McAdams v. Marquette Univ.*, 914 N.W.2d 708, 737 (Wisc. 2018). The court found the suspension constituted a breach of contract because the activity was protected by the contract's guarantee of academic freedom. *Id*. at 735. Indeed, the court held that "[a] university's academic freedom is a shield against governmental interference" and criticized the dissent's willingness to "reforge it as a sword with which to strike down contracts [the University] no longer wishes to honor." *Id*. at 737. Similar to *McAdams*, Crenshaw's conduct throughout this matter was protected by Erskine's Faculty Manual which

[28] Crenshaw's bewilderment concerning the alleged need for him to apologize to his colleagues and that he had a "strained relationship" with them is understandable given the fact that the faculty had voted him Professor of the Year during the very year the initial grievance arose.

guarantees academic freedom for faculty and defines the term as "freedom of thought and expression within the institution: freedom to explore, to criticize, to exchange ideas, and to communicate the result of honest and responsible inquiry." Accordingly, the jury could have found the suspension from teaching constituted a breach of contract because Crenshaw's conduct did not rise to the level of "immediate harm to himself or others" as required by the Faculty Manual.

At the end of the meeting, Norman asked Crenshaw to let him know two days later which of the following options he decided to choose: (1) apologize; (2) retire early; or (3) proceed with termination. Crenshaw complied with Norman's request in an email indicating his willingness to discuss early retirement with his attorney. However, Norman interpreted Crenshaw's response to be a final decision to proceed with early retirement, immediately drafted an agreement and announcement for Crenshaw's approval, and requested his response by the following day—despite the fact that Crenshaw was guaranteed by law twenty-one days in which to consider the offer. Crenshaw responded that announcing his retirement was premature, and Norman reiterated that he was suspended from teaching and that he had to make a decision immediately. Four days after Crenshaw's initial reply, Norman instituted formal termination proceedings against Crenshaw because, in his view, they had not been able to "resolve the matter by mutual consent" according to the Faculty Manual. Nevertheless, Norman indicated the early retirement offer was still on the table, but at the same time, informed Crenshaw of the grounds of his dismissal and his right to a hearing before a faculty committee. Norman provided Crenshaw only three days to notify him of his desire for a hearing.

While the Faculty Manual does not require a specific length of time for each stage of the termination proceedings, the jury could have found Erskine unnecessarily rushed the process when—after allowing eight months to pass without taking any action—Norman escalated the proceedings to stage two and scheduled the hearing a mere two weeks later. The jury could have also determined Norman further confused and bungled the process by granting Crenshaw time to consider early retirement while at the same time threatening him with termination and mandating his suspension from teaching. Although Norman proceeded with scheduling a hearing and testified he actually appeared on the date of the scheduled hearing, the jury could well have found this hearing to be a sham since no committee was appointed to hear the case as required by the Faculty Manual. Obviously, even if Crenshaw had appeared that day, no hearing could have been held without an adjudicative body. Thereafter, Norman took the extraordinary step of banning

Crenshaw from campus, even though his home was essentially located there. The jury may have determined that this severe measure breached Erskine's contract with Crenshaw since there is no provision in the Faculty Manual which authorizes the president to ban a tenured professor from stepping foot on the Erskine campus.

Finally, the jury could have found Erskine's notification of Crenshaw's right to a hearing was itself confusing and ambiguous because the letter stated that a hearing would be held unless waived, provided a date, time, and location for the scheduled hearing, but also asked that he reply if he desired the hearing. *See Williams v. Teran, Inc.*, 266 S.C. 55, 60, 221 S.E.2d 526, 529 (1976) (noting that any doubt in a contract must be resolved against the drafting party); *Mid-Continent Refrigerator Co. v. Way*, 263 S.C. 101, 104-05, 208 S.E.2d 31, 32 (1974) (noting that ambiguities or conflicts in documents constituting a contract must be construed against the party who drafted the contract). Because Norman had offered Crenshaw early retirement and allowed him twenty-one days to consider the offer, the jury could have found he was not required to request a hearing because he was still in the preliminary negotiation stage of the process, and an agreement to accept early retirement would have constituted a resolution of the matter "by mutual consent" under the Faculty Manual.

These numerous factual issues, among others, were peculiarly the province of the jury chosen to resolve this case. The position taken by the majority—that the presence of factual questions are irrelevant because the contract between the parties required Crenshaw to avail himself of the appeals process prior to filing suit—can only be justified by the majority arrogating to itself the task of determining the terms of the contract, a matter which I insist was properly submitted to the jury. In fact, whether the Faculty Manual created a contract was one of the most hotly disputed issues in this case, and it was the threshold issue the jury was required to determine. This point—which is the main thrust of my separate writing—bears repeating: not only does the majority usurp the jury's role in deciding the terms of the parties' contract, it also errs in its determination because absolutely nothing in the Faculty Manual—a manual designed to guarantee tenured professors certain rights of due process which the majority essentially dismisses as meaningless—provides that a failure to request a hearing forfeits the professor's right to bring a lawsuit for breach of contract. Therefore, any alleged procedural failure on Crenshaw's part did not—and indeed cannot—end this case as a matter of law. Issues regarding the existence of a contract, its terms, and whether a breach has occurred have historically been issues for a jury, and they should be in this case. The majority's remarkable departure

from this longstanding principle of appellate practice and procedure is wrong, and it effectively destroys the concept of academic tenure in this state. With the stroke of a pen, the majority has essentially transformed a tenured professor with a distinguished career spanning over thirty years into an at-will employee, despite the clearly supportable verdict of a jury in his favor.

Accordingly, I would affirm the decision of the court of appeals reinstating the jury's verdict and awarding Crenshaw $600,000 damages for his breach of contract claim.

BEATTY, C.J., concurs.

[qualifying facility], such utility would generate or purchase from another source." 16 U.S.C. § 824a-3(d) (2010).[2] In other words, the PSC may not set the rates for renewable energy higher than the combination of expenses and capital costs the utility would incur if it produced the electricity itself, or if it purchased the electricity from another provider.

b. South Carolina Law Implementing Federal Requirements

In 2018, South Carolina law required the PSC to set the rates for renewable energy as part of a utility's annual "fuel cost" review proceeding. S.C. Code Ann. § 58-27-865 (2015). The applicable statute—still in effect for other purposes—requires the PSC to conduct "twelve-month reviews to determine whether an increase or decrease in the base rate amount designed to recover fuel cost should be granted." § 58-27-865(B). "The term 'fuel cost' . . . includes . . . fuel costs related to purchased power." § 58-27-865(A)(1). The term "fuel costs related to purchased power" includes "costs under . . . PURPA." § 58-27-865(A)(2).

In 2019, the General Assembly enacted the South Carolina Energy Freedom Act. Act No. 62, 2019 S.C. Acts 368. Section 1 of the Act sets forth new procedures through which the PSC must set rates for renewable energy under PURPA. *See* S.C. Code Ann. §§ 58-41-05 to -40 (Supp. 2019). Subsection 58-41-20(A)(1) specifically provides the proceedings are now "separate from the electrical utilities' annual fuel cost proceedings conducted pursuant to Section 58-27-865." The new procedures "include . . . discovery, filed comments or testimony, and an evidentiary hearing." § 58-41-20(A)(2). Under one particularly important new procedure, the PSC "shall engage . . . a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided costs for purposes of proceedings conducted pursuant to this section." § 58-41-20(I). The PSC must now conduct these proceedings and set new rates "at least once every twenty-four months." § 58-41-20(A).

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[2] FERC rules and regulations use the term "avoided costs" and define the term to mean "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 C.F.R. § 292.101(b)(6) (2020).