

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff )  
 )  
 RACHEL TUDOR, )  
 )  
 Plaintiff-Intervenor )  
 v. )  
 )  
 SOUTHEASTERN OKLAHOMA )  
 STATE UNIVERSITY, and )  
 )  
 THE REGIONAL UNIVERSITY )  
 SYSTEM OF OKLAHOMA, )  
 )  
 Defendants. )

CASE NO. 5:15-CV-00324-C

**RESPONSE IN OPPOSITION TO DEFENDANTS’ REQUEST FOR EXPEDITED  
BRIEFING OF DEFENDANTS’ MOTION IN LIMINE**

**I. Introduction**

Defendants have filed an early Motion in Limine (ECF No. 88) to exclude certain testimony regarding statements made by Dr. Douglas McMillan about Plaintiff-Intervenor Rachel Tudor and transgender people generally. Defendants have also requested an abbreviated briefing schedule so that the Court might rule on their motion prior to the close of discovery in this case. In order to provide the Court with a prompt statement of the United States’ position, this response is limited to a discussion of the

United States' opposition to Defendants' baseless request for an expedited briefing schedule.<sup>1</sup> Defendants' request for expedited briefing should be denied.

## **II. Argument**

On the eve of the United States' deposition of Dr. McMillan, more than three weeks before the close of discovery and two months before motions in limine are due, Defendants filed a premature motion in limine to exclude from evidence testimony regarding Dr. McMillan's prior statements. Defendants also seek to impose an expedited briefing schedule on the Parties, providing only ten days to file a response instead of the typical 21 days provided by LCvR 7.1(g). Defendants seek a Court ruling on their motion before the September 1, 2016 close of discovery, arguing that an expedited schedule is necessary "to potentially alleviate inadmissible evidence from dispositive motion pleadings." ECF No. 88 at 11. Because the dispositive motion process already provides adequate means to address the admissibility of evidence, the timing of Defendants' motion and their request for expedited review unnecessarily distract counsel for Plaintiff and Plaintiff-Intervenor during the final weeks of discovery with premature motion practice.

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<sup>1</sup> The United States intends to file a separate response in opposition to the substance of Defendants' motion in limine once a briefing schedule has been determined.

**A. The Summary Judgment Process Already Provides Adequate Means to Address the Admissibility of Evidence**

Rule 56(c)(2) of the Federal Rules of Civil Procedure provides that, when seeking summary judgment, “[a] party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.” Thus, the summary judgment process already incorporates a way for Defendants to contest the admissibility of any evidence offered by the United States. *See Mitchell v. Zia Park, LLC*, 842 F. Supp. 2d 1316, 1320-21 (D.N.M. 2012) (describing Rule 56 process for contesting admissibility of evidence). Defendants provide no explanation of why the existing process is insufficient nor why the allegedly-inadmissible and supposedly-prejudicial evidence, which Defendants have now introduced into the public record themselves, should be kept from dispositive motion pleadings. The admissibility of statements made by Dr. McMillan, including whether such statements are inadmissible hearsay, should be addressed during summary judgment briefing, as envisioned by Rule 56, or at trial.

**B. Defendants’ Motion Is Premature and Its Request for Expedited Briefing is Unnecessarily Burdensome and Prejudicial**

In light of the process already afforded by Rule 56 for resolving disputes about the admissibility of evidence at the summary judgment phase, Defendants’ premature attempt to seek resolution of these issues in the midst of discovery, before Dr. McMillan himself has even been deposed, suggests that their true objective is to prevent the Court from considering all potential evidence in making admissibility decisions and, ultimately, from

considering all relevant and admissible evidence during dispositive motions. The United States anticipates that the testimony of Dr. McMillan, as well as other testimonial and documentary evidence that may be obtained during the remaining three weeks of discovery, may be relevant to the issue of corroboration that the Defendants cited in their motion. (ECF No. 88 at 10). For example, the United States and Plaintiff-Intervenor have noticed the depositions of Mindy House, a former Southeastern employee, and Judge Richard Ogden, a former Regent of the Regional University System of Oklahoma, both of which will occur after Defendants' proposed August 19, 2016 deadline for the United States to respond. One or both of these individuals may testify as to the issues identified by Defendants. Defendants' proposed expedited schedule deprives Plaintiff of the ability to corroborate Dr. McMillan's statements with such evidence and requires the Court to make a decision based on an incomplete universe of discovery.

Moreover, Defendants' proposed briefing schedule is prejudicial and intended to distract the United States by adding unnecessary deadlines to an already-full discovery calendar. The United States has noticed Dr. McMillan's depositions for Wednesday, August 10, and Plaintiff-Intervenor has noticed a Fed. R. Civ. P. 30(b)(6) deposition of Defendant Regional University System of Oklahoma for Thursday, August 11. The United States and Plaintiff-Intervenor have noticed two additional fact depositions prior to the close of discovery, as have Defendants. Numerous other tasks also need to be completed prior to the close of discovery. An expedited briefing schedule places undue burden on the United States to defend the admissibility of significant pieces of evidence

before it has all of the information to do so and before the time Rule 56 has set for such a determination.

### **III. Conclusion**

Defendants provide no legitimate basis for their request for an expedited briefing schedule. Instead, the proposed briefing schedule would interfere with the United States' ability to respond in full to the substance of Defendants' Motion. The United States requests that the Court deny the request for expedited briefing. Furthermore, because the typical briefing schedule set forth by LCvR 7.1(g) still would require Plaintiff to respond on August 30, 2016, prior to the discovery deadline, the United States requests that the Court set Plaintiff's deadline to respond to the substance of Defendants' Motion in Limine no earlier than September 8, 2016 (a week after the September 1, 2016 close of discovery).

Date: August 10, 2016

Respectfully submitted,  
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