

No. 18-6102

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

DR. RACHEL TUDOR,
Plaintiff-Appellant-Cross-Appellee,

v.

SOUTHEAST OKLAHOMA STATE UNIV., et al.
Defendants-Appellees-Cross-Appellants.

On Appeal from the United States District Court
for the Western District of Oklahoma
Case No. 5:15-cv-00324
The Honorable Robin Cauthron, District Judge.

**PROPOSED AMICUS CURIAE LAMBDA LEGAL'S MOTION TO
EXTEND TIME TO FILE AMICUS BRIEF IN SUPPORT OF
CROSS-APPELLEE DR. RACHEL TUDOR**

Proposed amicus curiae Lambda Legal seeks leave of Court to file its brief in support of Dr. Rachel Tudor, in her role as cross-appellee, within one week after she files the "Third Brief" (see Document: 010110066696), defending the judgment of liability in this appeal.

**CERTIFICATION OF COMPLIANCE WITH
TENTH CIRCUIT RULE 27.1**

Because the email exchange among the parties to the appeal elucidates the nature of Lambda Legal’s request, and because both Cross-Appellants and Cross-Appellee essentially consented to the request, Lambda Legal sets forth the email exchange verbatim:

On November 7, 2017, Gregory R. Nevins, counsel for proposed amicus curiae, sent the following email to, *inter alia*, Ezra Young, counsel for cross-appellee Rachel Tudor, and Zach West, counsel for cross appellants Southeast Oklahoma State University, *et al.*:

To Whom It May Concern:

Lambda Legal intends to participate in this appeal as amicus curiae to assist the Court of Appeals regarding the correct standards applied by the District Court regarding Title VII liability and in defense of the judgment of liability. Lambda Legal wants to file its amicus brief within 7 days of the filing of the “Third Brief” in the cross-appeal process, that being the brief that Cross-Appellee Tudor will file in response to Cross-Appellant Oklahoma’s filing of the Second Brief. Please let me know your respective positions on this request, including any position on whether the timing of the filing of the Fourth Brief by Oklahoma should be adjusted if our request is granted.

The rationale is that it makes little sense for Lambda Legal to file 7 days after Tudor files her “Principal Brief,” the First Brief in the cross-appeals process, because that brief will focus primarily, if not exclusively, on the reasons that Tudor argues that the judgment is inadequate or deficient, issues upon which Lambda Legal does not intend to brief. Oklahoma, in the Second Brief, will set forth its arguments why the liability judgment should be reversed, and it only makes sense for our brief responding to those arguments to occur after those arguments are actually made.

I intend to file this motion on or before Friday and will apprise the Court of your respective positions. Thank you for your anticipated cooperation.

Counsel for cross-appellee Rachel Tudor responded later that day:

Greg,

Dr. Tudor does not oppose Lambda Legal’s motion.

As to the timing of OAG’s fourth brief—Tudor does not have a position at this time. If our OAG colleagues have a position on it we are happy to discuss. Best, Ezra

Counsel for cross-appellants Zach West responded on November 9, 2018:

Greg,

This schedule makes sense, but only if the Appellant's opening brief focuses exclusively on the issues Lambda Legal does not intend to discuss. Put differently, we have no objection at present, but reserve the right to object in the future depending on what the opening brief actually contains.

Zach West

ARGUMENT

Under the parameters for briefing set forth in this Court's October 16, 2018 Scheduling Order, all parties concerned agree that it makes sense for Lambda Legal to file its brief in support of Dr. Rachel Tudor's defense of the judgment of liability after Tudor files the Third Brief. Precedent for this arrangement can be found in the appeal at *Taylor v. Keycorp, et al.*, 680 F.3d 609 (6th Cir. 2012), a cross-appeal where the Secretary of Labor supported the plaintiff in both of the plaintiff's roles of appellant and cross-appellee. The Secretary filed a supporting brief within a week of Taylor's filing of the First Brief and filed another supporting brief within a week of Taylor's filing of the Third Brief in the cross-appeal process. *See Taylor, v. Keycorp, et al*, Brief of the Secretary of Labor, Hilda L. Solis, as Amicus Curiae Supporting Plaintiff-Cross-Appellee, 2011 WL 2118175 *4 and n.2 (6th Cir. May 20, 2011).

CONCLUSION

For the aforementioned reasons, Lambda Legal respectfully requests that this Court grant leave and permit Lambda Legal to file its brief in support of cross-appellee Tudor within a week of her filing the Third Brief.

DATED: November 9, 2018

Respectfully submitted,

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

By: /s/ Gregory R. Nevins
Gregory R. Nevins
Attorneys for Proposed *Amicus Curiae*
Lambda Legal

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

This motion complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type-style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007, in 14-point Times New Roman font.

DATED: November 9, 2018

By: /s/ Gregory R. Nevins
Gregory R. Nevins

CERTIFICATE OF SERVICE

I, Gregory R. Nevins, hereby certify that on November 9, 2018, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Gregory R. Nevins

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